

**CODE OF ORDINANCES**  
**TOWN OF**  
**YANCEYVILLE, NORTH CAROLINA**

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Published by Order of the Council

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MUNICIPAL CODE CORPORATION

Tallahassee, Florida 1998

OFFICIALS  
o f t h e  
T O W N O F  
YANCEYVILLE, NORTH CAROLINA  
AT THE TIME OF THIS CODIFICATION

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Curtis E. Davis  
*Mayor*

---

Alvin W. Foster  
M. Duke Foster  
C. Keith Tatum  
*Council*

---

R. Lee Farmer  
*Town Attorney*

---

Steven Smith  
*Town Clerk*

## PREFACE

This Code constitutes a complete codification of the general and permanent ordinances of the Town of Yanceyville, North Carolina.

Source materials used in the preparation of the Code were the ordinances adopted by the council. The source of each section is included in the history note appearing in parentheses at the end thereof. The absence of such a note indicates that the section is new and was adopted for the first time with the adoption of the Code. By use of the comparative tables appearing in the back of this Code, the reader can locate any ordinance included herein.

The chapters of the Code have been conveniently arranged in alphabetical order, and the various sections within each chapter have been catchlined to facilitate usage. Notes which tie related sections of the Code together and which refer to relevant state law have been included. A table listing the state law citations and setting forth their location within the Code is included at the back of this Code.

### *Chapter and Section Numbering System*

The chapter and section numbering system used in this Code is the same system used in many state and local government codes. Each section number consists of two parts separated by a dash. The figure before the dash refers to the chapter number, and the figure after the dash refers to the position of the section within the chapter. Thus, the second section of chapter 1 is numbered 1-2, and the first section of chapter 6 is 6-1. Under this system, each section is identified with its chapter, and at the same time new sections can be inserted in their proper place by using the decimal system for amendments. For example, if new material consisting of one section that would logically come between sections 6-1 and 6-2 is desired to be added, such new section would be numbered 6-1.5. New articles and new divisions may be included in the same way or, in the case of articles, may be placed at the end of the chapter embracing the subject, and, in the case of divisions, may be placed at the end of the article embracing the subject. The next successive number shall be assigned to the new article or division. New chapters may be included by using one of the reserved chapter numbers. Care should be taken that the alphabetical arrangement of chapters is maintained when including new chapters.

### *Page Numbering System*

The page numbering system used in this Code is a prefix system. The letters to the left of the colon are an abbreviation which represents a certain portion of the volume. The number to the right of the colon represents the number of the page in that portion. In the case of a chapter of the Code, the number to the left of the colon indicates the number of the chapter. In the case of an appendix

to the Code, the letter immediately to the left of the colon indicates the letter of the appendix. The following are typical parts of codes of ordinances, which may or may not appear in this Code at this time, and their corresponding prefixes:

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### *Indexes*

The indexes have been prepared with the greatest of care. Each particular item has been placed under several headings, some of which are couched in lay phraseology, others in legal terminology, and still others in language generally used by local government officials and employees. There are numerous cross references within the indexes themselves which stand as guideposts to direct the user to the particular item in which the user is interested.

### *Looseleaf Supplements*

A special feature of this publication is the looseleaf system of binding and supplemental servicing of the publication. With this system, the publication will be kept up-to-date. Subsequent amendatory legislation will be properly edited, and the affected page or pages will be reprinted. These new pages will be distributed to holders of copies of the publication, with instructions for the manner of inserting the new pages and deleting the obsolete pages.

Keeping this publication up-to-date at all times will depend largely upon the holder of the publication. As revised pages are received, it will then become the responsibility of the holder to have the amendments inserted according to the attached instructions. It is strongly recommended by the publisher that all such amendments be inserted immediately upon receipt to avoid misplacing them and, in addition, that all deleted pages be saved and filed for historical reference purposes.

### *Acknowledgments*

This publication was under the direct supervision of Jan Shekitka, Supervising Editor, and Jody Wilson and Robert MacNaughton, Editors, of the

Municipal Code Corporation, Tallahassee, Florida. Credit is gratefully given to the other members of the publisher's staff for their sincere interest and able assistance throughout the project.

The publisher is most grateful to R. Lee Farmer, Town Attorney, for his cooperation and assistance during the progress of the work on this publication. It is hoped that his efforts and those of the publisher have resulted in a Code of Ordinances which will make the active law of the town readily accessible to all citizens and which will be a valuable tool in the day-to-day administration of the town's affairs.

### *Copyright*

All editorial enhancements of this Code are copyrighted by Municipal Code Corporation and the Town of Yanceyville, North Carolina. Editorial enhancements include, but are not limited to: organization; table of contents; section catchlines; prechapter section analyses; editor's notes; cross references; state law references; numbering system; code comparative table; state law reference table; and index. Such material may not be used or reproduced for commercial purposes without the express written consent of Municipal Code Corporation and the Town of Yanceyville, North Carolina.

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Municipal Code Corporation and the Town of Yanceyville, North Carolina.  
1998.

ADOPTING ORDINANCE 1-98

*An Ordinance Adopting and Enacting a New Code for the Town of Yanceyville, North Carolina; Providing for the Repeal of Certain Ordinances not Included Therein; Providing a Penalty for the Violation Thereof; Providing for the Manner of Amending Such Code; And Providing When Such Code and this Ordinance Shall Become Effective.*

*Be it Ordained by the Town Council of the Town of Yanceyville, North Carolina:*

*Section 1.* The Code entitled "Code of Ordinances, Town of Yanceyville, North Carolina," published by Municipal Code Corporation, consisting of chapters 1 through 42, each inclusive, is adopted.

*Section 2.* All ordinances of a general and permanent nature enacted on or before July 7, 1998, and not included in the Code or recognized and continued in force by reference therein, are repealed.

*Section 3.* The repeal provided for in section 2 hereof shall not be construed to revive any ordinance or part thereof that has been repealed by a subsequent ordinance that is repealed by this ordinance.

*Section 4.* Unless another penalty is expressly provided, every person convicted of a violation of any provision of the Code or any ordinance, rule or regulation adopted or issued in pursuance thereof shall be punished in accordance with G.S. 160A-175. Each act of violation and each day upon which any such violation shall occur shall constitute a separate offense. The penalty provided by this section, unless another penalty is expressly provided, shall apply to the amendment of any Code section, whether or not such penalty is reenacted in the amendatory ordinance. In addition to the penalty prescribed above, the town may pursue other remedies such as abatement of nuisances, injunctive relief and revocation of licenses or permits.

*Section 5.* Additions or amendments to the Code when passed in the form as to indicate the intention of the town council to make the same a part of the Code shall be deemed to be incorporated in the Code, so that reference to the Code includes the additions and amendments.

*Section 6.* Ordinances adopted after July 7, 1998, that amend or refer to ordinances that have been codified in the Code shall be construed as if they amend or refer to like provisions of the Code.

*Section 7.* This ordinance shall become effective November 3, 1998. Passed and adopted by the town council the 3<sup>rd</sup> day of November, 1998.

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/s/ Curtis E. Davis, Mayor

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/s/ Steven Smith, Town Clerk

(SEAL)

Certificate of Adoption

I hereby certify that the foregoing is a true copy of the ordinance passed at the regular meeting of the town council of the Town of Yanceyville, North Carolina, held on the 3<sup>rd</sup> day of November, 1998.

/s/

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Steven Smith, Town Clerk

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**Checklist of Up-to-Date Pages**  
**(This checklist will be updated with the printing of each Supplement)**

From our experience in publishing Looseleaf Supplements on a page-for-page substitution basis, it has become evident that through usage and supplementation many pages can be inserted and removed in error.

The following listing is included in this Code as a ready guide for the user to determine whether the Code volume properly reflects the latest printing of each page.

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*P A R T I*  
*CHARTER\**

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Sec. 1.1. Incorporation and corporate powers.

**Chapter II. Corporate Boundaries**

Sec. 2.1. Town Boundaries

**Chapter III. Governing Body**

Sec. 3.1. Structure of governing body; number of members.

Sec. 3.2. Manner of electing board.

Sec. 3.3. Term of office of Councilmembers.

Sec. 3.4. Selection of Mayor; term of office.

Sec. 3.5. Filling of vacancies.

**Chapter IV. Elections**

Sec. 4. 1. Conduct of Town elections.

**Chapter V. Administration**

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Sec. 5.2. Incorporation of town and dissolution of sanitary district; transfer of assets and liabilities.

Sec. 5.3. Taxation; budget.

Sec. 5.4. Application of state law transitional provisions.

Sec. 5.5. Effective date of Charter.

**\*Editor's** note—Printed herein is the Charter of the Town of Yanceyville, North Carolina being chapter 501 of the Acts of 1985, as adopted by the legislature on June 28, 1985, and effective on the same date. Amendments to the Charter are indicated by parenthetical history notes following amended provisions. The absence of a history note indicates that the provision remains unchanged from the original Charter. Obvious misspellings have been corrected without notation. For stylistic purposes, a uniform system of headings, catchlines and citations to state statutes has been used. Additions made for clarity are indicated by brackets.

**CHAPTER I. INCORPORATION AND CORPORATE POWERS****Sec. 1.1. Incorporation and corporate powers.**

The inhabitants of the Town of Yanceyville area body corporate and politic under the name "Town of Yanceyville." Under that name they have all the powers, duties, rights, privileges, and immunities conferred and imposed upon cities by the general law of North Carolina.

**CHAPTER II. CORPORATE BOUNDARIES\*****Sec. 2.1. Town Boundaries.**

Until modified in accordance with law, the boundaries of the Town of Yanceyville are as follows:

BEGINNING at an iron stake in the northern right-of-way line of N.C. HWY 86 (100 feet R/W) and being the southeast corner of Roxboro Lumber Company, Inc. (Ace Hardware); thence crossing N.C. HWY 86 S 5°30'V - 100.00 feet to a point in the southern right-of-way line of N.C. HWY 86; thence S 5°30'W - 400.00 feet to a point; thence along a line parallel with and 450.00 feet from the centerline of N.C. HWY 86 and U.S. HWY 158 in a westerly direction 2,220.00 feet to a point in the western line of the lot recorded in Plat Book 4 at Page 191, said point being 450.00 feet from and perpendicular with the centerline of U.S. HWY 158; thence along the said line S 25°00'E - 110.96 feet to a corner with the B.S. Graves Estate; thence along the rear of said lot recorded in Plat Book 4 at Page 191 S 76°29'20"W - 911.07 feet to a corner in the line of the Caswell Board of Education; thence with the line between the Caswell Board of Education and the B.S. Graves Estate S 7°16'47"W - 1,790.00 feet to the corner with Bradner; thence with the line of Bradner N 86°48'W - 1,970.00 feet to a corner with the Caswell County Board of Education; thence with the Caswell Board of Education S 66°50'V - 158.00 feet; thence S 56°17'W - 220.00 feet; thence N 28°13'W - 35.00 feet; thence S 04°30'W - 110.00 feet; thence S 55°00'W - 70.00 feet; thence S 49°30'V - 75.00 feet; thence S 14°00'V - 80.00 feet; thence S 74°00'V - 210.00 feet; thence N 15°00'V - 510.00 feet to an iron stake in the south right-of-way line of South Second Street; thence crossing South Second Street N 38°55'30"E - 33.25 feet to an iron stake in the north right-of-way line of South Second Street, corner with T. S. Lee Estate recorded in Plat Book 10 at Page 91; thence with said estate the following courses and distances: N 44°07'30"V - 74.75 feet, S 87°52'30"V - 233.00 feet; N 05°22'30"E - 217.25 feet, N 12°17'30"W - 136.71 feet, N 43°55'30"W - 37.01 feet to an iron stake in the T. O. Jones Heirs Recorded in Plat Book 10 at Page 55; thence with the line of said Jones Heirs the following courses and distances; N 20°37'30"W - 231.00 feet, N 24°46'30"V - 198.00 feet, N 11°40'30"E - 239.13 feet to a corner with Caswell County recorded in Plat Book 6 at Page 37; thence N 76°39'30"W - 830.00 feet to an iron stake in the J. H. Kerr Estate; thence with the Estate the following courses and distances: S 06°08'30"W - 286.50 feet, S 08°15'30"W - 835.00 feet, S 04°59'32"W - 1,137.23 feet, S 03°23'28"W - 109.85 feet to a corner with said Estate and the Yanceyville Sanitary District as recorded in Plat Book 4 at Page 45; thence with said

\***State law** reference—Corporate boundaries, G.S. 160A-21 et seq.



Sanitary District S 04054V - 2,241.21 feet to a point in the center of Country Line Creek; thence along the center of Country Line Creek as it meanders in a westerly direction 3,250.00 feet to junction with Fullers Creek; thence along the center of Fullers Creek as it meanders in a northerly direction 2,470.00 feet to the centerline of Old N.C. HWY 62; thence crossing said road and running with the western boundary of the Yanceyville Lake Property in a northerly direction a distance of approximately 1,900 feet to an iron stake, corner with Roy Atwater; thence with the line of Roy Atwater the following courses and distances: N 55°55'W - 533.63 feet, N 6°24'E - 1,409.55 feet to a corner with Underwood, N 5°01'E - 772.29 feet, N 4°53'E - 609.94 feet, N 84°22'30"V - 1,400.27 feet, N 4°04'E - 1,269.05 feet to the corner with George F. Marshall; thence with the line between George F. Marshall and Underwood N 9°31'E - 418.36 feet to the corner with Allen Gwyn Property; thence with the line between George F. Marshall and the Allen Gwyn Property N 5°18'E - 618.59 feet; thence S 84°31'E - 462.29 feet to the corner with Frank Smith; thence with the line between Frank Smith and the Allen Gwyn Property N 4°35'E - 1,870.00 feet to a point in the line of Smith; thence across lot No. 3 of the Allen Gwyn Property and along the rear of lot Nos. 2 and 3D of the Allen Gwyn Property as recorded in -Plat Book 6, Page 173 S 83°41'38"W - 2,770.00 feet to a point in the eastern right-of-way line of Hatchett Road; thence with the eastern right-of-way line of Hatched Road in a northerly direction 830 feet to the center of U.S. HWY 158; thence 300 feet north of and perpendicular to the centerline of U.S. HWY 158 to a point; thence along a line being the rear of lot Nos. 1C, 1B, and 1D of the Allen Gwyn Property N 83°55'15"T - 2,130 feet to a point on the western boundary of the J. C. Womack and K C. Arey Subdivision recorded in Plat Book No. 1 at Page 181; thence with the line between the Allen Gwyn Property and the J. C. Womack and K. C. Arey Subdivision N 4°55'27"E - 783.54 feet to the corner with the Allen Gwyn Property and lot No. 4 of the W. P. Aldridge Heirs Subdivision recorded in Plat Book 6 at Page 43; thence across said lot No. 4, 530 feet to a point in the line between lot Nos. 3 and 4, said point being 430 feet perpendicular from the centerline of S. R. 1500 (Old N.C. 86); thence along a line parallel with and 430 feet from the centerline of S.R. 1500 3,770.00 feet to a point 475 feet from the centerline of N.C. HWY 86; thence N 14°14'W - 620.00 feet; thence S 83°31'E - 427.65 feet to the western right-of-way line of N.C. HWY 86; thence in a line crossing N.C. HWY 86 N 38°13'E - 992.00 feet to the northwest corner of Public Service Co. of N.C. lot on S.R. 1500; thence along the northern line of Public Service Co. of N.C. S 51°47'E - 360.00 feet to the eastern right-of-way line of S.R. 1500; thence along the line between lots 14-A and 14-H of the C.E. Kimbro Subdivision recorded in Plat Book 5 at Page 307 S 52°57'E - 303.60 feet to the rear corner of lot 14-H; thence S 36°01'W - 663.60 feet; thence S 23°53'V - 406.64 feet to the rear corner between lot Nos. 15-C and 15-D of the C.E. Kimbro Subdivision; thence along the rear of lot Nos. 15-C and 15-B of the C. E. Kimbro Subdivision N 14°14'V - 214.94 feet, thence along the line between lots 15-A and 16-A of the C. E. Kimbro Subdivision S 65°32'E - 128.14 feet to a point 475 feet from the centerline and perpendicular to the centerline with N.C. HWY 86; thence across lot 16-A of the C. E. Kimbro Subdivision 475 feet from the centerline of N.C. HWY 86 S 14°14'E - 885.00 feet to a point in the line between lots 16-A and 17-A of the C. E. Kimbro Subdivision; thence along the line between 16-A and 17-A of the C. E. Kimbro Subdivision S 69°42'E - 612.11 feet to the center of Rattlesnake Creek; thence along Rattlesnake Creek as it meanders in a southerly direction 685 feet to the southeastern corner

of lot 18-A of the C. E. Kimbro Subdivision; thence along the lot No. 18-A N 85°17'V - 285.00 feet, thence S 7°40'W - 160.00 feet to a point 475 feet from the centerline and perpendicular to the centerline of N.C. HWY 86; thence along a line 475 feet from the centerline of N.C. HWY 86 in a southerly direction 1,990.00 feet to a point in the line of Caswell Motor Company, Inc.; thence along the line of Caswell Motor Co., Inc. N 54°45'E - 157.37 feet and S 73°35'E - 361.29 feet to the rear corner of Caswell Motor Co., Inc.; thence along the line between W. L. Daniel and Tract 2A of the W. L. Hooper Estate as recorded in Plat Book 10 at Page 208 N 38°17'E - 863.60 feet to a point; thence S 33°41'43"E - 87.04 feet to the centerline of S.R. 1576; thence along the line between Chandler and Tract 2B of the W. L. Hooper Estate S 33°41'43"E - 186.50 feet; thence S 47°41'43"E - 270.60 feet; thence S 37°12'22"E - 691.71 feet to the corner with the Caswell County Board of Education; thence with the line of the Caswell County Board of Education S 50°40'41"E - 168.07 feet thence N 59°19'E - 700.00 feet to the corner with the Caswell County Farm; thence S 0°19'E - 600.00 feet to the northern right-of-way line of S.R. 1572; thence along the northern right-of-way line of S.R. 1572 in an easterly direction 2,450.00 feet to a point in the line of the Caswell County Farm, said point being approximately 625 feet from the centerline of S.R. 1589; thence along the Caswell County Farm line S 31°26'E - 1,000.00 feet; thence S 54°56'E - 945.00 feet to the north corner of lot 124 of the T. E. Steed Subdivision as recorded in Plat Book 1 at Page 210; thence along the rear of lot Nos. 124, 125, and 126 of the T. E. Steed Subdivision S 42°06'E - 5,144.00 feet to an iron stake, corner with lot 126 of said subdivision and lot No. 1 of the Norman S. Upchurch Subdivision recorded in Plat Book 1 at Page 179; thence with the rear line of lot Nos. 1 and 2 of the Norman S. Upchurch Subdivision N 53°04'E - 150.00 feet; thence N 42°06'W - 125.00 feet; thence N 53°13'E - 166.00 feet; thence S 56°06'E - 133.25 feet to the corner with lot No. 4 of the Norman S. Upchurch Subdivision; thence S 42°06'E - 240.00 feet to an iron stake in the line of lot No. 4 and corner with lot No. 5 of the Norman S. Upchurch Subdivision, thence along the rear of lot Nos. 5, 6, 7, and 8 of the Norman S. Upchurch Subdivision N 52° WE - 220.00 feet; thence N 42°06'W - 15.00 feet; thence N 52°15'E - 75.00 feet; thence S 42°06'E - 175.00 feet to a point in the northern right-of-way line of N.C. HWY 62; thence along the northern right-of-way line of N.C. HWY 62 in an easterly direction S 52°15'V - 195.00 feet; thence crossing N.C. HWY 62 S 36°15'E - 570.00 feet; thence S 43°45'W - 500.00 feet to the northeast corner of Roxboro Lumber Co., Inc.; thence with the western boundary of Roxboro Lumber Co., Inc. S 5°30'W - 350.00 feet to the POINT OF BEGINNING, containing 2,579.00 acres, the same being 4.03 square miles.

**Editor's** note—The corporate boundaries of the town have been changed by annexation ordinances subsequently adopted by the council. These ordinances are as follows: Ord. of 5-7-91; Ord. of 8-4-92; Ord. of 12-1-92; Ord. of 5-2-95; Ord. of 6-6-95; Ord. of 8-1-95 and Ord. of 1-2-96. Certified copies of these annexation ordinances are on file and available in the town offices.

**State law** reference—Annexations, G.S. 160A-29 et seq.

### CHAPTER III. GOVERNING BODY

#### Sec. 3.1. Structure of governing body; number of members.

The governing body of the Town of Yanceyville is the Town Council, which has five members. **State law reference—Composition** of council, G.S. 160A-66.

**Sec. 3.2. Manner of electing board.**

The qualified voters of the entire Town nominate and elect the members of the Council.

**Sec. 3.3. Term of office of Councilmembers.**

Until members are elected in accordance with this section, the Town Council shall consist of the three members of the Yanceyville Sanitary District Board, and two other persons appointed by those three members at the Town Council's first meeting in July, 1986. The two persons on the Yanceyville Sanitary District Board whose terms expire in 1986 shall serve until the 1987 municipal election. The person on the Yanceyville Sanitary District Board whose term expires in 1988 shall serve until the 1989 municipal election. One of the two persons appointed to the Town Council by the three members of the Yanceyville Sanitary District Board shall serve until the 1987 municipal election, and the other shall serve until the 1989 municipal election. The three members of the Yanceyville Sanitary District Board shall designate whom shall serve which term. In the 1987 municipal election and quadrennially thereafter, the three persons receiving the highest numbers of votes shall be elected for four-year terms on the Town Council. In the 1989 municipal election and quadrennially thereafter, the two persons receiving the highest numbers of votes shall be elected for four-year terms on the Town Council.

**Sec. 3.4. Selection of Mayor; term of office.**

The Mayor shall be appointed by the Town Council from among its own membership for a two-year term. The Mayor shall have the right to vote on all questions that come before the Council, but shall have no right to break a tie vote. in which he participated.

**State law reference**—Mayor to preside over council, G.S. 160A-69.

**Sec. 3.5. Filling of vacancies.**

Vacancies occurring for any reason in the Town Council shall be filled by the remaining members of the Council for the remainder of the unexpired term.

State law reference—Vacancies in elective offices, G.S. 160A-63.

**CHAPTER IV. ELECTIONS\*****Sec. 4.1. Conduct of Town elections.**

The Town Council shall be elected on a nonpartisan basis and the results determined by the plurality method as provided by G.S. 163-292.

**CHAPTER V. ADMINISTRATION****Sec. 5.1. Mayor-council plan.**

The Town of Yanceyville operates under the mayor-council plan as provided by G.S. 160A-155 et seq.

\*State law reference—Municipal elections, G.S. 163-279 et seq.

†**State law reference** Cities and towns, G.S. ch. 160A.

**Sec. 5.2. Incorporation of town and dissolution of sanitary district; transfer of assets and liabilities.**

The incorporation of the Town of Yanceyville and the simultaneous dissolution of the Yanceyville Sanitary District shall become effective at 12:00 noon on July 1, 1986. The Yanceyville Sanitary District shall take all actions necessary to effect this transfer of the assets and liabilities of the Sanitary District to the Town of Yanceyville by June 28, 1986.

**Sec. 5.3. Taxation; budget.**

From and after January 1, 1986, the citizens and property in the Town of Yanceyville shall be subject to municipal taxes levied for the year beginning January 1, 1986, and the town shall obtain from Caswell County a record of property in the area herein incorporated which was listed for taxes as of January 1, 1986, and the businesses in the town shall be liable for privilege license tax from the effective date of the privilege license tax ordinance. The Town may adopt a budget ordinance for fiscal year 1986-87 without following the timetable in the Local Government Budget and Fiscal Control Act, G.S. 159-7 et seq.

**Sec. 5.4. Application of state law transitional provisions.**

The transitional provisions of G.S. 130A-81(5)a. through g. shall apply to the Town of Yanceyville and the Yanceyville Sanitary District.

**Sec. 5.5. Effective date of Charter.**

This act is effective upon ratification. In the General Assembly [it has been] read three times and ratified, [on] this the 28th day of June, 1985.

## CHARTER COMPARATIVE TABLE

### SESSION LAWS

This table shows the location of the sections of the basic Charter and any amendments thereto.

<b>Session Laws Year</b>	<b>Chapter</b>	<b>Section</b>	<b>Section this Charter</b>
1985	501	1.1-5.5	1.1-5.5

**PART II**  
**CODE OF ORDINANCES**

C h a p t e r 1

**GENERAL PROVISIONS**

- Sec. 1-1. Designation and citation of Code.
- Sec. 1-2. Definitions and rules of construction.
- Sec. 1-3 Provisions considered as continuations of existing ordinances.
- Sec. 1-4 Catchlines of sections; history notes and references.
- Sec. 1-5 Severability of parts of Code.
- Sec. 1-6 General penalty; enforcement of ordinances; continuing violations.
- Sec. 1-7 Amendments to Code; effect of new ordinances; amendatory language.
- Sec. 1-8 Supplementation of Code.
- Sec. 1-9 Ordinances not affected by Code.

**Sec. 1-1. Designation and citation of Code.**

The ordinances embraced in this and the following chapters and sections shall constitute and be designated "Code of Ordinances, Town of Yanceyville, North Carolina," and may be so cited.

**State law reference**--Admission of Code in evidence, G.S. 160A-79.

**Sec. 1-2. Definitions and rules of construction.**

In the construction of this Code and of all ordinances, the following definitions and rules of construction shall be observed, unless inconsistent with the manifest intent of the town council or the context clearly requires otherwise:

*Charter* The word "Charter" shall mean the Charter of the Town of Yanceyville, North Carolina, as printed in Part I of this volume.

*Code*. The word "Code" shall mean the Code of Ordinances, Town of Yanceyville, North Carolina, as designated in section 1-1.

*Computation of time*. The time within which an act is to be done shall be computed by excluding the first and including the last day; and if the last day is Saturday, Sunday or a legal holiday, that day shall be excluded.

**State law reference**—Computation of time, G.S. 1-593.

*Council*. The terms "council" or "town council" shall mean the mayor and councilmembers or the governing body of the Town of Yanceyville, North Carolina.

*County*. The word "county" shall mean the County of Caswell, in the State of North Carolina, except as otherwise provided.

*Gender* Words importing the masculine gender shall include the feminine and neuter.

*G.S. or General Statutes*. The abbreviation "G.S." or the words "General Statutes" shall mean the latest edition of the General Statutes of North Carolina, as amended.

*Governor* The words "governor" or "the governor" shall mean the Governor of North Carolina.

*Joint authority*. All words giving a joint authority to three or more persons or officers shall be construed as giving such authority to a majority of such persons or officers.

*May, shall*. The word "may" is permissive; the word "shall" is mandatory.

*Month*: The word "month" shall mean a calendar month.

*Number* Words used in the singular include the plural and the plural includes the singular number.

*Oath*. The word "oath" shall be construed to include an affirmation in all cases in which, by law, an affirmation may be substituted for an oath, and in such cases the words "swear" and "sworn" shall be equivalent to the words "affirm" and "affirmed."

*Official time standard.* The term "official time standard" means that whenever certain hours are named in this Code, they shall mean standard time or daylight saving time as may be in current use in this town.

*Officials, boards, commissions, etc.* Whenever reference is made to officials, boards, commissions, committees and the like, by title only, they shall be construed as if followed by the words "of the Town of Yanceyville, North Carolina."

*Owner.* The word "owner," applied to any property, shall include any part owner, joint owner, tenant in common, joint tenant or tenant by the entirety, of the whole or a part of such property.

*Person.* The word "person" shall include a corporation, firm, partnership, association, organization and any other group acting as a unit, as well as an individual.

*Personal property.* The term "personal property" includes every species of property except real property.

*Preceding, following.* The words "preceding" and "following" shall mean next before and next after, respectively.

*Property.* The word "property" shall include real and personal property.

*Real property.* The term "real property" shall include lands, tenements and hereditaments.

*Sidewalk.* The word "sidewalk" shall mean any portion of a street, between the curblin and the adjacent property line intended for the use of pedestrians.

*Signature or subscription.* The word "signature" or "subscription" includes a mark when the person cannot write.

*State.* The words "state" or "this state" shall be construed to mean the State of North Carolina, except as otherwise provided.

*Street.* The word "street" shall mean and include any public way, road, highway, street, avenue, boulevard, parkway, alley, lane, viaduct, bridge, and the approaches thereto within the town and shall mean the entire width of the right-of-way between abutting property lines.

*Tenant.* The word "tenant" or "occupant" applied to a building or land shall include any person who occupies the whole or a part of such building or land, whether alone or with others.

*Tense.* Words used in the past or present tense include the future as well as the past and present.

*Town.* The words "the town" or "this town" shall mean the Town of Yanceyville, in the County of Caswell in the State of North Carolina, except as otherwise provided.

*Writing, written.* The words "writing" and "written" shall include printing and any other mode of representing words and letters.

*Year.* The word "year" shall mean a calendar year, unless otherwise specified.

State law **reference** Similar rules of construction of statutes, G.S. 160A-1.



**Sec. 1-3. Provisions considered as continuations of existing ordinances.**

The provisions appearing in this Code, so far as they are the same as those of ordinances adopted prior to the adoption of this Code and included herein, shall be considered as continuations thereof and not as new enactments.

**Sec. 1-4. catchlines of sections; history notes and references.**

(a) The catchlines of the several sections of this Code are intended as mere catchwords to indicate the contents of the section and shall not be deemed or taken to be titles of such sections nor as any part of the section, nor, unless expressly so provided, shall they be deemed when any of such sections, including the catchlines, are amended or reenacted.

(b) The history notes following sections and the references and notes scattered throughout the Code are not part of the Code but are merely for the benefit of the user of the Code.

**Sec. 1-5. Severability of parts of Code.**

It is hereby declared to be the intention of the town council that the sections, paragraphs, sentences, clauses and phrases of this Code are severable, and if any phrase, clause, sentence, paragraph or section of this Code shall be declared unconstitutional or otherwise invalid by the judgment or decree of any court of competent jurisdiction, such unconstitutionality or invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this Code, since they would have been enacted by the town council without the incorporation in this Code of any such unconstitutional or invalid phrase, clause, sentence, paragraph or section.

**Sec. 1-6. Enforcement of Code and ordinances; remedies; remedies non-exclusive. (a)***Enforcement of ordinances.*

- (1) Unless an ordinance expressly provides which remedy or remedies shall be used to enforce its provisions, the town may enforce an ordinance by fines, imprisonment, civil penalties, actions in law and actions in equity or by a combination of such remedies.
- (2) The power to enforce an ordinance shall include the power to secure preliminary injunctions, temporary restraining orders, mandatory injunctions or prohibitory injunctions, order of abatement and any other appropriate equitable remedy issuing from the appropriated division of the North Carolina General Court of Justice to the full extent that the town is empowered to use such remedy by the state statutes and laws. Legal and equitable action to enforce the ordinance shall be governed by the laws and rules governing civil proceedings including G.S. 160A-175(e) and the rules of civil procedure.
- (3) It shall not be a defense to an application by the town for equitable relief that it may have an adequate remedy at law.

(b) *General penalty for violations of ordinances; penalties non-exclusive.*

- (1) Unless otherwise provided by the terms of an ordinance, a violation of such ordinance is a misdemeanor or infraction as provided by G.S. 14-4 unless the town council expressly stated that the maximum fine, term of imprisonment, or infraction penalty to be imposed for a violation of a particular ordinance is some amount of money or number of days less than the maximum penalties imposed by G.S 14-4.
- (2) This section shall not be deemed to be the exclusive penalty for violation of a town ordinance nor shall it in any way be deemed to limit any legal or equitable remedy or power the town may be empowered to use to enforce its ordinances.
- (3) Each act that violated this ordinance and each day upon which a violation of this ordinance shall occur shall constitute a separate offense except as may be provided.

(c) *Enforcement of ordinances by civil penalties; non-exclusive.*

- (1) In addition to the general penalty provided for in section 1-2 of this Code, an ordinance may provide that a violation of the ordinance shall subject the offender to a civil penalty.
- (2) In the event an ordinance provides that a violation thereof shall subject the offender to a civil penalty, the civil penalty shall be recovered by the town in a civil action in the 15 days after the offender has been served with a citation for a violation of the ordinance.
- (3) Upon determination of a violation of any section of this Code, the penalty for which is a civil penalty, the appropriate official of the town shall report such violation to the town administrator and request approval to proceed with the civil citation procedure. Approval of the request to proceed by the town administrator shall empower the appropriate town official to proceed to issue a warning citation and, if necessary, a penalty citation. The warning citation and the citation shall set out the nature of the violation, the section violated, the date of the violation, and shall contain an order to immediately cease the violation. If the violation is one for which an order of abatement would be appropriate in a civil proceeding, a reasonable period of time must be stated in which the violation must be abated. The warning citation shall be served by delivering a copy to the violator or by mailing a copy to the violator by first class mail by depositing it enclosed in a postpaid, properly addressed wrapper in a post office or official depository under the exclusive care and custody of the United States Postal Service.
- (4) Where the official determines that the period of time stated in the original warning citation is not sufficient for abatement based upon the work required or based upon a schedule agreed upon with the violator for abatement, the official may amend the warning citation to provide for additional time. The warning citation shall specify that a second citation shall incur a civil penalty, together with costs, and attorney fees.
- (5) Upon failure of the violator to obey the warning citation, a civil citation shall be issued by the official and either served personally on the violator, or the violator's duly

designated agent, or registered agent if a corporation, or by depositing a copy in the post office for mailing by registered or certified mail, return receipt requested, addressed to the violator at the violator's dwelling house or usual place of abode. The citation shall direct the violator to pay the citation to the finance department within 15 days of the date of service of the citation. The violation for which the citation is issued must have been corrected by the time the citation is paid, otherwise further citations shall be issued.

- (6) Appeals from a citation for a violation of the zoning ordinances shall be made to the board of adjustment and the violator must file written notice of such appeal with the board of adjustment within 10 days from the date of the service of the citation. Except in any case where the ordinance which is violated specifically grants to the board of adjustment in considering appeals and such appeal is applied for, the board of adjustment in considering appeals of a citation shall have power only in the manner of administrative review and interpretation where it is alleged that the official has made an error in the application of this Code, in the factual situation as it relates to the application of the Code, or both.
- (7) Except for appeals from citations for violation of the zoning ordinance, appeals shall be made to the town administrator within 10 days from the date of the service of the citation.
- (8) Unless the terms of an ordinance exempt it from the operation of this section, each day upon which a violation of the ordinance shall continue or occur shall constitute a separate and distinct offense.

(Ord. No. 2-99, §§ 1-1-1-3, 1-5-99)

**State law references—Similar** provisions, G.S. .160A-175; penalty for violation of town ordinances, G.S. 14-4.

**Sec. 1-7. Amendments to Code; effect of new ordinances; amendatory language.**

(a) All ordinances passed subsequent to this Code which amend, repeal or in any way affect this Code may be numbered in accordance with the numbering system hereof and printed for inclusion herein. When subsequent ordinances repeal any chapter, section or subsection or any portion thereof, such repealed portions may be excluded from this Code by omission from reprinted pages. The subsequent ordinances as numbered and printed, or omitted in the case of repeal, shall be prima facie evidence of such subsequent ordinances until such time that this Code and subsequent ordinances numbered or omitted are readopted as a new Code by the town council.

(b) Amendments to any of the provisions of this Code shall be made by amending such provisions by specific reference to the section number of this Code in the following language: "That section \_\_\_\_\_ of the Code of Ordinances, Town of Yanceyville, North Carolina, is hereby amended to read as follows: ..... The new provisions shall then be set out in full as desired.

(c) If a new section not heretofore existing in the Code is to be added, the following language shall be used: "That the Code of Ordinances, Town of Yanceyville, North Carolina, is hereby amended by adding a section, to be numbered \_\_\_\_\_, which such section reads as follows: " The new section shall then be set out in full as desired.

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

**Sec. 1-8. Supplementation of Code.**

(a) By contract or by town personnel, supplements to this Code shall be prepared on an annual basis. A supplement to the Code shall include all substantive, permanent and general parts of ordinances passed by the town council during the period covered by the supplement and all changes made thereby in the Code. The pages of a supplement shall be so numbered that they will fit properly into the Code and will, where necessary, replace pages which have become obsolete or partially obsolete, and the new pages shall be so prepared that, when they have been inserted, the Code will be current through the date of the adoption of the latest ordinance included in the supplement.

(b) In preparing a supplement to this Code, all portions of the Code which have been repealed shall be excluded from the Code by the omission thereof from reprinted pages.

(c) When preparing a supplement to this Code, the codifier (meaning the person, agency or organization authorized to prepare the supplement) may make formal, nonsubstantive changes in ordinances and parts of ordinances included in the supplement, insofar as it is necessary to do so to embody them into a unified Code. For example, the codifier may:

- (1) Organize the ordinance material into appropriate subdivisions.
- (2) Provide appropriate catchlines, headings and titles for sections and other subdivisions of the Code printed in the supplement, and make changes in such catchlines, headings and titles.
- (3) Assign appropriate numbers to sections and other subdivisions to be inserted in the Code and, where necessary to accommodate new material, change existing section or other subdivision numbers.
- (4) Change the words "this ordinance" or words of the same meaning to "this chapter," "this article," "this division," etc., as the case may be, or to "sections \_\_\_\_\_ to \_\_\_\_\_" (inserting section numbers to indicate the sections of the Code which embody the substantive sections of the ordinance incorporated into the Code).
- (5) Make other nonsubstantive changes necessary to preserve the original meanings of ordinance sections inserted into the Code; but in no case shall the codifier make any change in the meaning or effect of ordinance material included in the supplement or already embodied in the Code.

**Sec. 1-9. Ordinances not affected by Code.**

Nothing in this Code or the ordinance adopting this Code shall be construed to repeal or otherwise affect the validity of any of the following:

- (1) Any offense or act committed or done or any penalty or forfeiture incurred or any contract or right established or accruing before the effective date of this Code;
- (2) Any ordinance or resolution promising or guaranteeing the payment of money for the town or authorizing the issuance of any bonds of the town or any evidence of the town's indebtedness;
- (3) Any contract or obligation assumed by the town;
- (4) Any ordinance fixing the salary of any town officer or employee;
- (5) Any right or franchise granted by the town;
- (6) Any ordinance dedicating, naming, establishing, locating, relocating, opening, widening, paving, etc., any street or public way in the town;
- (7) Any appropriation ordinance;
- (8) Any ordinance which, by its own terms, is effective for a stated or limited term;
- (9) Any ordinance providing for local improvements and assessing taxes therefor;
- (10) Any zoning ordinance;
- (11) Any ordinance dedicating or accepting any subdivision plat;
- (12) Any ordinance describing or altering the boundaries of the town;
- (13) The administrative ordinances or resolutions of the town not in conflict or inconsistent with the provisions of this Code;
- (14) Any ordinance levying or imposing taxes not included herein;
- (15) Any ordinance establishing or prescribing street grades in the town;
- (16) Any personnel ordinance;

nor shall such ordinance be construed to revive any ordinance or part thereof that has been repealed by a subsequent ordinance which is repealed by this chapter; and all such ordinances are hereby recognized as continuing in full force and effect to the same extent as if set out at length in this section.

**State law reference—Statutes** not repealed by General Statutes, G.S. 164-7.

Chapter 2

**ADMINISTRATION\***

**Article I. In General**

Secs. 2-1-2-20. Reserved.

**Article II. Council**

Secs. 2-21-2-40. Reserved.

**Article III. Officers and Employees**

Division 1. In General

Sec. 2-41. Personnel rules and regulations.

Secs. 2-42-2-60. Reserved.

Division 2. Finance Officer; Purchasing

Sec. 2-61. Grant of authority.

Sec. 2-62. Report.

Sec. 2-63. Extent of authority.

Sec. 2-64. No limitation of other authority.

Sec. 2-65. Appropriation required.

Sec. 2-66. Application of general statutes.

Secs. 2-67-2-80. Reserved.

Division 3. Town Clerk; Disposal of Surplus Personal Property

Sec. 2-81. Disposal of surplus personal property;

Sec. 2-82. authorization. Methods of sale.

Sec. 2-83. Sale to highest offer.

Sec. 2-84. Record of sale.

**\*Cross references**—Animal control department, § 6-41 et seq.; administration of flood damage prevention ordinance, § 14-66 et seq.; law enforcement, ch. 22; administration of sewer use ordinance, § 38-61 et seq.; zoning, ch. 42.

**State law reference**—Cities and towns, G.S. ch. 160A.

**ARTICLE I. IN GENERAL**

**Secs. 2-1-2-20. Reserved.**

**ARTICLE II. COUNCIL**

**Secs. 2-21-2-40. Reserved.**

**ARTICLE III. OFFICERS AND EMPLOYEES**

## DIVISION 1. IN GENERAL

**Sec. 2-41. Personnel rules and regulations.**

The town's personnel rules and regulations are not printed in this Code but are on file and available in the town offices.

**Secs. 2-42-2-60. Reserved.**

## DIVISION 2. FINANCE OFFICER; PURCHASING

**Sec. 2-61. Grant of authority.**

Subject to the restrictions and conditions hereinafter provided, when purchasing apparatus, supplies, materials or equipment for use by the town, in addition to such authority as may be provided by law and/or otherwise delegated by the town council, the town finance officer shall have the authority to:

- (1) Prepare, or cause to be prepared, plans and/or specifications setting forth a complete description of the item(s) to be purchased and the characteristics, features and/or requirements therefor;
- (2) Include, where appropriate, in specification for the item(s) to be purchased an opportunity for bidders to purchase as trade-in specified personal property owned by the town;
- (3) Advertise, or otherwise secure bids, for such item(s), if required under applicable law;
- (4) Award contracts for the purchase of the item(s) and, where applicable, award contracts for the purchase of the item(s) and the sale of trade-in property;
- (5) Reject bids;
- (6) Readvertise to receive bids;
- (7) Waive bid bond or deposit requirements;
- (8) Waive performance and payment bond requirements; and,

(9) Execute and deliver the purchase contract(s). (Ord. No. 3-99, § 1, 5-4-99)

**Sec. 2-62. Report.**

At the first meeting of the town council following the award of any contract(s) pursuant to this article, the town finance officer shall submit a report to the town council summarizing the bids received and the contract(s) awarded. Such report shall be included in the minutes of the meeting at which it is received.

(Ord. No. 3-99, § 2, 5-4-99)

**Sec. 2-63. Extent of authority.**

Except in cases of sole source purchases pursuant to G.S. 143-129(f) and cases of purchases from established contracts pursuant to G.S. 143-129(g), unless otherwise provided by law, the provisions of this article shall apply to the purchase of apparatus, supplies, materials or equipment requiring the estimated expenditure of municipal funds in an amount not to exceed \$5,000.00 for any one item or group of similar items.

(Ord. No. 3-99, § 3, 5-4-99)

**Sec. 2-64. No limitation of other authority.**

The provisions of this article are not intended to limit, restrict or revoke, in any manner, authority otherwise granted and/or delegated to the town finance officer by statute, law or action of the town council.

(Ord. No. 3-99, § 4, 5-4-99)

**Sec. 2-65. Appropriation required.**

No purchase shall be made by the town finance officer under authority of this article unless an appropriation for such purpose has been authorized in the annual budget, or by supplemental appropriation or budget appropriation amendment duly adopted by the town council. (Ord. No. 3-99, § 5, 5-4-99)

**Sec. 2-66. Application of general statutes.**

In acting pursuant to the authority delegated by this article, the town finance officer shall comply with the requirements of G.S. art. 8, ch. 143, as from time to time amended, modified, supplemented, revised, or superseded, to the same extent as would have otherwise applied to the town council.

(Ord. No. 3-99, § 6, 5-4-99)

**State law reference—G.S. § 143-129(a)**

*Secs. 2-67-2-80. Reserved.*



## DIVISION 3. TOWN CLERK; DISPOSAL OF SURPLUS PERSONAL PROPERTY

**Sec. 2-81. Disposal of surplus personal property; authorization.**

The town clerk is hereby authorized to dispose of any surplus personal property owned by the town, whenever he or she determines, in his or her discretion, that:

- (1) The item or group of items has a fair market value of less than five thousand dollars (\$5,000.00);
- (2) The property is no longer necessary for the conduct of public business; and
- (3) Sound property management principles and financial considerations indicate that the interests of the town would best be served by disposing of the property. (Ord. No. 4-99, § 1, 5-4-99)

**Sec. 2-82. Methods of sale.**

The town clerk may dispose of any such surplus personal property by any means which he or she judges reasonably calculated to yield the highest attainable sale price in money or other consideration, including but not limited to the methods of sale provided in G.S. ch. 160A, art. 12. Such sale may be public or private, and with or without notice and minimum waiting period. (Ord. No. 4-99, § 2, 5-4-99)

**Sec. 2-83. Sale to highest offer.**

The surplus property shall be sold to the party who tenders the highest offer, or exchanged for any property or services useful to the town if greater value may be obtained in that manner, and the town clerk is hereby authorized to execute and deliver any applicable title documents. If no offers are received within a reasonable time, the town clerk may retain the property, obtain any reasonably available salvage value, or cause it to be disposed of as waste material. No surplus property may be donated to any individual or organization except by resolution of the town council.

(Ord. No. 4-99, § 3, 5-4-99)

**Sec. 2-84. Record of sale.**

The town clerk shall keep a record of all property sold under authority of this article and that record shall generally describe the property sold or exchanged, to whom it was sold, or with whom exchanged, and the amount of money or other consideration received for each sale or exchange.

(Ord. No. 4-99, § 4, 5-4-99)

**State law reference—G.S. § 160A-266(c)**

## Chapter 6

### **A N I M A L S \***

#### **Article I. In General**

- Sec. 6-1. Definitions.
- Sec. 6-2. Cruelty to animals.
- Sec. 6-3. Confinement, muzzling and control of vicious or dangerous animals.
- Sec. 6-4. Animals creating nuisance.
- Sec. 6-5. Dog identification tag.
- Sec. 6-6. Interference with enforcement of chapter.
- Sec. 6-7. Civil penalties.
- Secs. 6-8--6-40. Reserved.

#### **Article II. Animal Control Department**

- Sec. 6-41. Establishment and composition; appointment and compensation of department employees.
- Sec. 6-42. General duties.
- Sec. 6-43. Recordkeeping.
- Sec. 6-44. Establishment and composition of the animal control advisory committee.
- Secs. 6-45-6-75. Reserved.

#### **Article III. Rabies Control**

- Sec. 6-76. Penalty for violation of article.
- Sec. 6-77. Compliance with state law; article as supplement to state law.
- Sec. 6-78. Inoculation of dogs and cats.
- Sec. 6-79. Evidence of inoculation of dogs.
- Sec. 6-80. Evidence of inoculation of cats.
- Sec. 6-81. Report and confinement of animals biting persons or showing symptoms of rabies.
- Sec. 6-82. Destruction or confinement of animal bitten by rabid animal.
- Sec. 6-83. Area-wide emergency quarantine.
- Sec. 6-84. Postmortem diagnosis.
- Sec. 6-85. Unlawful killing or releasing of certain animals.
- Sec. 6-86. Failure to surrender animal for quarantine or destruction.
- Secs. 6-87-6-120. Reserved.

#### **Article IV. Impoundment**

- Sec. 6-121. Generally.
- Sec. 6-122. Notice to owner.
- Sec. 6-123. Redemption by owner.
- Sec. 6-124. Destruction or adoption of unredeemed animal.

\***State law** references—Protection of animals, G.S. 19A-1 et seq.; dogs, G.S. 67-1 et seq.; fences and stock law, G.S. 68-1 et seq.; rabies, G.S. 130A-184 et seq.; municipal regulation of domestic animals, G.S. 160A-186.

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- Sec. 6-125. Procedure with respect to redemption or adoption of unvaccinated dog or cat.
- Sec. 6-126. Suspected rabid animals not to be redeemed or adopted.
- Sec. 6-127. Destruction of wounded or diseased animals.

**ARTICLE I. IN GENERAL****Sec. 6-1. Definitions.**

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

*Animal shelter* means any premises designated by the town for the purpose of impounding and caring for small animals found running at large or otherwise subject to impounding in accordance with the provisions of this chapter.

*At large* means any animal shall be deemed to be at large when it is off the property of its owner and not under the control of a competent person.

*Exposed to rabies* means an animal has been exposed to rabies within the meaning of this chapter, if it has been bitten by, or exposed to, any animal known or suspected to have been infected with rabies.

*Kennel, dealer, breeder or pet shop* means any person, group of persons, partnership or corporation engaged in buying, selling, breeding or boarding animals.

*Neutered male* means any male animal which has been operated upon to prevent reproduction.

*Owner* means any person, group of persons, firm, partnership, corporation owning, keeping, having charge of, sheltering, feeding, harboring or taking care of any animal. The owner is responsible for the care, actions and behavior of his animals.

*Pet* means a domesticated animal kept for pleasure rather than utility.

*Restraint* means:

- (1) Controlled by means of a chain, leash or other like device;
- (2) Sufficiently near the owner or handler to be under his direct control and is obedient to that person's commands;
- (3) On or within a vehicle being driven or parked;
- (4) Within a secure enclosure; or
- (5) Within the property limits of its owner or keeper.

*Spayed female* means any female animal which has been operated upon to prevent mating and conception.

*Stray* means any domestic animal not under restraint and found off the property of its owner.

*Vicious animal* means one that has made an unprovoked attack on a human or that attacks farm stock and other pets.

(Ord. of 8-16-88, art. I, § 1)

**Cross reference**—Definitions generally, § 1-2.

**Sec. 6-2. Cruelty to animals.**

It shall be unlawful for any person to molest, tease, bait, torture, deprive of necessary sustenance, cruelly beat, needlessly mutilate or kill, wound, injure, poison, abandon or subject to conditions detrimental to its health or general welfare any animal, or to cause or procure such action. The words "torture" and "torment". shall be held to include every act, omission or neglect whereby unjustifiable physical pain, suffering or death is caused or permitted, but such terms shall not be construed to prohibit lawful shooting of birds, deer and other game for human food; nor to prohibit the animal control department or its agents or veterinarians from destroying dangerous, unwanted or injured animals in a humane manner; nor to prohibit the lawful use of animals in scientific research.

(Ord. of 8-16-88, art. II, § 1)

**State law reference—Authority** to define and prohibit the abuse of animals, G.S. 160A-182.

**Sec. 6-3. Confinement, muzzling and control of vicious or dangerous animals.**

It shall be unlawful for any owner to keep any vicious, fierce or dangerous animal within the town, unless it is confined within a secure building or enclosure, or unless it is securely muzzled and under control by a competent person who, by means of a leash, chain or rope, has such animal firmly under control at all times. The premises on which any animal under this section is confined shall be clearly marked with a warning sign.

(Ord. of 8-16-88, art. II, § 2)

**State law reference—Authority** to regulate the possession of dangerous animals, G.S. 160A-187.

**Sec. 6-4. Animals creating nuisance.**

(a) It shall be unlawful for an owner to permit an animal to run at large, if such animal is reported as creating a public nuisance and an animal control officer determines, after investigation, that the reports are supported by the evidence. In such cases, and only in such cases, the owner must keep the animal that has been found to be creating a public nuisance on his own property at all times, unless the animal is under restraint. For the purpose of this section, public nuisance includes, without limitation, the following: Animals that habitually or repeatedly chase, snap at, attack or harass pedestrians, bicyclists or vehicles; tip over garbage pails; damage yards, gardens, flowers, vegetables or personal property; or in the case of a female animal, one that is allowed to run at large during estrus.

(b) It shall be unlawful for any dog owner to keep or have a dog that habitually or repeatedly barks, whines or howls in such a manner or to such an extent that it is a public nuisance.

(c) Upon receipt of a written complaint signed by two or more residents of the town, each complainant residing in separate dwellings in the vicinity in which the violation and issue occurred, made under oath before an individual authorized by law to take acknowledgements, setting forth the nature and the date of the act, the apparent owner of the animal, the address

of the apparent owner and description of the animal doing such act, the animal control department shall investigate the complaint to determine whether the act complained of violates this chapter.

(Ord. of 8-16-88, art. II, § 3)

State law reference—Authority to define and abate nuisances, G.S. 160A-174, G.S. 160A-193.

**Sec. 6-5. Dog identification tag.**

(a) It shall be unlawful for any dog owner to fail to provide his dog with an identification tag on which is inscribed the dog's owner's name, address and telephone number.

(b) The animal control officer shall have the authority to issue a citation to a pet owner if the pet owner cannot show a valid tax license or tag or a certified rabies license or tag. The pet owner must show a license or certified rabies license within 72 hours or be fined the currently required penalty charge.

(c) All vicious dogs, especially pit bulls, must be confined in a locked pen or gate of sufficient height to restrain such animal.

(d) It shall *also* be unlawful for any dog owner to fail to provide his dog with a collar or harness to which a current identification tag described under this section is securely attached. The collar or harness with the attached identification tag must be worn at all times, except during the times the dog is performing at shows, obedience trials, tracking tests, field trials, schools or other events sanctioned and supervised by a recognized organization, or is engaged in hunting or some other activity in which a collar might endanger its safety. (Ord. of 8-16-88, art. II, § 4)

**Sec. 6-6. Interference with enforcement of chapter.**

It shall be unlawful for any person to interfere with, hinder or molest the animal control department or its agents or animal control officers or veterinarians in the performance of any duty authorized by this chapter, or to seek to release any animal in the custody of such agents, except as otherwise specifically provided.

(Ord. of 8-16-88, art II, § 5)

**Sec. 6-7. Civil penalties.**

Any person who violates any provision of this chapter shall be subject to civil penalty for each violation in the amount of \$25.00. Each day of violation shall constitute a separate event and shall subject such person to a separate and additional civil fine. The penalty must be paid within 72 hours after the person has been cited for the violation of this chapter by the animal control department or its authorized agents. This chapter is also intended to create a legal cause of action by which any persons damaged by the violation of this chapter might apply by

means of the filing of a verified complaint in the county district court for relief from such violation, including the issuance of an injunction pursuant to G.S. 19-2.1, and any other appropriate civil remedies authorized by the General Statutes of North Carolina. (Ord. of 8-16-88, art. II, § 6)

**Secs. 6 8--6-40. Reserved.**

**ARTICLE II. ANIMAL CONTROL DEPARTMENT\***

**Sec. 6-41. Establishment and composition; appointment and compensation of department employees.**

There is hereby created an animal control department which shall be composed of such employees as shall be determined by the town. Such town employees shall be appointed and compensated in accordance with the personnel policies of the town. (Ord. of 8-16-88, art. I, § 3)

**Sec. 6-42. General duties.**

The animal control department shall be charged with the responsibility of:

- (1) Enforcing, in this town, all state, town and county ordinances and resolutions relating to the care, custody and control of animals.
- (2) Cooperating with the health director/rabies inspector and assisting in the enforcement of the laws of the state with regard to animals and especially with regard to vaccination of animals against rabies and the confinement or leashing of vicious animals.
- (3) Investigating cruelty or animal abuse with regard to animals, where necessary.
- (4) Making such canvasses of the town, including the homes in the town, as it deems necessary for the purposes of ascertaining that all animals are duly licensed and vaccinated against rabies as required by local ordinance or state statute.
- (5) Utilizing, pursuant to policies of the county, the county animal shelters. (Ord. of 8-16-88, art. I, § 4)

**Sec. 6-43. Recordkeeping.**

It shall be the duty of the animal control department to keep or cause to be kept, accurate and detailed records of:

- (1) Impoundment and disposition of all animals coming into the animal shelters that originate from within the town.
- (2) Bite cases, violations and complaints, and investigation of the same. **\*Cross** reference—Administration, ch. 2.

(3) All other records deemed necessary by the town council.  
(Ord. of 8-16-88, art. I, § 5)

**Sec. 6-44. Establishment and composition of the animal control advisory committee.**

There is hereby created an advisory committee to advise the town council. The advisory committee is to be composed of five members appointed by the board and mayor of the Town of Yanceyville. The members of the advisory committee shall serve terms as established by the town.  
(Ord. of 8-16-88, art. I, § 2)

**Secs. 6-45-6-75. Reserved.**

**ARTICLE III. RABIES CONTROL\***

**Sec. 6-76. Penalty for violation of article.**

Any person violating any provision of this article shall be deemed guilty of a misdemeanor and shall be punished in accordance with section 1-6.  
(Ord. of 8-16-88, art. III, § 11)

**Sec. 6-77. Compliance with state law; article as supplement to state law.**

(a) It shall be unlawful for any animal owner or other person to fail to comply with the state laws relating to the control of rabies.

(b) It is the purpose of this article to supplement the state laws by providing a procedure for the enforcement of state laws relating to rabies control, in addition to the criminal penalties provided by state law.

(Ord. of 8-16-88, art. III, § 1)

**Sec. 6-78. Inoculation of dogs and cats.**

(a) It shall be unlawful for an owner to fail to provide current inoculation against rabies (hydrophobia) by a licensed veterinarian for any dog or cat four months of age or older. Should it be deemed necessary by the county health director, the board of county commissioners or the state public health veterinarian that other pets be inoculated in order to prevent a threatened epidemic or to control an existing epidemic, it shall be unlawful for an owner to fail to provide current inoculation against rabies for that pet.

(b) A rabies inoculation shall be deemed current for a cat if the inoculation has been given within the preceding 12 months. A rabies inoculation shall be deemed current for a dog if its first inoculation has been given within the preceding one year or if a second or subsequent inoculation has been given within the preceding three years.

(Ord. of 8-16-88, art. III, § 3)

\***State law reference—Rabies**, G.S. 130A-184-130A-200.



**Sec. 6-79. Evidence of inoculation of dogs.**

(a) Upon complying with the provisions of section 6-78, there shall be issued to the owner of the animal inoculated a numbered metallic tag, stamped with the number and the year for which issued, appropriately color coded, as recommended by the state public health veterinarian, and indicating that the animal has been inoculated against rabies.

(b) It shall be unlawful for any dog owner to fail to provide the dog with a collar or harness to which a current tag issued under this section be securely attached. The collar or harness, with attached tag, must be worn at all times, except as provided by section 6-5(d).

(c) It shall be unlawful for any person to use for any animal a rabies inoculation tag issued for an animal other than the one for which it was issued.

(d) The owner of a dog shall maintain the rabies inoculation certificate as written evidence that the dog has a current rabies inoculation.

(Ord. of 8-16-88, art. III, § 3)

**Sec. 6-80. Evidence of inoculation of cats.**

Cats shall not be required to wear the metallic tag referred to in section 6-79, but the owner of a cat shall maintain the rabies vaccination certificates as written evidence to prove that the cat has a current rabies inoculation.

(Ord. of 8-16-88, art. III, § 4)

**Sec. 6-81. Report and confinement of animals biting persons or showing symptoms of rabies.**

(a) *Quarantine period; release.* Every animal which has bitten any person or which shows symptoms of rabies shall be confined immediately and shall be promptly reported to the animal control department. All dogs and cats shall be securely quarantined, at the direction of the animal control department, for a period of ten days, and shall not be released from such quarantine except by written permission from the animal control department.

(b) *Places of confinement of dogs and cats, inspection of owner's premises.* Dogs and cats quarantined under this section shall be confined in a veterinary hospital, boarding kennel, or county animal shelter, at the expense of the owner; provided, however, that if the animal control department determines that the owner of an animal which must be quarantined has adequate confinement facilities upon his own premises, the animal control department shall authorize the animal to be confined on such premises. The animal control department may not authorize the animal to be confined on the owner's premises unless the owner has a secure area in his yard and the secure area has no entrances or exits that are not locked, and the animal is currently vaccinated against rabies and has a current license tag. If the animal is confined on the owner's premises, the animal control officer shall revisit the premises for inspection purposes at approximately the middle of the confinement period and again at the conclusion of the confinement period. Every such animal enclosure shall be clearly marked to show that the animal is quarantined.

(c) *Euthanization of stray dogs and cats, examination of heads.* In the case of stray dogs or cats whose ownership is not known, the dogs or cats may be euthanized by the animal control department or by a licensed veterinarian, and the head examined for rabies or kept for the supervised quarantine period required by this section at the county animal shelter.

(d) *Release from quarantine, fee.* If symptoms of rabies do not develop within ten days after a dog or cat is quarantined under this section, the dog or cat may be released from quarantine with the written permission of the animal control department. If the dog or cat has been confined in the county animal shelter, the owner shall pay a fee determined by resolution of the board of county commissioners for each day of confinement to defray the cost of feeding, upon reclaiming the animal. The fee schedule shall be available for public inspection in the office of the clerk to the board of county commissioners and the office of the clerk of the town.

(e) *Carnivores or bats.* In the case of any carnivore or bat, the animal must be euthanized, unless an exception is approved by the state public health veterinarian, and the head tested for rabies.

(Ord. of 8-16-88, art. III, § 5)

**Sec. 6-82. Destruction or confinement of animal bitten by rabid animal.**

Animals which have been inoculated against rabies that are bitten by a proven rabid animal shall be euthanized and destroyed immediately. If the owner is unwilling to have this done, such animal shall be confined and quarantined for a six-month period at the expense of the owner. One month before release, i.e., five months after being bitten, the animal shall be inoculated against rabies at least 30 days before the exposure, and if such animal has a current rabies inoculation, it shall be revaccinated immediately and placed in strict confinement at the expense of the owner for at least 30 days. Any confinement or quarantine within this section provided for by the owner of any animal shall be supervised and approved by the animal control department.

(Ord. of 8-16-88, art. III, § 6)

**Sec. 6-83. Area-wide emergency quarantine.**

(a) When reports indicate a positive diagnosis of rabies, the county director of public health may order an area-wide quarantine for such period as he deems necessary. Upon invoking of such emergency quarantine, no dog, cat or other carnivore shall be taken into the streets or permitted to be in the streets during such period unless leashed. During such quarantine, no dog, cat or other carnivore may be taken or shipped from the town without written permission of the animal control department. The police department and/or sheriffs department are hereby directed during such emergency to impound any dog, cat or other carnivore found running at large in the town. During the quarantine period, the animal control department or the local health authorities shall be empowered to provide for a program of mass immunization by the establishment of temporary emergency rabies vaccination facilities strategically located throughout the town.

(b) If there are additional positive cases of rabies occurring during the period of quarantine, such period of quarantine may be extended at the discretion of the county director of public health.

(Ord. of 8-16-88, art. III, § 7)

**Sec. 6-84. Postmortem diagnosis.**

If an animal dies while under observation for rabies or is suspected of dying of rabies, the head of the animal shall be submitted to the animal control department for shipment to the laboratory section of the division of health services for rabies diagnosis.

(Ord. of 8-16-88, art. III, § 8)

**Sec. 6-85. Unlawful killing or releasing of certain animals.**

It shall be unlawful for any person to kill or release any animal under observation for rabies, any animal suspected of having been exposed to rabies, or any animal having bitten a human, or to remove such animal from the town without written permission from the animal control department and the county director of public health.

(Ord. of 8-16-88, art. III, § 9)

**Sec. 6-86. Failure to surrender animal for quarantine or destruction.**

It shall be unlawful for any person to fail or refuse to surrender any animal for quarantine or destruction as required in this article, when demand is made therefore by the animal control department.

(Ord. of 8-16-88, art. III, § 10)

**Secs. 6-87-6-120. Reserved.**

**ARTICLE IV. IMPOUNDMENT**

**Sec. 6-121. Generally.**

Any animal which appears to be lost, stray or unwanted, or which is found to be not wearing a currently valid rabies vaccination tag and an identification tag as required by state law or this chapter and not under restraint in violation of this chapter, shall be impounded by the animal control department and confined in an animal shelter in a humane manner. Impoundment of such an animal shall not relieve the owner from any penalty which may be imposed for a violation of this chapter.

(Ord. of 8-16-88, art. IV, § 1)

**Sec. 6-122. Notice to owner.**

Immediately upon impounding an animal, the animal control department shall make a reasonable effort to notify the owner and inform such owner of the conditions whereby the

animal may be redeemed. If the owner is unknown or cannot be located, a notice posted of such impoundment, showing the time of impoundment, shall be posted for 72 hours at the animal shelter, or until the animal is disposed of.

(Ord. of 8-16-88, art. IV, § 2)

**Sec. 6-123. Redemption by owner.**

The owner of an animal impounded under this article may redeem the animal and regain possession thereof within 168 hours (seven days) after notice of impoundment is given or posted as required by section 6-122, by complying with all applicable provisions of this chapter and paying a redemption fee, any necessary veterinarian's fee, and a daily boarding fee at a rate to be determined by resolution of the board of county commissioners. Fee rates *shall* be available for public inspection in the office of the clerk of the board of county commissioners and in the office of the clerk of the town.

(Ord. of 8-16-88, art. IV, § 3),

**Sec. 6-124. Destruction or adoption of unredeemed animal.**

(a) If an impounded animal is not redeemed by the owner within the period prescribed in section 6-123, it may be destroyed in a humane manner or shall become the property of the animal shelters and offered for adoption to any responsible adult who is willing to comply with this chapter. Such animal may be adopted or purchased by the first such person who pays the adoption or purchase fee and rabies vaccination fee.

(b) The animal control department shall recommend that all adopted female dogs and cats released from the animal shelter be spayed.

(c) No animal which has been impounded by reason of its being a stray, unclaimed by its owner, shall be allowed to be adopted from the animal shelter during a period of emergency rabies quarantine invoked pursuant to section 6-83, except by special authorization of the director of public health and the animal control department.

(Ord. of 8-16-88, art. IV, § 4)

**Sec. 6-125. Procedure with respect to redemption or adoption of unvaccinated dog or cat.**

(a) Unless proof of a current rabies vaccination can be furnished, every person who either adopts or redeems a dog or cat at the animal shelter will be given a proof of rabies vaccination card at the time of the redemption or adoption. This card will be marked with a date stating the maximum time limit allowed to take the dog or cat to the veterinarian of such person's choice for rabies vaccination. The time limit for dogs and cats four months and older will be 72 hours, with Sundays and holidays excluded. For puppies and kittens under four months, the time limit will vary according to their age. Any animal referred to in this section and its vaccination card shall be taken by the person adopting or redeeming such animal to a veterinarian within the time limit to be vaccinated.

(b) Payment for rabies vaccination provided for in this section will be the responsibility of the person redeeming or adopting the animal.

(c) Violation of this section by any person will subject said person to the criminal penalties provided for in section 6-76.  
(Ord. of 8-16-88, art. IV, § 5)

**Sec. 6-126. Suspected rabid animals not to be redeemed or adopted.**

Notwithstanding any other provision of this article, any animals impounded which appear to be suffering from rabies shall not be redeemed or adopted, but shall be dealt with in accord with article **III** of this chapter.  
(Ord. of 8-16-88, art. IV, § 6)

**Sec. 6-127. Destruction of wounded or diseased animals.**

Notwithstanding any other provision of this article, any animal impounded which is badly wounded or diseased (not a rabies suspect) and has no identification may be destroyed immediately in a humane manner. If the animal has identification, the animal control department shall attempt to notify the owner before disposing of such animal, but if the owner cannot be reached readily, and the animal is suffering, the animal control department may destroy the animal at its discretion in a humane manner.  
(Ord. of 8-16-88, art. IV, § 7)

Chapter 7

**RESERVED**

Chapter 8  
**EMERGENCY MANAGEMENT**

**Article I. In General**

Secs. 8-1-8-20. Reserved.

**Article II. Office of Civil Preparedness**

Sec. 8-21. Short title.  
Sec. 8-22. Intent.  
Sec. 8-23. Authority and references.  
Sec. 8-24. Policy and purpose.  
Sec. 8-25. Organization.  
Secs. 8-26-8-50. Reserved.

**Article III. Emergency Proclamation Restrictions**

Sec. 8-51. Proclamation imposing prohibitions and restrictions.  
Sec. 8-52. Curfew.  
Sec. 8-53. Restrictions on possession, consumption or transfer of intoxicating liquor.  
Sec. 8-54. Restrictions on possession, transportation, and transfer of dangerous weapons and substances.  
Sec. 8-55. Restriction on access to areas.  
Sec. 8-56. Amendments of the proclamation.  
Sec. 8-57. Removal of prohibitions and restrictions.  
Sec. 8-58. Separate and superseding proclamation.

**ARTICLE I. IN GENERAL****Sees. 8-1-8-20. Reserved.****ARTICLE II. OFFICE OF CIVIL PREPAREDNESS****Sec. 8-21. Short title.**

This article shall be known and may be cited and referred to as the "Ordinance No. 8-99, Town Civil Preparedness and Emergency Operations Plan Ordinance."  
(Ord. No. 8-99, § (a), 11-2-99)

**Sec. 8-22. Intent.**

(a) It is the intent of this article to establish an office that will insure the complete and efficient utilization of all of the town's resources to combat disaster from natural causes such as tornadoes, floods, fire and earthquakes; or from those caused by man such as industrial explosions, aircraft accidents, civil disturbances, and the like; or from enemy attack, sabotage or other hostile action.

(b) The town administrator will be the coordinating official for all activity in connection with the town's emergency preparedness. The town administrator will advise and provide recommendations to the town council, police chief and town attorney as to actions to be taken in coping with the disaster situation.

(c) This article will not relieve any town department of its responsibilities or authority nor will it adversely affect the work of any volunteer agency organized for relief in emergencies. (Ord. No. 8-99, § (b), 11-2-99)

**Sec. 8-23. Authority and references.**

(a) North Carolina Emergency Management Act of 1977, (General Statute Chapter 166A).

(b) The Federal Civil Defense Act of 1950, as amended (Public Law 81-920).

(c) The Federal Disaster Relief Act of 1974, as amended (Public Law 93-288).  
(Ord. No. 8-99, § (c), 11-2-99)

**Sec. 8-24. Policy and purpose.**

Because of the existing and ever present possibility of the occurrence of disasters of significant size and large scale destructiveness and in order to insure that preparations of this community will be adequate to deal with such disasters, and to provide for the general welfare, health and safety, and to preserve the lives and property found and declared to be necessary:

(1) To establish the town administrator as the coordinating official for all town civil preparedness;



- (2) To recognize the responsibilities of local government and the emergency powers conferred upon the local governing body by the North Carolina General Statutes;
  - (3) To provide for the exchange of mutual aid among neighboring towns, cities and counties; and
  - (4) To recognize the importance of coordinating to the maximum extent all civil preparedness functions of this community with comparable functions of the state and federal governments, including their various departments and agencies, and of other localities as well as private agencies of every type, to the end that the most effective preparation and use may be made of all available resources for dealing with any disasters that may occur.
- (Ord. No. 8-99, § (d), 11-2-99)

**Sec. 8-25. Organization.**

That it is hereby established that the town administrator is the coordinating official for all civil preparedness within the town. The town administrator will be responsible to the town council, police chief and town attorney. The town administrator shall be responsible and accountable for the emergency planning, administration, organization and operation of emergency preparedness functions of the town before, during, and after disasters. He shall act as the town's coordinator with the civil preparedness representatives of other towns, cities and counties as well as those of state and federal governments.

(Ord. No. 8-99, § (e), 11-2-99)

**Secs. 8-26-8-50. Reserved.**

**ARTICLE III. EMERGENCY PROCLAMATION RESTRICTIONS**

**Sec. 8-51. Proclamation imposing prohibitions and restrictions.**

(a) The town council by proclamation may impose the prohibitions and restrictions specified in sections 8-52 through 8-55 of this article in the manner described in those sections. The said council may impose as many of those specified prohibitions and restrictions as it 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 said council shall recite its findings in the proclamation.

(b) The proclamation shall be in writing. The council 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 and town clerk shall retain a text of the proclamation and furnish upon request certified copies of it for use as evidence. Further, the town clerk shall make available copies of said proclamation to the news media for public dissemination.

(Ord. No. 9-99, § 1, 11-2-99)

**Sec. 8-52. 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 24-hour day to which the curfew applies. The town council may exempt from some or all of the curfew restrictions classes of people whose exemption the council 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 council by proclamation removes the curfew. (Ord. No. 9-99, § 2, 11-2-99)

**Sec. 8-53. Restrictions on possession, consumption or transfer of intoxicating liquor.**

(a) 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 of any intoxicating liquor. The prohibition, if imposed, shall apply to transfers of intoxicating liquor by employees of the alcoholic beverage control stores as well as by anyone else within the town.

(b) If imposed, the restrictions shall apply throughout the town.  
(Ord. No. 9-99, § 3, 11-2-99)

**Sec. 8-54. Restrictions on possession, transportation, and transfer of dangerous weapons and substances.**

(a) The proclamation may prohibit the possession of any dangerous weapon or substance unless it remains in a place of storage within the possessor's premises, or if the weapon, or substance cannot be readily stored in the possessor's premises, unless it remains in a customary place of storage not readily available to the possessor. The proclamation may also prohibit the sale or other transfer or the transportation of any dangerous weapon or substance. The town council 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, or other instrument or substance designed for a use that carries a threat of serious bodily injury or destruction of property. (A more complete definition is found in G.S. 14-288.1(2)).
- (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.  
(Ord. No. 9-99, § 4, 11-2-99)

**Sec. 8-55. Restriction on access to areas.**

(a) The proclamation may prohibit obtaining access or attemptation 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 town police chief and his subordinates when directed in the proclamation to do so by the town council. When acting under this authority, the town police chief and his subordinates may restrict or deny access to any area, street facility, or location within the town if that 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. 9-99, § 5, 11-2-99)

**Sec. 8-56. Amendments of the proclamation.**

The town council may amend the proclamation from time to time, making such modifications as they would have been authorized to include in the original proclamation. (Ord. No. 9-99, § 6, 11-2-99)

**Sec. 8-57. Removal of prohibitions and restrictions.**

The town council shall by proclamation remove the prohibitions and restrictions as the emergency no longer requires them.

(Ord. No. 9-99, § 7, 11-2-99)

**Sec. 8-58. Separate and superseding proclamation.**

The town council in their 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. 9-99, § 8, 11-2-99)

Chapter 9  
**RESERVED**

Chapter 10

**ENVIRONMENT\***

**Article I. In General**

Secs. 10-1-10-15. Reserved.

**Article II. Nuisances**

Division 1. Generally

- Sec. 10-16. Purpose.
- Sec. 10-17. Conditions constituting public nuisances.
- Sec. 10-18. Enforcement authority.
- Sec. 10-19. Notice of findings and order of abatement.
- Sec. 10-20. Town may proceed with criminal action.
- Sec. 10-21. Appeal.
- Secs. 10-22-10-30. Reserved.

Division 2. Nuisance, Abandoned and Junk Motor Vehicles

Subdivision 1. Public Health Nuisances Caused by Vehicles—Within Town Limits

- Sec. 10-30.1. Administration.
- Sec. 10-30.2. Definitions.
- Sec. 10-30.3. Enforcement.
- Sec. 10-30.4. Creation of lien.
- Secs. 10-30.5-10-30.10. Reserved.

Subdivision 2. Abandoned and Junked Motor Vehicles Located on Public Streets, Town Property, or Private Property Without Consent

- Sec. 10-30.11. Administration.
- Sec. 10-30.12. Definitions.
- Sec. 10-30.13. Vehicles exempt from section.
- Sec. 10-30.14. Abandonment of vehicle prohibited.
- Sec. 10-30.15. Keeping on private property prohibited without consent of the owner, lessee or occupant of the premises.
- Sec. 10-30.16. Removal from private property at request of owner, occupant or lessee.
- Sec. 10-30.17. Removal of abandoned or junked motor vehicles—Pre-towing notice of requirements.
- Sec. 10-30.18. Exceptions to prior notice requirement.
- Sec. 10-30.19. Removal of vehicles; post-towing requirements.
- Sec. 10-30.20. Right to probable cause hearing before sale or final disposition of vehicle.
- Sec. 10-30.21. Redemption of vehicle during proceedings.
- Sec. 10-30.22. Schedule of towing fees.
- Sec. 10-30.23. Schedule of storage fees.
- Sec. 10-30.24. Collection of fees.

**\*Cross reference—Floods**, ch. 14.

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- Sec. 10-30.25. Creation of liens; enforcement.
- Sec. 10-30.26. Additional remedies available.
- Secs. 10-30.27-10-30.30. Reserved.

### Subdivision 3. Junked Motor Vehicles on Public Grounds and Private Property Within the Town

- Sec. 10-30.31. Administration.
- Sec. 10-30.32. Definitions.
- Sec. 10-30.33. Junked motor vehicles regulated; removal authorized.
- Sec. 10-30.34. Removal of junked motor vehicles; pre-towing notice requirements.
- Sec. 10-30.35. Removal of vehicles; post-towing notice requirements.
- Sec. 10-30.36. Right to probable cause hearing before sale of final disposition of vehicle.
- Sec. 10-30.37. Redemption of vehicle during proceedings.
- Sec. 10-30.38. Schedule of towing fees.
- Sec. 10-30.39. Schedule of storage fees.
- Sec. 10-30.40. Collection of fees.
- Sec. 10-30.41. Creation of liens; enforcement.
- Sec. 10-30.42. Vehicles exempt from sections 10-30.31 through 10-30.42.
- Sec. 10-30.43. Additional remedies available.

### **Article III. Noise**

- Sec. 10-31. Violation of article a misdemeanor; additional remedy.
- Sec. 10-32. Findings and declarations.
- Sec. 10-33. Prohibited acts—Generally.
- Sec. 10-34. Same—Specific standards for unnecessary noise.
- Sec. 10-35. Exempted acts.
- Secs. 10-36-10-50. Reserved.

### **Article IV. Radiation and Hazardous Materials**

- Sec. 10-51. Purpose.
- Sec. 10-52. Citation.
- Sec. 10-53. Definitions.
- Sec. 10-54. Exceptions—Radioactive.
- Sec. 10-55. Prohibitions.
- Sec. 10-56. Limitations.
- Secs. 10-57-10-70. Reserved.

### **Article V. Town Tree, Ordinance**

- Sec. 10-71. Definitions.
- Sec. 10-72. Creation and establishment of a town tree board.
- Sec. 10-73. Term of office.
- Sec. 10-74. Compensation.
- Sec. 10-75. Duties and responsibilities.
- Sec. 10-76. Operation.
- Sec. 10-77. Street tree species to be planted.
- Sec. 10-78. Spacing.
- Sec. 10-79. Distance from curb and sidewalk.

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- Sec. 10-80. Distance from street corners and fireplugs.
- Sec. 10-81. Utilities.
- Sec. 10-82. Public tree care.
- Sec. 10-83. The topping.
- Sec. 10-84. Pruning, corner clearance.
- Sec. 10-85. Dead or diseased tree removal on private property.
- Sec. 10-86. Removal of stumps.
- Sec. 10-87. Interference with town tree board.
- Sec. 10-88. Arborists license and bond.
- Sec. 10-89. Review by town council.

**ARTICLE I. IN GENERAL****Secs. 10-1-10-15. Reserved.****ARTICLE II. NUISANCES\***

## DIVISION 1. GENERALLY

**Sec. 10-16. Purpose.**

Pursuant to authority granted by G.S. 160A-174 and 160A-193, the town council enacts the following provisions in order to define, prohibit, regulate, or abate acts, omissions, or conditions detrimental to the health, safety, or welfare of its citizens and the peace and dignity of the corporate limits of the town and to define and abate nuisances.  
(Ord. No. 1-99, § 1-1, 1-5-99)

**Sec. 10-17. Conditions constituting public nuisances.**

It is hereby found that there are, within the corporate limits of the town, the following enumerated and described conditions and the same are hereby found, deemed and declared to constitute public nuisances wherever the conditions may exist, and the creation, maintenance, or failure to abate is hereby declared unlawful.

- (1) The uncontrollable growth of noxious weeds, noxious weeds and grass or noxious weeds and other vegetation to a height in excess of 24 inches within 25 feet of a public street, highway or alley, or within 25 feet of a property line of an adjoining developed property.
- (2) The accumulation of animal or vegetable matter that is offensive by virtue of odors or vapors or by the inhabitancy therein of rats, mice, snakes, or vermin of any kind on a parcel of land not larger than two acres and within 100 feet of a property line of an adjoining developed property.
- (3) The collection of garbage, food waste, animal waste, or any other rotten or putrescible matter of any kind in an open space.
- (4) The accumulation of rubbish, trash, junk, or combustible items, causing or threatening to cause the accumulation of stagnant water or causing or threatening to cause the inhabitancy therein of mosquitos, harmful insects, rats, mice, snakes or vermin of any kind.

**\*Editor's note—Ord.** No. 1-99, §§ 1-1-1-44, adopted January 5, 1999, did not specifically amend the Code; therefore, the editor has treated the provisions of said ordinance as superseding the provisions of Art. II. Former Art. II, §§ 10-16-10-20, pertained to similar subject matter, and carried no history note.

**State law references—Authority** to define and abate nuisances, G.S. 160A-76; abatement of public health nuisances, G.S. 160A-193.



- (5) The open storage of any ice box, refrigerator, stove, water heater, freezer, other similar large appliances, glass, building materials, building rubbish, debris or similar items.
- (6) The obstruction of public streets, highways or alleys.
- (7) The accumulation of yard waste, dead trees, fallen trees, section of tree trunks, tree limbs or tree stumps not removed within 30 days after it has acquired a situs on the property. This shall not apply to accumulations of less than two cubic yards or to natural accumulations on vacant parcels of land when such parcels are larger than two acres and such natural accumulation is not within 50 feet of adjoining developed property.
- (8) Conditions which block, hinder, or obstruct in any way the natural flow of branches, streams, creeks, surface waters, ditches, or drains.
- (9) Conditions that injure or cause discomfort to the community at large, endanger life, generate disease, have a detrimental effect on the public health, safety and welfare. (Ord. No. 1-99, § 1-2, 1-5-99)

**Sec. 10-18. Enforcement authority.**

It shall be the duty of the zoning enforcement officer to enforce all of the provisions of this article, unless otherwise specified by the ordinance, and to make all necessary inspections necessary to determine whether or not the provisions of this article are being met. (Ord. No. 1-99, § 1-3, 1-5-99)

**Sec. 10-19. Notice of findings and order of abatement.**

(a) If the zoning enforcement officer finds that conditions constituting a public nuisance exist on a parcel of real property, the officer shall issue a written notice of findings and an order of abatement to the owner of the property and any other party in interest which shall:

- (1) Set out what conditions the officer has found existing on such property that constitute a public nuisance; and
- (2) Order the abatement of such conditions within 20 days of the date of the notice of findings and order of abatement.

When the term "owner" is used in this article, owner shall include the owner and any party having a legal or equitable interest in such property.

(b) The owner of the subject property shall be notified by personal service of the notice or by registered or certified mail, return receipt requested. If such owner cannot be personally served or refuses to accept the notice by registered mail of the violation, then the notice shall be posted on the property in a conspicuous place and visible from the public street, highway or alley. If the name of the owner cannot be ascertained then the notice shall be served on any person in possession of the subject property, or if there is no person in possession of the

property, by posting the notice on the subject property. If any such property is owned by a corporation, the notice shall be served upon the registered agent or, in the absence thereof, notice shall be served upon the corporation.

(c) Any notice required to be posted may be posted by any authorized representative of the zoning enforcement officer or by any officer of the town.

(d) If the owner, having been ordered to abate such a public nuisance, fails, neglects, or refuses to abate or remove the condition constituting the nuisance within 20 days from the date of said order, the officer shall cause said condition to be removed or otherwise remedied by having employees of the town or private contractor to go upon said premises and remove or otherwise abate such nuisance under the supervision of an officer or employee designated by the officer. Any person who has been ordered to abate a public nuisance may within the time allowed by this article request the town in writing to remove such condition, the cost of which shall be paid by the person making such request.

(e) Upon the completion of such removal and abatement, the zoning enforcement officer or his designee, shall deliver to the town tax collector a statement showing the actual cost of the abatement of the unlawful condition, according to the fee schedule adopted by town council. The tax collector shall thereupon mail to the owner of the subject property a bill covering the cost and the amount of the bill shall become a lien upon the subject property and, if not paid within 30 days shall be collected as in the same manner provided for the collection of delinquent taxes.

(Ord. No. 1-99, § 1-4, 1-5-99)

**Sec. 10-20. Town may proceed with criminal action.**

The procedure set forth in this division shall be in addition to any other remedies that exist under law for the abatement of public nuisances, and this division shall not prevent the town from proceeding in a criminal action against any person violating the provisions of this section as provided in G.S. Sec. 14-4.

(Ord. No. 1-99, § 1-5, 1-5-99)

**Sec. 10-21. Appeal.**

Within the 20-day period mentioned in section 10-19(a), the owner of the property where the nuisance exists. may appeal the notice of findings and order of abatement to the town council by giving written notice of appeal to the town clerk and such appeal shall stay the abatement of nuisances by the town until a final determination by the town council is made. If no appeal is taken, the town may proceed to abate the nuisance.

(Ord. No. 1-99, § 1-6, 1-5-99)

**Secs. 10-22-10-30. Reserved.**

## DIVISION 2. NUISANCE, ABANDONED AND JUNK MOTOR VEHICLES

*Subdivision 1. Public Health Nuisances Caused by Vehicles—Within Town Limits***Sec. 10-30.1. Administration.**

The zoning enforcement officer shall be responsible for the removal, abatement or remedy of nuisance vehicles.

(Ord. No. 1-99, § 1-9, 1-5-99)

**Sec. 10-30.2. Definitions.**

(a) *Nuisance vehicle* is a vehicle on public or private property that is determined and declared to be a health or safety hazard, a public nuisance, and unlawful by the town council.

(b) A vehicle is determined and declared to be a *health or safety hazard, a public nuisance, and unlawful* if such vehicle is:

- (1) A breeding ground or harbor for mosquitoes, other insects, rats, snakes or other pests;
- (2) A point of heavy growth of weeds or other noxious vegetation over eight inches in height;
- (3) A point of collection of pools or ponds of water;
- (4) A point of concentration of quantities of gasoline, oil or other flammable or explosive materials as evidenced by odor or other evidence;
- (5) One which has areas of confinement which cannot be operated from the inside of such area such as trunks, hoods, etc.;
- (6) So situated or located that there is a danger of it falling or turning over;
- (7) One which is a point of collection of garbage, food waste, animal waste, or any other rotten or putrescible matter of any kind; or
- (8) One which has sharp parts thereof which are jagged or contain sharp edges of metal or glass.

(Ord. No. 1-99, § 1-10, 1-5-99)

**Sec. 10-30.3. Enforcement.**

(a) The zoning enforcement officer shall notify the owner of the premises upon which a nuisance vehicle is found that the owner of said premises is in violation of this section.

(b) The zoning enforcement officer shall notify such owner by certified mail, registered mail or by personal services as by law provided, which notification shall be in writing and shall contain:

- (1) A brief statement of why the vehicle is a nuisance, citing the appropriate subsection or subsections of this article.

- (2) A statement that the keeping of such vehicles on the owner's premises is unlawful.
- (3) A request that the owner of the premises voluntarily remove, abate or remedy the nuisance within 30 days of the mailing or service of the notice.
- (4) A statement advising the owner that if the nuisance vehicle is not removed, abated or remedied, the town will take appropriate legal action to remove, abate or remedy the nuisance and that the expense of such action shall be paid by the owner of the premises, and if not paid, the expense shall be a lien upon the premises.

(c) If the owner of the premises fails to voluntarily remove, abate or remedy the nuisance within the 30-day period provided for in subsection (b)(3) above, the zoning enforcement officer shall conduct a hearing to determine if the owner of the premises should be ordered to remove, abate or remedy the nuisance and shall give the owner of the premises written notice of hearing by certified mail, registered mail or personal service as by law provided, which notice of hearing shall be in writing and shall contain:

- (1) A brief statement describing the vehicle and stating why it is a nuisance vehicle including a citation of the appropriate subsection or subsections of this section together with a brief description of the premises upon which it is located.
- (2) A statement that a hearing will be held before the zoning enforcement officer at a designated place, date and time which shall be not less than 15 days nor more than 30 days from the date of the mailing or service of the notice of hearing.
- (3) A statement that the owner has a right to appear at the hearing, be represented by counsel and offer evidence in the enforcement proceeding.

(d) Within five days of the conclusion of the hearing by the zoning enforcement officer, the zoning enforcement officer shall enter a written order in the enforcement proceeding which shall either:

- (1) Contain a finding that the vehicle is not a nuisance vehicle; or
- (2) Order the owner to remove, abate or remedy the nuisance within 30 days following the date of the service or the order upon the owner by certified mail, registered mail or personal service as by law provided.

(e) In the event the owner fails to remove, abate or remedy the nuisance as ordered, the zoning enforcement officer shall notify the town council of the owner's failure or refusal to comply with the order to remove, abate or remedy said nuisance.

(f) Upon receipt of the zoning enforcement officer's notice that an owner has failed to remove, abate or remedy a nuisance vehicle, the town council may direct that any appropriate legal action or proceeding be initiated to remove, abate or remedy the nuisance. (Ord. No. 1-99, § 1-11, 1-5-99)

#### **Sec. 10-30.4. Creation of lien.**

In the event the town takes action to remove, abate or remedy the nuisance, the expense of the action shall be paid by the person in default in failing to remove, abate or remedy the nuisance, and, if not paid, the said expenses shall be a lien upon the land or premises where the nuisance occurred and shall be collected as unpaid taxes.

(Ord. No. 1-99, § 1-12, 1-5-99)

**Secs. 10-30.5-10-30.10. Reserved.**

*Subdivision 2. Abandoned and Junked Motor Vehicles Located on Public Streets, Town Property, or Private Property without Consent*

**Sec. 10-30.11. Administration.**

(a) The police department shall be responsible for the administration and enforcement of the removal of and disposition of abandoned and junked motor vehicles located on public streets or highways.

(b) The zoning enforcement officer shall be responsible for the administration and enforcement of the removal and disposition of abandoned and junked motor vehicles located on any other property owned or operated by the town or on private property.

(Ord. No. 1-99, § 1-14, 1-5-99)

**Sec. 10-30.12. Definitions.**

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

*Abandoned motor vehicle* shall mean a motor vehicle that:

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

*motor vehicle* shall mean an abandoned motor vehicle that also:

- (1) Is partially dismantled or wrecked;
- (2) Cannot be self-propelled or moved in the manner in which it was originally intended to move;
- (3) Is more than five years old and worth less than \$100.00; or
- (4) Does not display a current license plate.

*Motor vehicle* shall mean all machines designed or intended to travel over land or water by self-propulsion or while attached to any self-propelled vehicle.

*Upon a street or highway* shall mean the period of time when any portion of a vehicle is touching or projecting over or upon any traveled or dedicated portion of any street or highway.

(Ord. No. 1-99, § 1-15, 1-5-99)

**Sec. 10-30.13. Vehicles exempt from section.**

Nothing in this section shall be construed to apply to:

- (1) Any vehicle in an enclosed building;
- (2) Any vehicle on the premises of a business enterprise being operated in a lawful place and manner when the vehicle is necessary to the operation of such business enterprise; or
- (3) Any vehicle in an appropriate storage place or depository maintained in a lawful place and manner.

(Ord. No. 1-99, § 1-16, 1-5-99)

**Sec. 10-30.14. Abandonment of vehicle prohibited.**

It shall be unlawful for a person to abandon a motor vehicle on the public streets or on public or private property within the town. Any junked or abandoned vehicle found to be in violation of this section may be removed to a storage garage or area.

(Ord. No. 1-99, § 1-17, 1-5-99)

**Sec. 10-30.15. Keeping on private property prohibited without consent of the owner, lessee or occupant of the premises.**

It shall be unlawful for any person to keep a junked or abandoned vehicle on private property within the town without the consent of the owner, lessee or occupant of the premises.

(Ord. No. 1-99, § 1-18, 1-5-99)

**Sec. 10-30.16. Removal from private property at request of owner, occupant or lessee.**

(a) Any junked or abandoned motor vehicle found to be in violation of section 10-30.15 above may be removed to a storage garage or area, but no such vehicle shall be removed from private property without the written request of the owner, lessee, or occupant of the premises unless the inspector has declared such vehicle to be a health or safety hazard.

(b) Any person requesting the removal of a junked or abandoned motor vehicle from private property shall indemnify the town against any loss, expense, or liability incurred because of the removal, storage, or sale thereof.

(Ord. No. 1-99, § 1-19, 1-5-99)

**Sec. 10-30.17. Removal of abandoned or junked motor vehicles—Pre-towing notice of requirements.**

Except as set forth in section 10-30.18 below, an abandoned or junked vehicle which is to be removed shall be towed only after notice to the registered owner or person entitled to possession of the vehicle. In case of a junked motor vehicle, if the names and mailing addresses of the registered owner or person entitled to the possession of the vehicle, or the owner, lessee,

magistrate will set the hearing within 72 hours of receipt of the request, and the hearing will be conducted in accordance with the provisions of G.S. 20-219.11, as amended. Any aggrieved party may appeal the magistrate's decision to district court.

(Ord. No. 1-99, § 1-23, 1-5-99)

**Sec. 10-30.21. Redemption of vehicle during proceedings.**

At any stage in the proceedings, including before the probable cause hearing the owner may obtain possession of the removed vehicle by paying the towing fee, including any storage charges with the town. Upon regaining possession of a vehicle, the owner or person entitled to the possession of the vehicle shall not allow or engage in further violations of this article.

(Ord. No. 1-99, § 1-24, 1-5-99)

**Sec. 10-30.22. Schedule of towing fees.**

The fees for towing shall be as set out in the schedule of towing fees, a copy of which shall be maintained by the town clerk and by the inspector.

(Ord. No. 1-99, § 1-25, 1-5-99)

**Sec. 10-30.23. Schedule of storage fees.**

The fees for storage shall be as set forth in the schedule of storage fees, a copy of which shall be maintained by the town clerk and by the inspector.

(Ord. No. 1-99, § 1-26, 1-5-99)

**Sec. 10-30.24. Collection of fees.**

The town shall be responsible for collecting towing and storage fees for a vehicle found to be in violation of this division.

(Ord. No. 1-99, § 1-27, 1-5-99)

**Sec. 10-30.25. Creation of liens; enforcement.**

(a) The towing and storage charges provided for in sections 10-30.23 and 10-30.24 above shall be a lien upon the vehicle.

(b) The charges for which the lien is claimed under this section may be enforced by a sale of the vehicle if the owner fails to claim the vehicle and pay the charges within 30 days following a final determination of the matter on appeal whichever date occurs first. If the lien is enforced by a sale of the vehicle, the procedure shall be as provided by G.S. 44A-4, 44A-5 and 44A-6 where the property upon which the lien is claimed is a motor vehicle, provided that if no one purchases the vehicle at the sale and if the value of the vehicle is less than the amount of the lien, the vehicle may be destroyed.

(Ord. No. 1-99, § 1-28, 1-5-99)



**Sec. 10-30.26. Additional remedies available.**

In addition to the enforcement procedures provided for in this division, the town may initiate any appropriate action or proceedings to prevent, restrain, correct or abate the violation of this division.

(Ord. No. 1-99, § 1-29, 1-5-99)

**Secs. 10-30.27-10-30.30. Reserved.**

*Subdivision 3. Junked Motor Vehicles on Public Grounds and Private Property Within the Town*

**Sec. 10-30.31. Administration.**

The zoning enforcement officer of the town shall be responsible for the administration and enforcement of this section. The town may contract with private tow truck operators or towing businesses, to remove to a designated storage garage or area junked motor vehicles in compliance with this section and applicable state laws. Nothing in this section shall be construed to limit the legal authority or powers of the zoning enforcement officer, officers of the town police department and fire department in enforcing other laws or in otherwise carrying out their duties.

(Ord. No. 1-99, § 1-31, 1-5-99)

**Sec. 10-30.32. Definitions.**

For purpose of this subdivision, certain words and terms are defined as herein indicated:

*Authorizing official.* This zoning enforcement officer, or his designee, is designated to authorize the removal of vehicles under the provisions of this subdivision.

*Junked motor vehicle.* As authorized and defined in G.S. 160A-303.2 the term "junked motor vehicle" means a vehicle that does not display a current license plate lawfully upon that vehicle and that:

- (1) Is partially dismantled or wrecked;
- (2) Cannot be self-propelled or moved in the manner in which it originally was intended to move; or
- (3) Is more than five years old and appears to be worth less than \$100.00.

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

(Ord. No. 1-99, § 1-32, 1-5-99)

**Sec. 10-30.33. Junked motor vehicles regulated; removal authorized.**

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

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

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

(d) Subject to the provisions of subsection (5) below, upon investigation, the zoning enforcement officer may order the removal of a junked motor vehicle as defined in this section after finding in writing that the aesthetic benefits of removing the vehicle outweigh the burdens imposed on the private property owner. Such findings shall be based on a balancing of the monetary loss of the owner or person entitled to possession against the corresponding gain to the public by promoting or enhancing community, neighborhood or area appearance. The following among other relevant factors may be considered:

- (1) Protection of property values;
- (2) Promotion of tourism and other economic development opportunities;
- (3) Indirect protection of public health and safety;
- (4) Preservation of the character and integrity of the community; and
- (5) Promotion of the comfort, happiness and emotional stability of area residents.

(e) Permitted concealment of enclosure of junked motor vehicle: One junked motor vehicle, in its entirety, can be located in the rear yard as defined by the town's zoning ordinance if the junked motor vehicle is entirely concealed from public view from a public street and from abutting premises by an acceptable covering.

The zoning enforcement officer has the authority to determine whether any junked motor vehicle is adequately concealed as required by this provision. The covering or enclosure must be compatible with the objectives stated in the preamble of this article.

(Ord. No. 1-99, § 1-33, 1-5-99)

**Sec. 10-30.34. Removal of junked motor vehicles; pre-towing notice requirements.**

A junked vehicle which is to be removed pursuant to section 10-30.33 above shall be towed only after notice to the registered owner or person entitled to possession of the vehicle. If the name(s) and mailing address(es) of the registered owner or person entitled to the possession of the vehicle, or the owner, lessee, or occupant of the real property upon which the vehicle is

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

If the registered owner or person entitled to possession does not remove the vehicle but chooses to appeal the determination that the vehicle is a junked motor vehicle, such appeal shall be made to the town council in writing, heard at the next regularly scheduled meeting of the town council, and further proceedings to remove the vehicle shall be stayed until the appeal is heard and decided. The determination of the town council may be appealed. The appeal shall be made within ten days of the determination by the town council and shall be to the District Court of Caswell County.

(Ord. No. 1-99, § 1-34, 1-5-99)

**Sec. 10-30.35. Removal of vehicles; post-towing notice requirements.**

Any junked motor vehicle which has been ordered removed may, as directed by the town, be removed to a storage garage or area by the towing truck operator or towing business contracting to perform such services for the town. Whenever such a vehicle is removed, the authorizing town official shall immediately notify the last known registered owner of the vehicle, such notice to include the following:

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

The town shall attempt to give notice to the vehicle owner by telephone; however, whether or not the owner is reached by telephone, written notice, including the information set forth in subsections (1) through (4) above, shall also be mailed to the registered owner's last known address unless this notice is waived in writing by the vehicle owner or his agent.

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

Whenever an abandoned or junked vehicle is removed, and such vehicle has no valid registration or registration plates, the authorizing town official shall make reasonable efforts,

including checking the vehicle identification number, to determine the last known registered owner of the vehicle and to notify him of the information set forth in subsections (1) through (4) above.

(Ord. No. 1-99, § 1-35, 1-5-99)

**Sec. 10-30.36. Right to probable cause hearing before sale of final disposition of vehicle.**

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

(Ord. No. 1-99, § 1-36, 1-5-99)

**Sec. 10-30.37. Redemption of vehicle during proceedings.**

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

(Ord. No. 1-99, § 1-37, 1-5-99)

**Sec. 10-30.38. Schedule of towing fees.**

The fees for towing shall be set out in the schedule of towing fees, a copy of which shall be maintained by the town clerk and by the inspector.

(Ord. No. 1-99, § 1-38, 1-5-99)

**Sec. 10-30.39. Schedule of storage fees.**

The fees for storage shall be as set out in the schedule of storage fees, a copy of which shall be maintained by the town clerk and by the inspector.

(Ord. No. 1-99, § 1-39, 1-5-99)

**Sec. 10-30.40. Collection of fees.**

The town shall be responsible for collecting towing and storage fees for a vehicle found to be in violation of this division.

(Ord. No. 1-99, § 1-40, 1-5-99)

**Sec. 10-30.41. Creation of liens; enforcement.**

(a) The towing and storage charges provided for in sections 10-30.38 and 10-30.39 above shall be a lien upon the vehicle.

(b) The charges for which the lien is claimed under this section may be enforced by a sale of the vehicle if the owner fails to claim the vehicle and pay the charges within 30 days following a final determination of the matter on appeal whichever date occurs first. If the lien is enforced by a sale of the vehicle, the procedure shall be as provided by G.S. 44A-4, 44A-5 and 44A-6 where the property upon which the lien is claimed is a motor vehicle, provided that if no one purchases the vehicle at the sale and if the value of the vehicle is less than the amount of the lien, the vehicle may be destroyed.

(Ord. No. 1-99, § 1-41, 1-5-99)

**Sec. 10-30.42. Vehicles exempt from sections 10-30.31 through 10-30.42.**

No motor vehicle that is used on a regular basis for business or personal use shall be removed or disposed of pursuant to sections 10-30.31 through 10-30.42.

(Ord. No. 1-99, § 1-42, 1-5-99)

**Sec. 10-30.43. Additional remedies available.**

In addition to the enforcement procedures provided for in this division, the town may initiate any appropriate action or proceedings to prevent, restrain, correct or abate the violation of this division.

(Ord. No. 1-99, § 1-43, 1-5-99)

**ARTICLE III. NOISE\*****Sec. 10-31. Violation of article a misdemeanor; additional remedy.**

(a) Any person violating any of the provisions of this article shall be deemed guilty of a misdemeanor and, upon conviction, shall be punished in accordance with section 1-6.

(b) As an additional remedy, the operation or maintenance of any device, instrument, vehicle or machine in violation of any provision of this article and which causes discomfort or annoyance to reasonable persons of normal sensitivity or which endangers the comfort, repose, health or peace of residents in the area shall be deemed, and is declared to be, a public nuisance and may be subject to abatement summarily by a restraining order or injunction issued by a court of competent jurisdiction.

(Ord. of 8-4-92, §§ 8-305, 8-306)

**\*State law reference**—Authority to regulate noise, G.S. 160A-184.

**Sec. 10-32. Findings and declarations.**

It is found and declared that:

- (1) The making and creation of excessive, offensive, unnecessary or unusually loud noises within the limits of the town is a condition which has existed for some time and the extent and volume for such noises is increasing.
- (2) The making, creation or maintenance of such excessive, offensive, unnecessary, unnatural or unusually loud noises which are prolonged, unusual and unnatural in their time, place and use affect and are a detriment to public health, comfort, convenience, safety, welfare and prosperity of the residents of the town.
- (3) The necessity in the public interest for the provisions and prohibitions hereinafter contained and enacted, is declared as a matter of legislative determination and public policy, and it is further declared that the provisions and prohibitions contained in this article and enacted are in pursuance of and for the purpose of securing and promoting the public health, comfort, convenience, safety, welfare and prosperity and the peace and quiet of the town and its inhabitants.

(Ord. of 8-4-92, § 8-301)

**Sec. 10-33. Prohibited acts—Generally.**

It shall be unlawful for any person to make, continue, or cause to be made or continued, any excessive, offensive, unnecessary or unusually loud noise or any noise which either annoys, disturbs, injures or endangers the comfort, repose, health, peace or safety of others within the limits of the town.

(Ord. of 8-4-92, § 8-302)

**Sec. 10-34. Same—Specific standards for unnecessary noise.**

The following acts, among others, are declared to be loud, disturbing and unnecessary noises in violation of this article, but such enumeration shall not be deemed to be exclusive:

- (1) *Horns and signaling devices.* The sounding of any horn or signaling device on any automobile, motorcycle or other vehicle on any street or public place of the town, except as a danger warning; the creation by means of any such signaling device for an unnecessary and unreasonable period of time. The use of any signaling device except one operated by hand or electricity; the use of any horn, whistle or other device operated by engine exhaust; and the use of any such signaling device when traffic is for any reason held up.
- (2) *Radios, phonographs and other devices for production or reproduction of sound.* The using, operating or permitting to be played, used or operated any radio receiving set, musical instrument, phonograph, tape player or other machine or device for the producing or reproducing of sound in such manner as to disturb the peace, quiet and comfort of the neighboring inhabitants or at any time with louder volume than is necessary for convenient hearing for the persons who are in the room, vehicle or

chamber in which such machine or device is operated and who are voluntary listeners thereto. The operation of any such set, instrument, phonograph, machine or device in such a manner as to be plainly audible at a distance of 50 feet from the building, structure or vehicle in which it is located shall be prima facie evidence of a violation of this section.

- (3) *Loudspeakers; amplifiers for advertising.* The using, operating or permitting to be played, used, or operated of any radio receiving set, musical instrument, phonograph, loudspeaker, sound amplifier, or other machine or device for the producing or reproducing of sound which is cast upon the public street for the purpose of commercial advertising or attracting the attention of the public to any building or structure.
- (4) *Yelling, shouting, hooting, whistling or singing.* Yelling, shouting, hooting, whistling or singing on the public streets, particularly between the hours of 11:00 p.m. and 7:00 a.m. or at any time or place so as to annoy or disturb the quiet, comfort, or repose of persons in any office, or in any dwelling, hotel or other type of residence, or, of any persons in the vicinity.
- (5) *Animals and birds.* The keeping of any animal or bird which by causing frequent or long continued noise shall disturb the comfort or repose of any persons in the vicinity.
- (6) *Steam whistles.* The blowing of any locomotive steam whistle attached to any stationary boiler except to give notice of the time to begin or stop work or as a warning of fire or danger, or upon request of proper city authorities.
- (7) *Exhausts.* The discharge into the open air of the exhaust of any steam engine, stationary internal combustion engine, motor boat, or motor vehicle except through a muffler or other device which will effectively prevent loud or explosive noises therefrom.
- (8) *Defect in vehicle or load.* The use of any automobile, motorcycle or vehicle so out of repair, so loaded or in such manner as to create loud and unnecessary grating, grinding, rattling or other noise.
- (9) *Loading, unloading and opening boxes.* The creation of a loud and excessive noise in connection with loading or unloading any vehicle or the opening and destruction of bales, boxes, crates and containers.
- (10) *Construction or repairing of buildings.* The erection (including excavation), demolition, alteration or repair of any building other than between the hours of 6:00 a.m. and 6:00 p.m. on weekdays, except in case of urgent necessity in the interest of public health and safety, and then only with a permit from the building inspector, which permit may be granted for a period not to exceed three days or less while the emergency continues and which permit may be renewed for periods of three days or less while the emergency continues. If the building inspector should determine that the public health and safety will not be impaired by the erection, demolition, alteration or repair of any building or the excavation of streets and highways within the hours of 6:00 p.m. and 7:00 a.m. and if he shall further determine that loss or inconvenience would result to any party in

interest, he may grant permission for such work to be done within the hours of 6:00 p.m. and 7:00 a.m., upon application being made at the time the permit for the work is awarded or during the progress of the work.

(11) *Schools, courts, churches and nursing homes.* The creation of any excessive noise on any street adjacent to any school, institution of learning, church or court while such institutions are in use, or adjacent to any nursing home, which unreasonably interferes with the workings of such institution, or which disturbs or unduly annoys patients in the nursing home, provided conspicuous signs are displayed in such street indication that the same is a school, nursing home or court street.

(12) *Hawkers and peddlers.* The shouting and crying of peddlers, hawkers and vendors which disturbs the peace and quiet of the neighborhood.

(13) *Drums.* The use of any drum or other instrument or device for the purpose of attracting attention by creation of noise to any performance, show or sale.

(14) *Metal rails and pillars and columns; transportation.* The transportation of rails, pillars or columns of iron, steel or other material, over and along streets and other public places upon carts, trays, cars, trucks, or in any other manner so loaded as to cause loud noises or as to disturb the peace and quiet of such streets or other public places.

(15) *Piledrivers, hammers or similar appliances.* The operation between the hours of 10:00 p.m. and 7:00 a.m. of any piledriver, steam shovel, pneumatic hammer, derrick, steam or electric hoist or other appliance, the use of which is attended by loud or unusual noise.

(16) *Blowers.* The operation of any noise-creating blower or power fan or any internal combustion engine, the operation of which causes noise due to the explosion of operating gases or fluids, unless the noise from such blower or fan is muffled and such engine is equipped with a muffler device sufficient to deaden such noise.

(Ord. of 8-4-92, § 8-303)

#### **Sec. 10-35. Exempted acts.**

Any and all parades, sporting events, concerts, meetings or public gatherings under the auspices of the town, county, county board of education or the county chamber of commerce shall be deemed exempt from the provisions of this article.

(Ord. of 8-4-92, § 8-304)

#### **Secs. 10-36-10-50. Reserved.**



**ARTICLE IV. RADIATION AND HAZARDOUS MATERIALS****Sec. 10-51. Purpose.**

To define, regulate, restrict, prohibit, or abate acts, omissions, or conditions detrimental to the health, safety, or welfare of the citizens of the town and the protection of persons and property in the town, from the harmful effects of radioactive materials and hazardous waste materials.

(Ord. No. 10-99, § 1, 11-2-99)

**Sec. 10-52. Citation.**

This article shall be known and may be cited as "Ordinance No. 10-99, Regulation of Radiation and Hazardous Materials within the Town of Yanceyville."

(Ord. No. 10-99, § 2, 11-2-99)

**Sec. 10-53. Definitions.**

*Hazardous or radioactive waste material* means any waste material which is now or may be properly listed as a hazardous or radioactive waste pursuant to the United States Environmental Protection Agency's Hazardous Waste Guidelines and Regulations as published in the Code of Federal Regulations (40 C.F.R. § 250.14 Dec. 18, 1978, Aug. 22, 1979), or any amendments thereto and any other waste or radioactive materials which shall be listed from time to time by the United States Environmental Protection Agency as hazardous or radioactive waste.

*Hazardous waste material* means any solid, liquid or gaseous material or a combination thereof which because of quantity, concentration or physical, chemical or infectious characteristics may cause, or significantly contribute to an increase in serious or incapacitating illness or which may pose a substantial present or potential hazard to human health, plant or animal life or the environment.

*Person* means any individual, corporation, partnership, firm, association, trust, estate, public or private institution, foundation, group, agency, or any successor thereto.

*Radioactive material* means any solid, liquid, gas or combination thereof which emits ionizing radiation spontaneously.

*Radiation machine* means any device designed to produce or which produces radiation or nuclear particles or emits ionizing radiation when the control devices of the machine are operated.

*To store* means to hold, locate, place, deposit or accumulate either in a warehouse, vehicle, conveyance, building, or pit, on a lot or in containers for a continuous period of time exceeding 24 hours.

(Ord. No. 10-99, § 3, 11-2-99)

**Sec. 10-54. Exceptions—Radioactive.**

It shall be unlawful for any person to process, store, or bury radioactive waste material or hazardous material within the territorial limits of the town except where said waste materials are produced within the said town incidental or secondary to the uses permitted by any territorial zoning ordinance, promulgated by the town. This article does not apply to the lawful use by properly licensed operators of radiation machines or radioactive materials for medical diagnostic and treatment purposes and this article does not apply to the use of radiation machines or radioactive materials by properly licensed and qualified operators in the testing laboratories, electronics communication, word processing, data processing, inspection, quality control or other legitimate manufacturing processes.

(Ord. No. 10-99, § 4, 11-2-99)

**Sec. 10-55. Prohibitions.**

The use of land or building structures for storage, disposal, accumulation, repackaging, incineration, burial or reprocessing of any hazardous waste material or radioactive waste material by any person within the town is prohibited.

(Ord. No. 10-99, § 5, 11-2-99)

**Sec. 10-56. Limitations.**

This article does not regulate, control or prevent any person from receiving hazardous or radioactive waste material from any lawful generator thereof in the town and transporting same on a street or highway under the control of the state board of transportation, and this article does not regulate or control any right of way or right of passage belonging to a public utility, electric or telephone membership corporation or public agency of the state and this article does not regulate or control a highway right of way in a manner inconsistent with the state law or an ordinance of the state board of transportation.

(Ord. No. 10-99, § 6, 11-2-99)

**Secs. 10-57-10-70. Reserved.****ARTICLE V. TOWN TREE ORDINANCE****Sec. 10-71. Definitions.**

*Street trees* are herein defined as trees, shrubs, bushes and all other woody vegetation on land lying between property lines on either side of all streets, avenues, or ways within the town.

*Park trees* are herein defined as trees, shrubs, bushes and all other woody vegetation in public parks having individual names, and all areas owned by the town, or to which the public has free access as a park.

(Ord. No. 7-99, § 1, 9-7-99)

**Sec. 10-72. Creation and establishment of a town tree board.**

There is hereby created and established a town tree board for the town, which shall consist of five members, citizens and residents of the town, who shall be appointed by town council. (Ord. No. 7-99, § 2, 9-7-99)

**Sec. 10-73. Term of office.**

The term of the five persons to appointed by the town council shall be three years except that the term of two of the members appointed to the first board shall be for only two years. In the event that a vacancy shall occur during the term of any member, his successor shall be appointed for the unexpired portion of the term.

(Ord. No. 7-99, § 3, 9-7-99)

**Sec. 10-74. Compensation.**

Members of the board shall serve without compensation.

(Ord. No. 7-99, § 4, 9-7-99)

**Sec. 10-75. Duties and responsibilities.**

It shall be the responsibility of the board to study, investigate, council and develop and/or update annually, and administer a written plan for the care, preservation, pruning, planting, replanting, removal or disposition of trees and shrubs in parks, along streets and in other public areas. Such plan will be presented annually to the town council and upon their acceptance and approval shall constitute the official comprehensive town tree plan for the town. The board, when requested by the town council, shall consider, investigate, make finding, report and recommend upon any special matter of question coming within the scope of its work.

(Ord. No. 7-99, § 5, 9-7-99)

**Sec. 10-76. Operation.**

The board shall choose its own officers, make its own rules and regulations and keep a journal of its proceedings. A majority of the members shall be a quorum for the transaction of business.

(Ord. No. 7-99, § 6, 9-7-99)

**Sec. 10-77. Street tree species to be planted.**

The following list constitutes the official suggested street tree species for the town: Bradford Pear, Green Ash, English Oak, Red Oak, Japanese Pagodatree, Pecan, River Birch, White Poplar, Silver Maple, Sugar Maple, Bur Oak, Sycamore, London plantree Sycamore, Pin Oak, Trident Maple, Amur Maple, Paperbark Maple, Chalkbark Maple, Nikko Maple, Japanese Maple, Norway Maple, Tatarian Maple, Three-flower Maple, Purpleblow Maple, Serviceberry, Siberian Peashrub, Eastern Redbud, Texas Redbud, Kousa Dogwood, Smoketree, American Smoketree, Green Hawthorn, Korean Evodia, Two-winged Silverbell, Seven-Sons Flower,

Japanese Raisintree, Hollics, Crapemyrtle, Amur Maackia, Magnolia, Flowering Crabapple, Southern Waxmyrtle, Carolina Cherrylaurel, Cherry Plum, Japanese Apricot, Japanese Cherry, Hybrid Cherries, Jacktree, Japanese Snowbell, Early Lilac, Japanese Tree Lilac, Oriental Arborvitae, Blackhaw Vibumum, Siebold Vibumum, Yellowhorn and Chinese Date. (Ord. No. 7-99, § 7, 9-7-99)

**Sec. 10-78. Spacing.**

The spacing of street trees will be in accordance with the tree species size, and no trees may be planted closer together than the following: small trees, 30 feet; medium trees, 40 feet; large trees, 50 feet; except in special plantings designed or approved by a landscape architect. (Ord. No. 7-99, § 8, 9-7-99)

**Sec. 10-79. Distance from curb and sidewalk.**

The distance trees may be planted from curbs or curblines and sidewalks will be in accordance with the tree species size, and no trees may be planted closer to any curb than the following: small trees, two feet; medium trees, three feet; and large trees, four feet. (Ord. No. 7-99, § 9, 9-7-99)

**Sec. 10-80. Distance from street corners and fireplugs.**

No street tree shall be planted closer than 35 feet of any street corner, measured from the point of nearest intersecting curbs or curblines. No street tree shall be planted closer than ten feet of any fireplug.  
(Ord. No. 7-99, § 10, 9-7-99)

**Sec. 10-81. Utilities.**

No street trees other than those species known as small trees may be planted under or within ten lateral feet of any overhead utility wire, or over or within five lateral feet of any underground water line, sewer line, transmission line or other utility.  
(Ord. No. 7-99, § 11, 9-7-99)

**Sec. 10-82. Public tree care.**

The town shall have the right to plant, prune, maintain and remove trees, plants and shrubs within the lines of all streets, alleys, avenues, lanes, squares and public grounds, as may be necessary to insure public safety or to preserve or enhance the symmetry and beauty of such public grounds.

The town tree board may remove or cause or order to be removed, any tree or part thereof which is in an unsafe condition or which by reason of its nature is injurious to sewers, electric power lines, gas lines, water lines, or other public improvements, or is affected with any injurious fungus, insect or other pest. This section does not prohibit the planting of street trees by adjacent property owners.  
(Ord. No. 7-99, § 12, 9-7-99)

**Sec. 10-83. The topping.**

It shall be unlawful as a normal practice for any person, firm, or town department to top any street tree, park tree, or other tree on public property. Topping is defined as the severe cutting back of limbs to stubs larger than three inches in diameter within the tree's crown to such a degree so as to remove the normal canopy and disfigure the tree. Trees severely damaged by storms or other causes, or certain trees under utility wires or other obstructions where other pruning practices are impractical may be exempted from this article at the determination of the town tree board.

(Ord. No. 7-99, § 13, 9-7-99)

**Sec. 10-84. Pruning, corner clearance.**

Every owner of any tree overhanging any street or right-of-way within the town shall prune the branches so that such branches shall not obstruct the view of any street intersection and so that there shall be a clear space of eight feet above the surface of the street or sidewalk. Said owners shall remove all dead, diseased or dangerous trees, or broken or decayed limbs which constitute a menace to the safety of the public. The town shall have the right to prune any tree or shrub on private property when it interferes with the proper spread of light along the street from a street light or interferes with visibility of any traffic control device or sign.

(Ord. No. 7-99, § 14, 9-7-99)

**Sec. 10-85. Dead or diseased tree removal on private property.**

The town shall have the right to cause the removal of any dead diseased trees on private property within the town, when such trees constitute a hazard to life and property, or harbor insects or disease which constitute a potential threat to other trees within the town. The town tree board will notify in writing the owners of such trees. Removal shall be done by said owners at their own expense within 30 days after the date of service of notice. In the event of failure of owners to comply with such provisions, the town shall have the authority to remove such trees and assess the cost of removal on the owners property tax statement.

(Ord. No. 7-99, § 15, 9-7-99)

**Sec. 10-86. Removal of stumps.**

All stumps of street and park trees shall be removed below the surface of the ground so that the top of the stump shall not project above the surface of the ground.

(Ord. No. 7-99, § 16, 9-7-99)

**Sec. 10-87. Interference with town tree board.**

It shall be unlawful for any person to prevent, delay or interfere with the town tree board, or any of its agents, while engaging in and about the planting, cultivating, mulching, pruning, spraying, or removing of any street trees, or trees on private grounds, as authorized in this article.

(Ord. No. 7-99, § 17, 9-7-99)

**Sec. 10-88. Arborists license and bond.**

It shall be unlawful for any person or firm to engage in the business or occupation of pruning, treating, or removing street or park trees within the town without first applying for and procuring a license. The license fee shall be \$25.00 annually in advance; provided, however, that no license shall be required of any public service company or town employee doing such work in the pursuit of their public service endeavors. Before any license shall be issued, each applicant shall first file evidence of possession of liability insurance in the minimum amounts of \$50,000.00 for bodily injury and \$100,000.00 property damage indemnifying the town or any person injured or damaged resulting from the pursuit of such endeavors as herein described.

(Ord. No. 7-99, § 18, 9-7-99)

**Sec. 10-89. Review by town council.**

The town council shall have the right to review the conduct, acts and decisions of the town tree board. Any person may appeal from any ruling or order of the town tree board to the town council who may hear the matter and make final decision.

(Ord. No. 7-99, § 19, 9-7-99)

Chapters 11-13

**RESERVED**

Chapter 14

**FLOODS\***

**Article I. In General**

Secs. 14-1-14-30. Reserved.

**Article H. Flood Damage Prevention**

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- Sec. 14-32. Findings of fact.
- Sec. 14-33. Statement of purpose.
- Sec. 14-34. Objectives.
- Sec. 14-35. Definitions.
- Sec. 14-36. Lands to which this article applies.
- Sec. 14-37. Basis for establishing the areas of special flood hazard.
- Sec. 14-38. Establishment of development permit.
- Sec. 14-39. Compliance with article and other applicable regulations.
- Sec. 14-40. Abrogation and greater restrictions.
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- Sec. 14-66. Designation of local administrator.
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Division 3. Flood Hazard Reduction

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- Sec. 14-95. Standards for areas of shallow flooding (AO zones).

**\*Cross references**—Environment, ch. 10; zoning, ch. 42.



**ARTICLE I. IN GENERAL****Secs. 14-1-14-30. Reserved.****ARTICLE II. FLOOD DAMAGE PREVENTION**

## DIVISION 1. GENERALLY

**Sec. 14-31. Statutory authorization.**

The legislature of the state has in G.S. 143-215.51 et seq.; G.S. 160A-381 et seq.; and G.S. 160A-458.1, delegated the responsibility to local governmental units to adopt regulations designed to promote the public health, safety and general welfare of its citizenry. Therefore, the town council does ordain the following provisions.

(Ord. of 2-6-96, art. 1, § A)

**Sec. 14-32. Findings of fact.**

(a) The flood hazard areas of the town are subject to periodic inundation which results in loss of life, property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures of flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety and general welfare.

(b) These flood losses are caused by the cumulative effect of obstructions in floodplains causing increases in flood heights and velocities, and by the occupancy in flood hazard areas by uses vulnerable to floods or hazardous to other lands which are inadequately elevated, floodproofed or otherwise unprotected from flood damages.

(Ord. of 2-6-96, art. 1, § B)

**Sec. 14-33. Statement of purpose.**

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

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

- (5) Prevent or regulate the construction of flood barriers which will unnaturally divert floodwaters or which may increase flood hazards to other lands.

(Ord. of 2-6-96, art. 1, § C)

**Sec. 14-34. Objectives.**

The objectives of this article are to:

- (1) Protect human life and health;
- (2) Minimize expenditure of public money for costly flood control projects;
- (3) Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
- (4) Minimize prolonged business interruptions;
- (5) Minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets and bridges located in floodplains;
- (6) Help maintain a stable tax base by providing for the sound use and development of floodprone areas in such a manner as to minimize flood blight areas; and
  - (7) Ensure that potential home buyers are notified that property is in a flood area. (Ord. of 2-6-96, art. 1, § D)

**Sec. 14-35. Definitions.**

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

*Accessory structure* means structures which are 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. Additions to existing buildings shall comply with the requirements for new construction, unless the addition, renovation or reconstruction to any building, that was constructed prior to the initial flood insurance study for that area, and the addition, renovation or reconstruction does not equal 50 percent of the present market value of the structure. Where a firewall is provided between the addition and the existing building, the additions shall be considered a separate building and must comply with the standards for new construction.

*Appeal* means a request from a review of the local administrator's interpretation of any provision of this article.

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

*Area of special flood hazard* means the land in the floodplain within a community subject to a one percent or greater chance of being equaled or exceeded in any given year.

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

*Basement* means that lowest level or story which has its floor subgrade on all sides.

*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. A breakaway wall shall have a design safe loading resistance of not less than ten and no more than 20 pounds per square foot. A wall with loading resistance of more than 20 pounds per square foot requires a professional engineer or architect's certificate.

*Building* means any structure built for support, shelter or enclosure for any occupancy or storage.

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

*Elevated building* means a nonbasement building built, in the case of a building in zones A1—A30, AE, A, A99, AO, AH, B, C, or X to have the top of the elevated floor, or in the case of a building in zones V1—V30, VE, or V to have the bottom of the lowest horizontal structural member of the elevated floor above the ground by means of pilings, columns (posts and piers), shear walls parallel to the flow of water and, adequately anchored so as not to impair the structural integrity of the building during a flood-up to the magnitude of the base flood. In the case of zones A1—A30, AE, A, A99, AO, AH, B, C, and X, the term "elevated building" also includes a building elevated by means of fill or solid foundation perimeter walls with openings sufficient to facilitate the unimpeded movement of floodwaters. In the case of zones V1—V30, VE, or V, elevated building also includes a building otherwise meeting the definition of elevated building, even though the area below is enclosed by means of breakaway walls if the breakaway walls meet the standards of section 14-92(5).

*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) is completed before the effective date of the ordinance from which this article derives.

*Expansion to an existing manufactured home park or subdivision* means the preparation of the additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete slabs).

*Flood or flooding* 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
- (2) The unusual and rapid accumulation of runoff of surface waters from any source.

*Flood hazard boundary map (FHBM)* means an official map of a community, issued by the Federal Emergency Management Agency, where the boundaries of the areas of special flood hazard have been defined as zone A.

*Flood insurance rate map (FIRM)* means an official map of a community, on which the Federal Emergency Management Agency has delineated both the areas of special flood hazard and the risk premium zones applicable to the community.

*Flood insurance study* means the official report provided by the Federal Emergency Management Agency. The report contains flood profiles, as well as the flood boundary floodway map and the water surface elevation of the base flood.

*Floodway* 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 foot.

*Floor* means the top surface of an enclosed area in a building (including the basement), i.e., top of slab in concrete slab construction or top of wood flooring in wood frame construction. The term does not include the floor of a garage used solely for parking vehicles.

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

*Highest adjacent grade* means the highest natural elevation of the ground surface, prior to construction, 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 state inventory of historic places;
- (4) Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified by an approved state program as determined by the Secretary of Interior, or directly by the Secretary of Interior in states without approved programs.

*Levee* means a manmade structure, usually an earthen embankment, designed and constructed in accordance with sound engineering practices to contain, control or divert the flow of water so as to provide protection from temporary flooding.

*Lowest floor* means the lowest floor of the lowest enclosed area (including the basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access, or storage in an area other than a basement area is not considered a building's lowest floor, provided that such an enclosure is not built so as to render the structure in violation of the applicable nonelevation design requirements of this article.

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

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

*Mean sea level* means the average height of the sea for *all* stages of the tide. It is used as a reference for establishing various elevations within the floodplain. For purposes of this ordinance, the term is synonymous with National Geodetic Vertical Datum (NGVD).

*National Geodetic Vertical Datum (NGVD)* (as corrected in 1929) means a vertical control used as a reference for establishing varying elevations within the floodplain.

*New construction* means structures for which the start of construction commenced on or after the effective date of the ordinance from which this article derives and includes any subsequent improvements to such structures.

*New manufactured home park or 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 slabs) is completed on or after the effective date of the ordinance from which this article derives.

*Nonconforming building or use* means any legally existing building or use which fails to comply with the provisions of this article.

*Recreational vehicle* means a vehicle which is:

- (1) Built on a single chassis;
- (2) Four hundred square feet or less when measured at the largest horizontal projection;

- (3) Designed to be self-propelled or permanently towable by a light duty truck; and
- (4) Designed primarily not for use as a permanent dwelling, but as temporary living quarters for recreational, camping, travel or seasonal use.

*Remedy a violation* means to bring the structure or other development into compliance with state or local floodplain management regulations, or, if this is not possible, to reduce the impacts of its noncompliance. Ways that impacts may be reduced include protecting the structure or other affected development from flood damages, implementing the enforcement provisions of this article or otherwise deterring future similar violations, or reducing federal financial exposure with regard to the structure or other development.

*Start of construction* (for other than new construction or substantial improvements under the Coastal Barrier Resources Act (P.L. 97-348)) includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition or improvement was within 180 days of the permit date. The actual start means the first placement of permanent construction of a structure (including a manufactured home) on a site, such as the pouring of slabs or footings, installation of piles, construction of columns, or any work beyond the stage of excavation or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers or foundations, or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor or other structural part of the building, whether or not that alteration affects the external dimensions of the building.

*Structure* means, for floodplain management purposes, a walled and roofed building, a manufactured home, including a gas or liquid storage tank, or other manmade facilities or infrastructures that are principally above the ground.

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

*Substantial improvement* means any repair, reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the start of construction of the improvement. This term includes structures which have incurred substantial damage, regardless of the actual repair work performed. The term does not, however, include either:

- (1) Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to ensure safe living conditions; or

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

*Substantially improved existing manufactured home park or subdivision* means where the repair, reconstruction, rehabilitation or improvement of the streets, utilities and pads equals or exceeds 50 percent of the value of the streets, utilities and pads before the repair, reconstruction or improvement commenced.

*Unmapped areas subject to periodic flooding* means the area adjacent to and including any stream, channel, storm drain, or drainageway that has not been officially mapped as a special flood hazard area, can periodically be inundated by stormwater flows, and has a contributing drainage area of at least five acres.

*Variance* means a grant of relief to a person from the requirements of this article which permits construction in a manner otherwise prohibited by this article where specific enforcement would result in unnecessary hardship.

*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 divisions 2 and 3 of this article is presumed to be in violation until such time as that documentation is provided.

(Ord. of 2-6-96, art. 2)

**Cross reference** Definitions generally, § 1-2.

**Sec. 14-36. Lands to which this article. applies.**

This article shall apply to all areas of special flood hazard and to unmapped areas of special flood hazard and to unmapped areas subject to periodic flooding within the jurisdiction of the town.

(Ord. of 2-6-96, art. 3, § A)

**Sec. 14-37. Basis for establishing the areas of special flood hazard.**

The areas of special flood hazard identified by the Federal Emergency Management Agency in its flood boundary hazard map, dated February 3, 1978, with accompanying maps and other supporting data, and any revision thereto are adopted by reference and declared to be a part of this article.

(Ord. of 2-6-96, art. 3, § B)

**Sec. 14-38. Establishment of development permit.**

A development permit shall be required in conformance with the provisions of this article prior to the commencement of any development activities.

(Ord. of 2-6-96, art. 3, § C)

**Sec. 14-39. Compliance with article and other applicable regulations.**

No structure or land shall hereafter be located, extended, converted or structurally altered without full compliance with the terms of this article and other applicable regulations. (Ord. of 2-6-96, art. 3, § D)

**Sec. 14-40. Abrogation and greater restrictions.**

This article is not intended to repeal, abrogate or impair any existing easements, covenants or deed restrictions. However, where this article and another conflict or overlap, whichever imposes the more stringent restrictions shall prevail. (Ord. of 2-6-96, art. 3, § E)

**Sec. 14-41. Interpretation of article.**

In the interpretation and application of this article all provisions shall be considered as minimum requirements, liberally construed in favor of the governing body and deemed neither to limit nor repeal any other powers granted under state statutes. (Ord. of 2-6-96, art. 3, § F)

**Sec. 14-42. Warning and disclaimer of liability.**

The degree of flood protection required by this article is considered reasonable for regulatory purposes and is based on scientific and engineering consideration. Larger floods can and will occur on rare occasions. Flood heights may be increased by manmade or natural causes. This article does not imply that land outside the areas of special flood hazard **or** uses permitted within such areas will be free from flooding or flood damages. This article 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 article or any administrative decision lawfully made under this article. (Ord. of 2-6-96, art. 3, § G)

**Sec. 14-43. Penalty for violation of article.**

Violation of the provisions of this article 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 article or fails to comply with any of its requirements shall, upon conviction, be fined not more than \$50.00 or imprisoned for not more than 30 days, or both. Each day such violation continues shall be considered a separate offense. Nothing contained in this section shall prevent the town from taking such other lawful action as is necessary to prevent or remedy any violation. (Ord. of 2-6-96, art. 3, § H)

**Secs. 14-44-14-65. Reserved.**



## DIVISION 2. ADMINISTRATION\*

**Sec. 14-66. Designation of local administrator.**

The zoning enforcement officer is hereby appointed to administer and implement the provisions of this article.

(Ord. of 2-6-96, art. 4, § A)

**Sec. 14-67. Development permit and certification requirements.**

Application for a development permit shall be made to the local administrator on forms furnished by him or her prior to any development activities. The development permit may include, but not be limited to, plans in duplicate drawn to scale showing: the nature, location, dimensions and elevations of the area in question; existing or proposed structures; and the location of fill materials, storage areas, and drainage facilities. Specifically, the following information is required:

- (1) Where base flood elevation data is provided in accordance with section 14-68, the application for a development permit within the zone A on the flood insurance rate map shall show:
  - a. The elevation (in relation to mean sea level) of the lowest floor (including the basement) of all new and substantially improved structures; and
  - b. If the structure has been floodproofed in accordance with section 14-92, the elevation (in relation to mean sea level) to which the structure was floodproofed.
- (2) Where the base flood elevation data is not provided, the application for a development permit must show construction of the lowest floor to be in accordance with section 14-93. Standards for unmapped areas subject to periodic flooding without established base flood elevation and/or floodways.
- (3) Where any watercourse will be altered or relocated as a result of proposed development, the application for a development permit shall include: a description of the extent of watercourse alteration or relocation; an engineering report on the effects of the proposed project on the flood-carrying capacity of the watercourse and the effects to properties located both upstream and downstream; and a map showing the location of the proposed watercourse alteration or relocation.
- (4) When a structure is floodproofed, the applicant shall provide a certificate from a registered professional engineer or architect that the nonresidential floodproofed structure meets the floodproofing criteria in section 14-92.
- (5) A floor elevation or floodproofing certification is required after the lowest floor is completed. Within 21 calendar days of establishment of the lowest floor elevation, or floodproofing by whatever construction means, whichever is applicable, it shall be the duty of the permit holder to submit to the local administrator a certification of the

\***Cross reference**—Administration, ch. 2.

elevation of the lowest floor, or floodproofed elevation, whichever is applicable, as-built, in relation to mean sea level. Such certification shall be prepared by or under the direct supervision of a registered land surveyor or professional engineer and certified by such professionals. When floodproofing is utilized for a particular building, the certification shall be prepared by or under the direct supervision of a professional engineer or architect and certified by such professionals. Any work done within the 21-day calendar period and prior to submission of the certification shall be at the permit holder's risk. The local administrator shall review the floor elevation survey data submitted. Deficiencies detected by such review shall be corrected by the permit holder immediately and prior to further progressive work being permitted to proceed. Failure to submit the survey or failure to make such corrections required hereby shall be cause to issue a stop work order for the project.

(Ord. of 2-6-96, art. 4, § B)

**Sec. 14-68. Duties and responsibilities of the local administrator.**

Duties of the local administrator shall include, but not be limited to:

- (1) Review all development permits to ensure that the requirements of this article have been satisfied.
- (2) Advise the permittee that additional federal or state permits may be required, and if specific federal or state permits are known, require that copies of such permits be provided and maintained on file with the 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.
- (4) Ensure that maintenance is provided within the altered or relocated portion of such watercourse so that the flood-carrying capacity is not diminished.
- (5) Prevent encroachments within floodways unless the certification and flood hazard reduction provisions of division 3 of this article are met.
- (6) Obtain actual elevation (in relation to the mean sea level) of the lowest floor (including the basement) of all new or substantially improved structures, in accordance with section 14-67(5).
- (7) Obtain the actual elevation (in relation to mean sea level) to which the new or substantially improved structures have been floodproofed, in accordance with section 14-67.
- (8) When floodproofing is utilized for a particular structure, obtain certifications from a registered professional engineer or architect in accordance with section 14-92.
- (9) Where interpretation is needed as to the exact location of boundaries of the areas of special flood hazard (for example, where there appears to be a conflict between a

mapped boundary and actual field conditions), make the necessary interpretation. The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in section 14-69.

- (10) When base flood elevation data or floodway data has not been provided in accordance with section 14-37, obtain, review and reasonably utilize any base flood elevation data and floodway data available from a federal, state or other source, including data developed pursuant to section 14-94(4), in order to administer the provisions of this ordinance.
- (11) When the exact location of boundaries of the areas of special flood hazards conflict with the current, natural topography information at the site the property owner may apply and be approved for a letter of map amendment (LOMA) by FEMA. A copy of the letter of map amendment issued *from* FEMA will be maintained by the local administrator in the permit file.
- (12) Make onsite inspections of projects in accordance with section 14-69.
- (13) Serve notices of violations, issue stop work orders, revoke permits and take corrective actions in accordance with section 14-69.
- (14) Maintain all records pertaining to the administration of this article and make these records available for public inspection.
- (15) Annexation. Provide the state department of crime control and public safety, division of emergency management, state coordinator for the National Flood Insurance Program. with two copies of the maps delineating new corporate limits within six months from date of annexation or change in corporate boundaries.

(Ord. of 2-6-96, art. 4, § C)

**Sec. 14-69. Administrative procedures.**

(a) *Inspections of work in progress.* As the work pursuant to a permit progresses, the local administrator shall make as many inspections of the work as may be necessary to ensure that the work is being done according to the provisions of the local ordinance and the terms of the permit. In exercising this power, the administrator has a right, upon presentation of proper credentials, to enter on any premises within the territorial jurisdiction at any reasonable hour for the purposes of inspection or other enforcement action.

(b) *Stop work orders.* Whenever a building or part thereof is being constructed, reconstructed, altered or repaired in violation of this article, the administrator may order the work to be immediately stopped. The stop work order shall be in writing and directed to the person doing the work. The stop work order shall state the specific work to be stopped, the specific reasons for the stoppage and the conditions under which the work may be resumed. Violation of a stop work order constitutes a misdemeanor.

(c) *Revocation of permits.* The local administrator may revoke and require the return of the development permit by notifying the permit holder in writing stating the reason for the revocation. Permits shall be revoked for any substantial departure from the approved

application, plans or specifications; for refusal or failure to comply with the requirements of state or local laws; or for false statements or misrepresentations made in securing the permit. Any permit mistakenly issued in violation of an applicable state or local law may also be revoked.

(d) *Periodic inspections.* The local administrator and each member of his inspections department shall have a right, upon presentation of proper credentials, to enter on any premises within the territorial jurisdiction of the department at any reasonable hour for the purposes of inspection or other enforcement action.

(e) *Violations to be corrected.* When the local administrator finds violations of applicable state and local laws, it shall be his duty to notify the owner or occupant of the building of the violation. The owner or occupant shall immediately remedy each of the violations of law in the property he owns.

(f) *Actions in event of failure to take corrective action.* If the owner of a building or property shall fail to take prompt corrective action, the administrator shall give him written notice by certified or registered mail to his last known address or by personal service that:

- (1) The building or property is in violation of this article;
- (2) A hearing will be held before the local administrator at a designated place and time, not later than ten days after the date of the notice, at which time the owner shall be entitled to be heard in person or by counsel and to present arguments and evidence pertaining to the matter; and
- (3) Following the hearing, the local administrator may issue such order to alter, vacate or demolish the building, or to remove fill as appears appropriate.

(g) *Order to take corrective action.* If, upon a hearing held pursuant to the notice prescribed in subsection (f) of this section, the administrator shall find that the building or development is in violation of this article, he shall make an order in writing to the owner, requiring the owner to remedy the violation within such period (not less than 60 days) the administrator may prescribe; provided, however, that where the administrator finds that there is imminent danger to life or other property, he may order that corrective action be taken in such lesser period as may be feasible.

(h) *Appeal.* Any owner who has received an order to take corrective action may appeal from the order to the local elected governing body by giving notice of appeal in writing to the administrator and the clerk within ten days following issuance of the final order. In the absence of an appeal, the order of the administrator shall be final. The local governing body shall hear an appeal within a reasonable time and may affirm, modify and affirm, or revoke the order.

(i) *Failure to comply with order* If the owner of a building or property fails to comply with an order to take corrective action from which no appeal has been taken, or fails to comply with an order of the governing body following an appeal, he shall be guilty of a misdemeanor and shall be punished in the discretion of the court.

(Ord. of 2-6-96, art. 4, § D)

**Sec. 14-70. Variance procedures.**

(a) The board of adjustment, as established by the town, shall hear and decide requests for variances from the requirements of this article.

(b) Any person aggrieved by the decision of the appeal board or any taxpayer may appeal such decision to the court, as provided in G.S. ch. 7A.

(c) Variances may be issued for the repair or rehabilitation of historic structures upon the determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.

(d) In passing upon such applications, the appeal board shall consider all technical evaluations, all relevant factors, all standards specified in other sections of this article, and:

- (1) The danger that materials may be swept onto other lands to the injury of others;
- (2) The danger to life and property due to flooding or erosion damage;
- (3) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
- (4) The importance of the services provided by the proposed facility to the community;
- (5) The necessity to the facility of a waterfront location, where applicable;
- (6) The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use;
- (7) The compatibility of the proposed use with existing and anticipated development;
- (8) The relationship of the proposed use to the comprehensive plan and floodplain management program for that area;
- (9) The safety of access to the property in times of flood for ordinary and emergency vehicles;
- (10) The expected heights, velocity, duration, rate of rise, and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site; and
- (11) The costs of providing governmental services during and after flood conditions including maintenance and repair of public utilities and facilities such as sewer, gas, electrical and water systems, and streets and bridges.

(e) The findings listed in subsection (d) of this section shall be submitted to the appeal board, in writing, and included in the application for a variance.

(f) Upon consideration of the factors listed in subsection (d) of this section and the purposes of this article, the appeal board may attach such conditions to the granting of variances as it deems necessary to further the purposes of this article.

(g) Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.

(h) Conditions for variances are as follows:

- (1) Variances may not be issued when the variance will make the structure in violation of other federal, state or local laws, regulations or ordinances.
- (2) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
- (3) Variances shall only be issued upon a showing of good and sufficient cause, a determination that failure to grant the variance would result in exceptional hardship, and a determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisance, cause fraud on or victimization of the public or conflict with existing local laws or ordinances.
- (4) Any applicant to whom a variance is granted shall be given written notice specifying the difference between the base flood elevation and the elevation to which the structure is to be built and a written statement that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation. Such notification shall be maintained with a record of all variance actions.
- (5) The local administrator shall maintain the records of all appeal actions and report any variances to the Federal Emergency Management Agency upon request. (Ord. of 2-6-96, art. 4, § E)

**Secs. 14-71-14-90. Reserved.**

DIVISION 3. FLOOD HAZARD REDUCTION

**Sec. 14-91. General standards.**

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

- (1) All new construction and substantial improvements shall be anchored to prevent flotation, collapse or 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 or 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.
- (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 floodwaters.
  - (7) Onsite 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 article shall meet the requirements of new construction as contained in this article.
  - (9) Nonconforming buildings or uses may not be enlarged, replaced or rebuilt unless such enlargement or reconstruction is accomplished in conformance with the provisions of this article; provided, however, that nothing in this article shall prevent the repair, reconstruction or replacement of a building or structure existing on the effective date of the ordinance from which this article derives and located totally or partially within the floodway zone, and provided that the bulk of the building or structure below base flood elevation in the floodway zone is not increased and provided that such repair, reconstruction or replacement meets all of the other requirements of this article.
- (Ord. of 2-6-96, art. 5, § A)

**See. 14-92. Specific standards.**

In all areas of special flood hazard where base flood elevation data has been provided, as set forth in section 14-37 or section 14-68(10), the following provisions are required:

- (1) *Residential construction.* New construction or substantial improvement of any residential structure (including manufactured homes) shall have the lowest floor, including the basement, elevated no lower than two feet above the base flood elevation. Should solid foundation perimeter walls be used to elevate a structure, openings sufficient to facilitate the unimpeded movements of floodwaters shall be provided.
- (2) *Nonresidential construction.* New construction or substantial improvement of any commercial, industrial or nonresidential structure (including manufactured homes) shall have the lowest floor, including the basement, elevated no lower than two feet above the level of the base flood elevation. Structures located in A zones may be floodproofed in lieu of elevation, provided that all areas of the structure below the required elevation are watertight with walls substantially impermeable to the passage of water, using structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effect of buoyancy. A registered professional engineer or architect shall certify that the standards of this subsection are satisfied. Such certification shall be provided to the official as set forth in section 14-67.
- (3) *Manufactured homes.* Standards for manufactured homes are as follows:
  - a. Manufactured homes that are placed or substantially improved on sites outside a manufactured home park or subdivision, in a new manufactured home park or subdivision, in an expansion to an existing manufactured home park or subdivi-

- sion, or in an existing manufactured home park or subdivision on which a manufactured home has incurred substantial damage as the result of a flood, must be elevated on a permanent foundation such that the lowest floor of the manufactured home is elevated no lower than two feet above the base flood elevation and be securely anchored to an adequately anchored foundation system to resist flotation, collapse and lateral movement.
- b. Manufactured homes that are to be placed or substantially improved on sites in an existing manufactured home park or subdivision that are not subject to the provisions of subsection (3)a of this section must be elevated so that the lowest floor of the manufactured home is elevated no lower than two feet above the base flood elevation, and be securely anchored to an adequately anchored foundation to resist flotation, collapse and lateral movement.
  - c. Manufactured homes shall be anchored to prevent flotation, collapse or lateral movement. For the purpose of this requirement, manufactured homes must be anchored to resist flotation, collapse or lateral movement in accordance with the Regulations for Mobile Homes and Modular Housing adopted by the commissioner of insurance pursuant to G.S. 143-143.15. Additionally, when the elevation would be met by an elevation of the chassis at least 36 inches or less above the grade at the sight, the chassis shall be supported by reinforced piers or other foundation elements of at least equivalent strength. When the elevation of the chassis is above 36 inches in height an engineering certification is required.
  - d. An evacuation plan must be developed for evacuation of all residents of all new, substantially improved or substantially damaged manufactured home parks or subdivisions located within floodprone areas. This plan shall be filed, with and approved by the local administrator and the local emergency management coordinator.
- (4) *Recreational vehicles.* A recreational vehicle is ready for highway use if it is on wheels or jacking system, is attached to the site only by quick-disconnect type utilities and security devices, and has no permanently attached additions. Recreation vehicles placed on sites shall either:
- a. Be on site for fewer than 180 consecutive days;
  - b. Be fully licensed and ready for highway use; or
  - c. Meet the requirements of section 14-67 and section 14-91 and subsection (3) of this section.
- (5) *Elevated buildings.* New construction or substantial improvements of elevated buildings that include fully enclosed areas that are usable solely for the parking of vehicles, building access or storage in an area other than a basement and which are subject to



flooding shall be designed to preclude finished living space and be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters.

- a. Designs for complying with this requirement must either be certified by a professional engineer or architect or meet the following minimum criteria:
  1. Provide a minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding;
  2. The bottom of all openings shall be no higher than one foot above grade; and
  3. Openings may be equipped with screens, louvers, valves or other coverings or devices provided they permit the automatic flow of floodwaters in both directions.
- b. Access to the enclosed area shall be the minimum necessary to allow for parking of vehicles (garage door) or limited storage of maintenance equipment used in connection with the premises (standard exterior door) or entry to the living area (stairway or elevator).
- c. The interior portion of such enclosed area shall not be partitioned or finished into separate rooms, except to enclose storage areas.

(6) *Temporary structures.* Prior to the issuance of a development permit for a temporary structure, the following requirements must be met:

- a. All applicants must submit to the local administrator prior to the issuance of the development permit a plan for the removal of such structure in the event of a hurricane or flash flood warning notification. The plan must include the following information:
  1. A specified time period for which the temporary use will be permitted;
  2. The name, address and phone number of the individual responsible for the removal of the temporary structure;
  3. The time frame prior to the event at which a structure will be removed (i.e. minimum of 72 hours before landfall of a hurricane or immediately upon flood warning notification);
  4. A copy of the contract or other suitable instrument with a trucking company to ensure the availability of removal equipment when needed; and
  5. Designation, accompanied by documentation, of a location outside the floodplain to which the temporary structure will be moved.
- b. The information of subsection (6)a of this section shall be submitted in writing to the local administrator for review and written approval.

(7) *Accessory structure.* When accessory structures (sheds, detached garages, etc.) with a value of \$3,000.00 or less, are to be placed in the floodplain, the following criteria shall be met-

- a. Accessory structures shall not be used for human habitation (including work, sleeping, living, cooking or restroom areas).

- b. Accessory structures shall be designed to have low flood damage potential.
- c. Accessory structures shall be constructed and placed on the building site so as to offer the minimum resistance to the flow of floodwaters.
- d. Accessory structures shall be firmly anchored in accordance with section 14-91(1).
- e. Service facilities such as electrical and heating equipment shall be elevated in accordance with section 14-91(4).
- f. Openings to relieve hydrostatic pressure during a flood shall be provided below base flood elevation in conformance with subsection (5) of this section.

(8) *Floodways.* Located within areas of special flood hazard established in section 14-37 are areas designated as floodways. The floodway is an extremely hazardous area due to the velocity of floodwaters which carry debris and potential projectiles and has erosion potential. The following provisions shall apply within such areas:

- a. No encroachments, including fill, new construction, substantial improvements and other developments shall be permitted unless it has been demonstrated through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that the proposed encroachment would not result in any increase in the flood levels during the occurrence of the base flood. Such certification and technical data shall be presented to the local administrator.
- b. If subsection (6)a of this section is satisfied, all new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions of this division.
- c. No manufactured homes shall be permitted, except in an existing manufactured home park or subdivision. A replacement manufactured home may be placed on a lot in an existing manufactured home park or subdivision, provided the anchoring and the elevation standards of subsection (3) of this section are met.

(Ord. of 2-6-96, art. 5, § B)

**Sec. 14-93. Standards for unmapped areas subject to periodic flooding without established base flood elevations and/or floodways.**

The following provisions apply within such areas:

- (1) No encroachments, including fill, new construction, building, substantial improvements or new development shall be permitted within a distance of the stream bank equal to five times the width of the stream at the top of the bank or 20 feet on each side from top of bank, whichever is greater, unless certification with supporting technical data by a licensed professional engineer is provided demonstrating that such encroachments will not result in any increase in flood levels during the occurrence of the base flood discharge.

- (2) The lowest floor elevation, including the basement of residential structures, shall be elevated not less than two feet above a reference elevation that is determined as follows:
  - a. The elevation of the lowest point of the nearest downstream curb, pavement, road, embankment, etc., that crosses the unmapped area shall be determined.
  - b. The reference elevation shall be the sum of the elevation determined in subsection (2)a of this section plus the amount of change in elevation of the stream bed between a point adjacent to and perpendicular to the upstream point of the proposed structure and the stream bed at the downstream location used in subsection (2)a of this section.
- (3) In no case shall the lowest floor elevation be less than two feet above the highest adjacent grade.
- (4) The lowest floor elevation, including basements of nonresidential structures, shall be elevated not less than two feet above a reference elevation, as determined in subsection (2) of this section, or together with attendant utility and sanitary facilities be floodproofed to this reference elevation.
- (5) In lieu of determining the lowest floor elevation as described in subsections (2), (3) and (4) of this section, the base flood elevation can be determined with supporting technical data by a licensed professional engineer and properly certified. In such cases, the lowest floor elevation (including attendant utility facilities) shall be at least two feet above the base flood elevation as determined by a licensed professional engineer.

(Ord. of 2-6-96, art. 5, § C)

**Sec. 14-94. Standards for subdivision proposals.**

Standards for subdivision proposals are as follows:

- (1) All subdivision proposals shall be consistent with the need to minimize flood damage;
- (2) All subdivision proposals shall have public utilities and facilities such as sewer, gas, electrical and water systems located and constructed to minimize flood damage;
- (3) All subdivision proposals shall have adequate drainage provided to reduce exposure to flood hazards; and
- (4) Base flood elevation data shall be provided for subdivision proposals and other proposed development which is greater than the lesser of 50 lots or five acres. (Ord. of 2-6-96, art. 5, § D)

**Sec. 14-95. Standards for areas of shallow flooding (AO zones).**

Located within the areas of special flood hazard established in section 14-37, are areas designated as shallow flooding. These areas have special flood hazards associated with base

flood depths of one to three feet where a clearly defined channel does not exist and where the path of flooding is unpredictable and indeterminate. The following provisions shall apply within such areas:

- (1) All new construction and substantial improvements of residential structures shall have the lowest floor, including the basement, elevated to the depth number specified on the flood insurance rate map, in feet, above the highest adjacent grade. If no depth number is specified, the lowest floor, including the basement, shall be elevated at least two feet above the highest adjacent grade.
- (2) All new construction and substantial improvements of nonresidential structures shall:
  - a. Have the lowest floor, including the basement, elevated to the depth number specified on the flood insurance rate map, in feet, above the highest adjacent grade. If no depth number is specified, the lowest floor, including the basement, shall be elevated at least two feet above the highest adjacent grade; or
  - b. Be completely floodproofed together with attendant utility and sanitary facilities to or above that level so that any space below that level is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy.

(Ord. of 2-6-96, art. 5, § E)

Chapters 15-17

**RESERVED**

Chapter 18

**HOUSING\***

**Article I. In General**

Secs. 18-1-18-30. Reserved.

**Article II. Minimum Housing Standards**

- Sec. 18-31. Findings and purpose of article.
- Sec. 18-32. Definitions.
- Sec. 18-33. Penalties for violation of article.
- Sec. 18-34. Minimum standards of fitness for dwelling and dwelling units.
- Sec. 18-35. Minimum standards for structural condition.
- Sec. 18-36. Minimum standards for basic plumbing, heating and electrical equipment and facilities.
- Sec. 18-37. Minimum standards for ventilation.
- Sec. 18-38. Minimum standards for space, use and location.
- Sec. 18-39. Minimum standards for safe and sanitary maintenance.
- Sec. 18-40. Minimum standards for control of insects, rodents and infestations.
- Sec. 18-41. Minimum standards applicable to roominghouses; exceptions.
- Sec. 18-42. Responsibilities of owners and occupants.
- Sec. 18-43. Powers and duties of enforcement officer.
- Sec. 18-44. Inspections; duty of owners and occupants.
- Sec. 18-45. Procedure for enforcement.
- Sec. 18-46. Methods of service of complaints and orders.
- Sec. 18-47. In rem action by inspection; placarding.
- Sec. 18-48. Costs constitute a lien on premises.
- Sec. 18-49. Alternative remedies.
- Sec. 18-50. Zoning board of adjustment to hear appeals.
- Sec. 18-51. Conflict of article with other provisions.

**\*Cross references**—Utilities, ch. 38; gas franchises, App. A; electrical service franchises, App. B; cable communications franchise, App. C.

**ARTICLE I. IN GENERAL**

**Secs. 18-1-18-30. Reserved.**

**ARTICLE II. MINIMUM HOUSING STANDARDS\*****Sec. 18-31. Findings and purpose of article.**

(a) Pursuant to G.S. 160A-441, it is hereby 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, dangerous and detrimental to the health, safety and morals, and otherwise inimical to the welfare of the residents of the town.

(b) In order to protect the health, safety and welfare of the residents of the town as authorized by G.S. 160A-441 et seq., it is the purpose of this article 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. 18-32. Definitions.**

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

*Basement* means a portion of a dwelling 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 dwelling which is 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 that a dwelling is unfit for human habitation and can be repaired, altered or improved to comply with all of the minimum standards established by this article at a cost not in excess of 50 percent of its value, as determined by finding of the enforcement officer.

*Dilapidated* means that a dwelling is unfit for human habitation and cannot be repaired, altered or improved to comply with all of the minimum standards established by this article except at a cost in excess of 50 percent of its value, as determined by finding of the officer.

*Dwelling* means any building, structure or part thereof which is wholly or partly used or intended to be used for living, sleeping or habitation by human occupants, and includes any outhouses and appurtenances belonging thereto or usually enjoyed therewith. Temporary housing shall not be regarded as a dwelling. The term shall include within its meaning the terms "roominghouse" and "rooming unit."

**\*State law reference**—Minimum housing standards, G.S. 160A-441 et seq.

*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 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 officer.

*Garbage* means the organic waste resulting from the handling, preparation, cooking and consumption of food.

*Gender.* Words having a masculine gender shall include the feminine and neuter genders.

*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 the public.

*Multiple dwelling* means any dwelling containing more than two dwelling units.

*Occupant* means any person, living, sleeping, cooking or eating in, or having actual possession of a dwelling, dwelling unit or rooming unit.

*Officer* means the zoning enforcement officer of the town or any authorized agent of the officer.

*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, jointly or severally with others:

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

*Party or parties in interest* means all persons who have interests of record in a dwelling, dwelling unit or rooming unit and any persons who are in possession thereof.



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

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

*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.

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

*Rubbish* means nonorganic waste materials. The term shall include paper, rags, cartons, boxes, wood, excelsior, rubber, leather, tree branches, yard trimmings, tin cans, metals, mineral matter, glass 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 30 consecutive days.

*Unfit for human habitation* means that conditions exist in a dwelling, dwelling unit, roominghouse or rooming unit which violate or do not comply with one or more of the requirements established by this article.

*Words having certain meaning.* Whenever the words "dwelling, dwelling unit, rooming-house, rooming unit, premises" are used in this article, they shall be construed as though they were followed by the words "or any part thereof."

**Cross reference—Definitions** generally, § 1-2.

### **Sec. 18-33. Penalties for violation of article.**

(a) It shall be unlawful for the owner of any dwelling or dwelling unit to fail, neglect or refuse to repair, alter or improve the dwelling or dwelling unit, or to vacate and close and remove or demolish the dwelling or dwelling unit, upon order of the enforcement officer duly made and served as provided in section 18-45, within the time specified in such order. Each day that any such failure, neglect or refusal to comply with such order continues shall constitute a separate and distinct offense.

(b) It shall be unlawful for the owner of any dwelling or dwelling unit, with respect to which an order has been issued pursuant to section 18-45, to occupy or permit the occupancy of the dwelling or dwelling unit after the time prescribed in such order for its repair, alteration or improvement, or its vacation and closing. Each day that such occupancy continues after such prescribed time shall constitute a separate and distinct offense.

(c) The violation of any provision of this article shall constitute a misdemeanor, as provided by G.S. 14-4.

(d) In addition to the penalty established by subsection (c) of this section, and the remedies provided by other provisions of this article, this article may be enforced by an appropriate equitable remedy issued by a court of competent jurisdiction.

**Sec. 18-34. Minimum standards of fitness for dwelling and dwelling units.**

(a) Every dwelling and dwelling unit used as a human habitation, or held out for use as a human habitation, shall comply with all of the minimum standards of fitness for human habitation and all of the requirements of sections 18-36 through 18-40.

(b) No person shall occupy as owner-occupant, or let to another for occupancy or use as a human habitation, any dwelling or dwelling unit which does not comply with all of the minimum standards of fitness for human habitation and all of the requirements of sections 18-35 through 18-40.

**Sec. 18-35. Minimum standards for structural condition.**

The following standards shall constitute the minimum standards for structural condition of a dwelling or dwelling unit:

- (1) Walls or partitions or supporting members, sills, joists, rafters or other structural members shall not list, lean or buckle, and shall not be rotted, deteriorated or damaged, and shall not have holes or cracks which might admit rodents.
- (2) Floors or roofs shall have adequate supporting members and strength to be reasonably safe for the purpose used.
- (3) Foundations, foundation walls, piers or other foundation supports shall not be deteriorated or damaged.
- (4) Steps, stairs, landings, porches or other parts or appurtenances shall be maintained in such condition that they will not fail or collapse.
- (5) Adequate facilities for egress in case of fire or panic shall be provided.
- (6) Interior walls and ceilings of all rooms, closets and hallways shall be finished of suitable materials, which will, by use of reasonable household methods, promote sanitation and cleanliness, and shall be maintained in such a manner so as to enable the occupants to maintain reasonable privacy between various spaces.

- (7) The roof, flashings, exterior walls, basement walls, floors and all doors and windows exposed to the weather shall be constructed and maintained so as to be weathertight and watertight.
- (8) There shall be no chimneys or parts thereof which are defective, deteriorated or in danger of falling, or in such condition or location as to constitute a fire hazard.
- (9) There shall be no use of the ground for floors, or wood floors on the ground.

**Sec. 18-36. Minimum standards for basic plumbing, heating and electrical equipment and facilities.**

(a) *Plumbing system.* Minimum standards for plumbing are as follows:

- (1) Each dwelling unit shall be connected to a potable water supply and to a public sewer or other approved sewage disposal system.
- (2) Each dwelling unit shall contain not less than a kitchen sink, lavatory, tub or shower, water closet and an adequate supply of both cold water and hot water. All water shall be supplied through an approved pipe distribution system connected to a potable water supply.
- (3) All plumbing fixtures shall meet the standards of the state plumbing code and shall be maintained in a state of good repair and in good working order.
- (4) All required plumbing fixtures shall be located within the dwelling unit and be accessible to the occupants of the dwelling unit. The water closet and tub or shower shall be located in a room affording privacy to the user.

(b) *Heating system.* Every dwelling and dwelling unit shall have facilities for providing heat in accordance with the following:

- (1) *Central and electric heating systems.* Every central or electric heating system shall be of sufficient capacity to heat all habitable rooms, bathrooms and water closet compartments in every dwelling unit to which it is connected with a minimum temperature of 70 degrees Fahrenheit, measured at a point three feet above the floor during ordinary winter conditions.
- (2) *Other heating facilities.* Where a central or electric heating system is not provided, each dwelling and dwelling unit shall be provided with sufficient fireplaces, chimneys, flues, gas vents or other facilities to which heating appliances may be connected to heat all habitable rooms with a minimum temperature of 70 degrees Fahrenheit, measured three feet above the floor during ordinary winter conditions.

(c) *Electrical system.* Minimum standards for the electrical system are as follows:

- (1) Every dwelling and dwelling unit shall be wired for electric lights and convenience receptacles. Every habitable room shall contain at least two floor or wall-type electric convenience receptacles connected in such manner as determined by the state electrical code. There shall be installed in every bathroom, water closet room, laundry

room and furnace room at least one supplied ceiling or wall-type electric light fixture. If wall or ceiling light fixtures are not provided in any habitable room, then each such habitable room shall contain at least three floor or wall-type electric convenience receptacles.

- (2) Every public hall and stairway in every multiple dwelling shall be adequately lighted by electric lights at all times when natural daylight is not sufficient.
- (3) All fixtures, receptacles, equipment and wiring shall be maintained in a state of good repair, safe, capable of being used, and installed in accordance with the state electrical code.

**Cross reference**--Utilities, ch. 38.

**Sec. 18-37. Minimum standards for ventilation.**

(a) *Generally.* Every habitable room shall have at least one window or skylight facing directly to the outdoors. The minimum total window area, measured between stops, for every habitable room shall be ten percent of the floor area of such room. Whenever walls or other portions of structures face a window or any room and such light-obstructing structures are located less than five feet from the window and extend to a level above that of the ceiling of the room, such window shall not be deemed to face directly to the outdoors and shall not be included as contributing to the required minimum total window area. Whenever the only window in a room is a skylight-type window in the top of such room, the total window area of such skylight shall equal at least 15 percent of the floor area of such room.

(b) *Habitable rooms.* Every habitable room shall have at least one window or skylight which can easily be opened, or such other device as will adequately ventilate the room. The total openable window area in every habitable room shall be equal to at least 45 percent of the minimum window area size or minimum skylight-type window size as required, or shall have other approved, equivalent ventilation.

(c) *Bathroom and water closet rooms.* Every bathroom and water closet compartment shall comply with the light and ventilation requirements for habitable rooms except that no windows or skylight shall be required in adequately ventilated bathrooms and water closet rooms equipped with an approved ventilation system.

**Sec. 18-38. Minimum standards for space, use and location.**

(a) *Room sizes.* Every dwelling unit shall contain at least the minimum room size in each habitable room as required by the state residential building code. Every dwelling unit shall contain at least 150 square feet of habitable floor area for the first occupant, at least 100 square feet of additional habitable area for each of the next three occupants, and at least 75 square feet of additional habitable floor area for each additional occupant. In every dwelling unit and in every rooming unit, every room occupied for sleeping purposes by one occupant shall contain at least 70 square feet of floor area, and every room occupied for sleeping purposes by more than one occupant shall contain at least 50 square feet of floor area for each occupant 12 years of age and over and at least 35 square feet of floor area for each occupant under 12 years of age.

(b) *Ceiling height.* At least one-half of the floor area of every habitable room shall have a ceiling height of not less than seven feet, six inches.

(c) *Floor area calculation.* Floor area shall be calculated on the basis of habitable room area. However, closet area and wall area within the dwelling unit may count for not more than ten percent of the required habitable floor area. The floor area of any part of any room where the ceiling height is less than 4<sup>1</sup>/<sub>2</sub> feet shall not be considered as part of the floor area for the purpose of determining maximum permissible occupancy.

(d) *Cellar.* No cellar shall be used for living purposes.

(e) *Basements.* No basement shall be used for living purposes unless:

- (1) The floor and walls are substantially watertight;
- (2) The total window area, total openable window area and ceiling height are equal to those required for habitable rooms; and
- (3) The required minimum window area of every habitable room is entirely above the grade adjoining such window area, except where the window or windows face a stairwell, window well or accessway.

**Sec. 18-39. Minimum standards for safe and sanitary maintenance.**

(a) *Exterior foundation, walls and roofs.* Every foundation wall, exterior wall and exterior roof shall be substantially weathertight and rodentproof; shall be kept in sound condition and good repair; shall be capable of affording privacy; and shall be safe to use and capable of supporting the load which normal use would cause to be placed thereon. Every exterior wall shall be protected with paint or other protective covering to prevent the entrance or penetration of moisture or the weather.

(b) *Interior floors, walls and ceilings.* Every floor, interior wall and ceiling shall be substantially rodentproof; shall be kept in sound condition and good repair; and shall be safe to use and capable of supporting the load which normal use would cause to be placed thereon.

(c) *Windows and doors.* Every window, exterior door, basement or cellar door and hatchway shall be substantially weathertight, watertight and rodentproof and shall be kept in sound working condition and good repair.

(d) *Stairs, porches and appurtenances.* Every outside and inside stair, porch and any appurtenance thereto shall be safe to use and capable of supporting the load that normal use would cause to be placed thereon and shall be kept in sound condition and good repair.

(e) *Bathroom floors.* Every bathroom floor surface and water closet compartment floor surface shall be constructed and maintained so that it will be reasonably impervious to water and will permit such floor to be easily kept in a clean and sanitary condition.

(f) *Supplied facilities.* Every supplied facility, piece of equipment or utility which is required under this article shall be so constructed or installed that it will function safely and effectively and shall be maintained in satisfactory working condition.

(g) *Drainage.* Every yard shall be properly graded in order to obtain thorough drainage and to prevent the accumulation of stagnant water.

(h) *Noxious weeds.* Every yard and all exterior property areas shall be kept free of species of weeds or plant growth which are noxious or detrimental to health.

*W Egress.* Every dwelling unit shall be provided with adequate means of egress as required by the state residential building code.

**Sec. 18-40. Minimum standards for control of insects, rodents and infestations.**

(a) *Screens.* In every dwelling unit, for protection' against mosquitoes, flies and other insects, every door opening directly from a dwelling unit to outdoor space shall be equipped with screens and a self-closing device. Every window or other device with openings to outdoor space, used or intended to be used for ventilation, shall likewise be equipped with screens; provided, however, that dwelling units containing central air conditioning equipment or window-type air conditioning units which will satisfactorily cool and ventilate the dwelling unit are not required to have screens in door and window openings.

(b) *Rodent control.* Every basement or cellar window used or intended to be used for ventilation, and every other opening to a basement which might provide an entry for rodents, shall be equipped with screens or such other approved device as will effectively prevent their entrance.

(c) *Infestation.* Every occupant of a dwelling containing a single dwelling unit shall be responsible for the extermination of any insects, rodents or other pests therein or on the premises; and every occupant of a dwelling unit in a dwelling containing more than one dwelling unit shall be responsible for such extermination whenever his dwelling unit is the only one infested. Whenever infestation is caused by failure of the owner to maintain a dwelling in a rodentproof or reasonably insectproof condition, extermination shall be the responsibility of the owner. Whenever infestation exists in two or more of the dwelling units in any dwelling or in the shared or public parts of any dwelling containing two or more dwelling units, extermination shall be the responsibility of the owner.

(d) *Rubbish storage and disposal.* Every dwelling and every dwelling unit shall be supplied with approved containers and covers for storage of rubbish as required by town ordinances, and the owner, operator or agent in control of such dwelling or dwelling unit shall be responsible for the removal of rubbish.

(e) *Garbage storage and disposal.* Every dwelling and every dwelling unit shall be supplied with approved garbage cans or approved garbage disposal facility, which may be an adequate mechanical garbage disposal unit (mechanical sink grinder) in each dwelling unit, or an approved outside garbage can as required by town ordinances.

**Sec. 18-41. Minimum standards applicable to roominghouses; exceptions.**

All of the provisions of this article, and all of the minimum standards and requirements of this -article, shall be applicable to roominghouses, and to every person who operates a roominghouse, or who occupies or lets to another for occupancy and any rooming unit in any roominghouse, except as provided in the following subsections:

- (1) *Water closet, hand lavatory and bath facilities.* At least one water closet, lavatory basin and bathtub or shower, properly connected to an approved water and sewer system and in good working condition, shall be supplied for each four rooms within a roominghouse wherever these facilities are shared. All such facilities shall be located within the residence building served and shall be directly accessible from a common hall or passageway and shall be not more than one story removed from any of the persons sharing such facilities. Every lavatory basin and bathtub or shower shall be supplied with hot and cold water at all times. Such required facilities shall not be located in a cellar.
- (2) *Minimum floor area for sleeping purposes.* Every room occupied for sleeping purposes by one occupant shall contain at least 70 square feet of floor area, and every room occupied for sleeping purposes by more than one occupant shall contain at least 50 square feet of floor area for each occupant 12 years of age and over and at least 35 square feet of floor area for each occupant under 12 years of age.
- (3) *Sanitary conditions.* The operator of every roominghouse shall be responsible for the sanitary maintenance of all walls, floors and ceilings, and for the sanitary maintenance of every other part of the roominghouse. He shall be further responsible for the sanitary maintenance of the entire premises where the entire structure or building within which the roominghouse is contained is leased or occupied by the operator.
- (4) *Sanitary facilities.* Every water closet, flush urinal, lavatory basin and bathtub or shower required by subsection (1) of this section shall be located within the rooming-house and within a room which afford privacy, are separate from the habitable rooms, are accessible from a common hall, and are accessible without going outside the roominghouse or through any other room therein.

**Sec. 18-42. Responsibilities of owners and occupants.**

(a) *Public areas.* Every owner of a dwelling containing two 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 such fixtures.

(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.

**Sec. 18-43. Powers and duties of enforcement officer.**

The enforcement officer is hereby designated as the officer to enforce the provisions of this article and to exercise the duties and powers prescribed in this section. The officer is authorized to exercise such powers as may be necessary or convenient to carry out and effectuate the purpose and provisions of this article. The officer shall have the following powers and duties:

- (1) 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 article with respect to the repair, closing or demolition of such dwelling and dwelling units;
- (2) 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) Keep a record of the inspections made under this article and an inventory of those dwellings that do not meet the minimum standards of fitness prescribed in this article;
- (4) Administer oaths and affirmations, examine witnesses and receive evidence;
- (5) Enter upon premises for the purpose of making examinations and inspections, provided that such entries shall be made in accordance with section 18-44 and state law, and shall be made in such manner as to cause the least possible inconvenience to the persons in possession;
- (6) Appoint and fix the duties of such officers, agents and employees as he deems necessary to assist in carrying out the purposes of this article, and to delegate any of his functions and powers to such officers, agents and employees; and
- (7) Perform such other duties as may be prescribed in this article or by the town

council. **Sec. 18-44. Inspections; duty of owners and occupants.**

(a) For the purpose of making inspections, the officer is hereby authorized to enter, examine and survey at all reasonable times all dwellings, dwelling units, roominghouses, rooming units and the premises associated therewith. The owner or occupant of every dwelling, dwelling units, roominghouse or rooming unit, or the person in charge thereof, shall give the officer free access to such dwelling and its premises at all reasonable times for the purposes of such inspection, examination and survey.



(b) Every occupant of a dwelling, dwelling unit, roominghouse or rooming 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 article, or with any lawful order issued pursuant to the provisions of this article.

**Sec. 18-45. Procedure for enforcement.**

(a) *Preliminary investigation; notice; hearing.* Whenever a petition is filed with the officer by a public authority or by at least five residents of the town charging that any dwelling or dwelling unit is unfit for human habitation, or whenever it appears to the officer, upon inspection, that any dwelling or dwelling unit is unfit for human habitation he *shall*, if his preliminary investigation discloses a basis for such charges, issue and cause to be served upon the owner of and parties in interest in such dwelling or dwelling unit a complaint stating the charges and containing a notice that a hearing will be held before the officer at a place therein fixed, not less than ten nor more than 30 days after the serving of the complaint. The owner or any party in interest shall have the right to file an answer to the complaint and to appear in person, or otherwise, and give testimony at the place and time fixed in the complaint. Notice of such hearing shall also be given to at least one 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 issue or issues being heard. The rules of evidence prevailing in courts of law or equity shall not be controlling in hearings before the officer.

(b) *Procedure after hearing.* After such notice and hearing, the officer shall state in writing his determination whether the dwelling or dwelling unit is unfit for human habitation and, if so, whether it is deteriorated or dilapidated. If the 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 or improve such dwelling or dwelling unit to comply with the minimum standards of fitness established by this article within a specified period of time, not to exceed 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 officer determines that the dwelling 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 either to repair, alter or improve such dwelling or dwelling unit to comply with the minimum standards of fitness established by this article, or else to vacate and remove or demolish the dwelling or dwelling unit within a specified period of time not to exceed 90 days.

(c) *Failure to comply with order.* If the owner fails to comply with the officer's order, the following shall take place:

(1) *In personam remedy.* If the owner of any deteriorated dwelling or dwelling unit shall fail to comply with an order of the officer to repair, alter or improve or to vacate and close the dwelling or dwelling unit within the time specified therein, or if the owner of

a dilapidated dwelling or dwelling unit shall fail to comply with an order of the officer to repair, alter or improve or to vacate and close and remove or demolish the dwelling or dwelling unit within the time specified therein, the officer shall submit to the board 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 officer, as authorized by G.S. 160A-446(g).

- (2) *In rem remedy.* After failure of an owner of a deteriorated or dilapidated dwelling or dwelling unit to comply with an order of the officer within the time specified therein, if injunctive relief has not been sought or has not been granted as provided in subsection (c)(1) of this section, the officer shall submit to the board an ordinance ordering the officer to cause such dwelling or dwelling unit to be repaired, altered, improved, vacated, closed, removed or demolished, as provided in the original order of the officer, and pending removal or demolition, to place a placard on such dwelling as provided by G.S. 160A-443 and section 18-47.

(d) *Appeals from orders of enforcement officer.* An appeal from any decision or order of the enforcement officer may be taken by any person aggrieved thereby. Any appeal from the enforcement officer shall be taken within ten days from the rendering of the decision or service of the order, and shall be taken by filing with the 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 officer shall forthwith transmit to the board all the papers constituting the record upon which the decision appealed from was made. When an appeal is from a decision of the officer refusing to allow the person aggrieved thereby to do any act, his decision shall remain in force until modified or reversed. When an appeal is from a decision of the 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 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 for due cause shown upon not less than one day's written notice to the 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 officer, but the concurring vote of four members of the board shall be necessary to reverse or modify any decision or order of the officer. The board shall have power also in passing upon appeals, in any case where there are practical difficulties of unnecessary hardships in the way of carrying out the strict letter of this article, to adapt the application of this article to the necessities of the case to the end that the spirit of this article 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 15 days of the decision of the board, but not otherwise.

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

**Sec. 18-46. Methods of service of complaints and orders.**

Complaints or orders issued by the officer shall be served upon persons either personally or by registered or certified mail. If the whereabouts of such persons are unknown and the whereabouts cannot be ascertained by the officer in the exercise of reasonable diligence, the 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 complaint or order at least once no later than the time at which personal service would be required under the provisions of this article in a newspaper having general circulation in the town. Where service is made by publication, a notice of the pending proceedings shall be posted in a conspicuous place on the premises affected by the complaint or order.

**Sec. 18-47. In rem action by inspection; placarding.**

After failure of an owner of a dwelling or dwelling unit to comply with an order of the officer issued pursuant to the provisions of this article, and upon adoption by the town council of an ordinance authorizing and directing him to do so, as provided by G.S. 160A-433(5) and section 18-45(c), the officer shall proceed to cause such dwelling or dwelling unit to be repaired, altered or improved to comply with minimum standards of fitness established by this article, or to be vacated and closed and removed or demolished, as directed by the ordinance of the board, 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 ordinance shall be recorded in the office of the county register of deeds 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).

**Sec. 18-48. Costs constitute a lien on premises.**

As provided by G.S. 160A-446(6), the costs of any repairs, alterations or improvements, or of vacating and closing, or removal or demolition, caused to be made or done by the officer pursuant to section 18-47 shall be a lien against the real property upon which such cost was incurred. Such lien shall be filed, having priority, and be collected in the same manner as the lien for special assessments established by G.S. 160A-216 et seq.

**Sec. 18-49. Alternative remedies.**

Neither this article nor any of its provisions shall be construed to impair or limit in any way the power of the town to define and declare nuisances and to cause their abatement by

summary action or otherwise, or to enforce this article by criminal process as authorized by G.S. 14-4 and section 18-51, and the enforcement of any remedy provided in this section shall not prevent the enforcement of any other remedies provided in this section or in other ordinances or laws.

**Sec. 18-50. Zoning board of adjustment to hear appeals.**

All appeals which may be taken from decisions or orders of the officer pursuant to section 18-45(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, 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 18-45(d) and shall keep an accurate journal of all its proceedings. If the zoning board of adjustment consists of more than five members, the chairman shall designate five members to hear appeals under this article.

**Cross reference**—Zoning board of adjustment, § 42-451 et seq.

**Sec. 18-51. Conflict of article with other provisions.**

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

Chapters 19-21

**RESERVED**

Chapter 22

**LAW ENFORCEMENT\***

**Article I. In General**

Secs. 22-1-22-30. Reserved.

**Article II. Police Department**

- Sec. 22-31. Established.
- Sec. 22-32. Composition.
- Sec. 22-33. Duties of police officers.
- Sec. 22-34. Personnel.
- Sec. 22-35. Control and supervision.
- Sec. 22-36. Conditions of employment.
- Sec. 22-37. Requirements of officer appointees.
- Sec. 22-38. Specific duties of the police chief.
- Sec. 22-39. Auxiliary police unit.

**\*Cross references**—Administration, ch. 2; offenses and miscellaneous provisions, ch. 26.  
**State law reference** - Law enforcement in towns, G.S. 160A-281-160A-289.

## ARTICLE I. IN GENERAL

**Secs. 22-1-22-30. Reserved.**

## ARTICLE II. POLICE DEPARTMENT\*

**Sec. 22-31. Established.**

There shall be a town police department, which shall be maintained in accordance with the relative provisions of the Charter of the town and the laws of the state. The duties of the police officers shall be prescribed by and their conduct regulated by such rules and regulations as may be established by the chief of police, with the approval and consent of the town council. (Ord. No. 39, § 1, 10-5-93)

**Sec. 22-32. Composition.**

The police department shall consist of a chief of police and officers of designated grade as the council deems necessary.  
(Ord. No. 39, § 2, 10-5-93)

**Sec. 22-33. Duties of police officers.**

(a) The chief of police and the members of the police department shall have the duty of enforcing all the ordinances of the town and the laws of this state within the town, and other duties as may be prescribed by ordinance

(b) It shall be the duty of each member of the police department, on information furnished him, or on his knowledge of any violation of the ordinances of the town or of the laws of this state, to secure proper warrants for the arrest and trial of any and all offenders against any ordinances or laws.

(Ord. No. 39, § 3, 10-5-93)

**.State law reference—Powers** and duties of police, G.S. 160A-285.

**Sec. 22-34. Personnel.**

The council shall have the duty of hiring persons as may be necessary to man the police department and to provide the town with adequate police protection, together with the duty of discharging such members.

(Ord. No. 39, § 4, 10-5-93)

**Sec. 22-35. Control and supervision.**

The chief of police, subject to the general supervision of the council, is held responsible for the discipline, good order and proper conduct of the department.

(Ord. No. 39, § 5, 10-5-93)

**\*State law** reference—Authority to establish a police department, G.S. 160A-281.

**Sec. 22-36. Conditions of employment.**

(a) Members of the police department shall be appointed by the council.

(b) An appointee shall serve six months' probation, or as extended by council.  
(Ord. No. 39, § 6, 10-5-93)

**Sec. 22-37. Requirements of officer appointees.**

Every person appointed as a law enforcement officer shall be:

- (1) A citizen of the United States;
- (2) At least 20 years of age;
- (3) Of good moral character;
- (4) Fingerprinted and a search made of local, state and federal fingerprint files;
- (5) Not have been convicted of a felony or an offense involving moral turpitude;
- (6), Have a high school diploma or its equivalent;
- (7) Pass an examination conducted by a physician employed by the town;
- (8) Submit to and pass an approved drug and alcohol urine test;
- (9) Be interviewed and approved by the council; and
- (10) Be certified in accordance with state law.

(Ord. No. 39, § 7, 10-5-93)

**State law reference**—Certification of law enforcement officers, G.S. 17A-6, 17A-7.

**Sec. 22-38. Specific duties of the police chief.**

(a)The police chief commands the force under his order, and is responsible for its discipline and efficiency. Further, he shall recommend to the council the reforms and changes in the police department which practical experience shows should be instituted. The chief will be required to submit a quarterly report of the activities of the department, and shall include therein any suggestions for the improvement in the service of personnel of the department.

(b) Additional, specific functions of the chief of police are to:

- (1) Issue to the force under his command such orders and directives as may be necessary to preserve the public peace, prevent crime, arrest offenders, and to protect public and private property and persons in the town;
- (2) Enforce the laws, ordinances, police regulations, and executive orders applicable to his jurisdiction; and
  - (3) Require the proper submission and handling of the necessary required reports. (Ord. No. 39, § 8, 10-5-93)



**Sec. 22-39. Auxiliary police unit.**

(a) *Creation; member duties generally.* There is hereby created within the police department a police auxiliary unit, each member of which shall be appointed by the chief of police and shall serve so long as he shall direct or until such member submits his resignation. Members of this unit shall assist and aid the regular police force of the town.

(b) *Composition.* The police auxiliary unit shall be composed of deputy police auxiliary in a number not to exceed eight qualified volunteers. Such volunteers shall be not less than 20 years of age at the time of their appointment and shall have such other qualifications as enumerated hereafter.

(c) *Powers and duties.* The police auxiliary unit shall have full police powers while on duty or while under the control and direction of the chief of police or his designated agent. Its members shall perform only such police duties as may be assigned by the chief of police, and then only when dressed or uniformed as prescribed by the chief or his agent, and shall be available for any departmental emergencies as the chief of police may determine. Such duties shall be performed only within the corporate limits or on property outside the town limits which is owned by the town.

(d) *Obedience of members to orders of police department.* Members of the auxiliary police unit shall obey all lawful orders of any members of the police department.

(e) *Rules of conduct, control and administration.* The chief of police shall prescribe rules and regulations for the conduct, control and administration of the auxiliary police unit. Each auxiliary member's record shall be subject to inspection and review for approval at six-month intervals by the chief of police.

(f) *Disciplinary action.* All disciplinary action shall be for cause, require notice and be administered by the chief of police.

(g) *Uniforms.* The chief of police shall prescribe the uniform to be worn by the member of the police auxiliary unit.

(h) *Liability of town and department for compensation or insurance coverage.* Neither the town nor its police department shall be liable to the auxiliary law enforcement personnel for any additional fringe benefits, wages, other compensation or insurance coverage, except as follows: While undergoing official training and while performing duties on behalf of the town pursuant to orders or instructions of the chief of police of the town, auxiliary law enforcement personnel shall be entitled to benefits under the North Carolina Workers' Compensation Act.

(i) *Liability of town or department for third party actions.* Neither the town nor its police department shall be liable to any third parties for any actions, intentional or otherwise, malicious or not, including negligence and/or gross negligence, unless the auxiliary law enforcement personnel was engaged in the performance of duties on behalf of the town pursuant to orders or instructions of the chief of police of the town.

0) *Liability of town or council for discipline, order and conduct.* Neither the town, and/or the town council, shall be held responsible for the discipline, good order and proper conduct of the auxiliary police unit.

(k) *Requirements of member appointees.* Every person appointed as a volunteer auxiliary law enforcement department member shall be:

- (1) A citizen of the United States;
- (2) At least 20 years of age;
- (3) Of good moral character;
- (4) Not have been convicted of a felony or an offense involving moral turpitude;
- (5) Have a high school diploma or its equivalent;
- (6) Be interviewed and approved by the council; and
- (7) Must complete the basic law enforcement training, be certified as a law enforcement officer and meet any additional requirements of law.

(Ord. No. 39, § 9, 10-5-93)

**State law reference**—Auxiliary law enforcement personnel authorized, G.S. 160A-282.

Chapter 23

**RESERVED**

Chapter 24  
**LICENSES AND BUSINESS REGULATIONS**

**Article I. In General**

Sees. 24-1-24-20. Reserved.

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**ARTICLE I. IN GENERAL****Secs. 24-1-24-20. Reserved.****ARTICLE II. ADULT ESTABLISHMENTS AND ENTERTAINMENT****Sec. 24-21. Purpose.**

The town council is committed to protecting the general welfare of the town through the enforcement of laws prohibiting obscenity, indecency, and sexual offenses. It seeks to reduce and eliminate the deleterious effects of adult establishments while preserving constitutionally protected forms of expression. The council recognizes that important and substantial government interest provide a constitutional basis for reasonable regulation of the time, place and manner under which adult establishments may operate. Specifically, the council has determined that the operation of adult establishments should be required to observe specific location requirements before commencing business, as provided for in chapter 42 entitled "Zoning" of this Code. The council finds that the licensing of adult establishments is necessary to help ensure compliance with the zoning regulations applicable to such businesses. Further, the council finds that adult establishments as defined in this article have been used for unlawful sexual activities, including prostitution, and sexual encounters of a more casual nature. The concern over sexually transmitted diseases is a legitimate health concern of the town. Live entertainment is the center of some adult establishments and therefore special attention must be focused on such entertainment. There is also evidence to suggest that adult oriented business of the type regulated herein increases the incidents of crime, require additional police patrolling in the area of such businesses and create other problems requiring the town to respond to those problems with manpower and other resources. Therefore, to protect public health, safety and welfare, reasonable rules and regulations have been established under this article and made applicable to those businesses by means of the licensing procedures established herein. The provisions of this article shall not be construed as permitting any use, activity or structure that is otherwise prohibited, illegal or made punishable by law, nor shall it be construed so as to prohibit conduct or expression that is subject to constitutional protection.

(Ord. No. 6-99, 9-7-99)

**Sec. 24-22. Definitions.**

*Adult arcade.* Any place to which the public is admitted or invited wherein coin-operated or slug-operated or electronically, electrically, or mechanically controlled still or motion picture machines, projectors, or other image-producing devices are maintained to show images to persons in booths or viewing rooms where the image is so displayed to depict or describe specified sexual activities or specified anatomical areas.

*Adult book store or adult video.* A commercial establishment which, either:

- (1) Receives the majority of its gross income during any calendar month from the sale or rental of any one or more of the following:
  - a. Books, magazines, periodicals or other printed matter or photographs, films, motion pictures, video cassettes or video reproductions, slides, or other visual representations that depict or describe specified sexual activities or specified anatomical areas; or
  - b. Instruments, devices, or paraphernalia that are designed for use in connection with specified sexual activities;
- (2) Or which has as a preponderance of its inventory;
  - a. Books, magazines, periodicals or other printed matter or photographs, films, motion pictures, video cassettes or video reproductions, slides, or other visual representations that depict or describe specified sexual activities or specified anatomical areas; or
  - b. Instruments, devices, or paraphernalia that are designed for use in connection with specified sexual activities;

*Adult cabaret.* A night club, bar, restaurant, or other commercial establishment that regularly features, exhibits or displays as one of its principle business purposes:

- (1) Persons who appear nude or semi-nude; or
- (2) Live performances which are characterized by the exposure of specific anatomical areas or by specified sexual activities; or
- (3) Films, motion pictures, video cassettes, slides, or other photographic reproductions which depict or describe specified sexual activities or specified anatomical areas.

*Adult establishment.* An adult arcade, adult book store, adult video store, adult cabaret, adult motel, adult motion picture theater, adult theater, escort agency, nude model studio, sexual encounter center or any combination of the foregoing.

*Adult live entertainment.* Any performances of or involving the presence of real people which exhibits specified sexual activities or specified anatomical areas as defined in this section.

*Adult motel.* A hotel, motel or similar commercial establishment that rents rooms or accommodations that:

- (1) Offers accommodations to the public for any form of consideration and provides patrons with closed circuit television transmissions, films, motion pictures, video cassettes, slides, or other photographic reproductions, that depict or describe specific sexual activities or specified anatomical areas as one of its principle business purposes; and
- (2) Offers a sleeping room for rent for a period of time that is less than ten hours.

- (3) Allows a tenant or occupant of a sleeping room to sub-rent the room for a period of time that is less than ten hours.

*Adult motion picture theater.* A commercial establishment where, for any form of consideration, films, motion pictures, video cassettes, slides, or similar photographic reproductions that depict or describe specified sexual activities or specified anatomical areas are regularly shown as one of its principle business purposes.

*Adult theater.* A theater, concert hall, auditorium or similar commercial establishment which regularly features, exhibits or displays, as one of its principle business purposes, persons who appear in a state of nudity or semi-nude, or live performances that expose or depict specified sexual activities.

*Conviction.* Any finding of guilt, a plea of guilty, plea of no contest or any admission of responsibility or request for prayer for judgment continued by a defendant in any criminal proceeding.

*Employee.* Any person who performs any service on the premises of an adult establishment on a full-time, part-time or contract basis, whether or not the person is denominated an employee, independent contractor, agent or otherwise. Employee does not include a person exclusively on the premises for repair or maintenance of the premises or for the delivery of goods to the premises.

*Escort.* A person who, for any form of consideration agrees or offers to act as a date/companion for another person or who agrees or offers to model nude or semi-nude or perform any strip tease or dance in a nude or semi-nude state for another person.

*Licensee.* A person or person in whose name a license to operate an adult establishment has been issued or a license to perform adult live entertainment has been issued.

*Nude model studio.* Any place that allows, permits or make available a nude or semi-nude person for the purpose of being observed, sketched, drawn, painted, sculptured, photographed or similarly depicted by other persons who pay money or some other form of consideration.

Nude model studio shall not include a proprietary school licensed by the state or any properly accredited and bona fide college, junior college or university, public or private, providing art and fine art courses as a part of its educational curriculum.

*Nude (including nudity or a state of nudity).* The showing of a human anus, the bare human male genitals or female genitals or pubic area, the female breasts with less than a fully opaque covering of all parts of the nipple or a state of dress which fails to opaquely cover a human anus, male genitals, or female genital, or pubic area, or the showing of the covered male genitals in a discernably turgid state.

Notwithstanding the above, a mother in the act of nursing her baby shall not be deemed nude.

*Person.* An individual, proprietorship, partnership, corporation association, limited liability company, or other legal entity as provided by law.

*Public place.* Any location frequented by the public, or where the public is present or likely to be present, or where a person may reasonably be expected to be observed by members of the public. Public places include, but are not limited to, streets, sidewalks, parks, beaches, businesses and commercial establishments (whether for profit or not-for-profit and whether open to the public at large or where entrance is limited by a cover charge or membership requirement), bottle clubs, hotels, motels, restaurants, nightclubs, county dubs, cabarets and meeting facilities utilized by any religious, social, fraternal or similar organizations, premises used solely as a private residence whether permanent or temporary in nature, shall not be deemed to be a public place.

Public place shall not include enclosed single sex public restrooms, enclosed single sex functional showers, locker and/or dressing room facilities, enclosed motel rooms and hotel rooms designed and intended for sleeping accommodations, doctors' offices, portions of hospitals and similar places in which nudity or exposure is necessarily and customarily expected outside of the home. Public place shall not include any class or classroom of any accredited and bona fide school, college, or university, public or private, having as a part of its curriculum, courses in the fine arts, including art, sculpture, photography or other similar bona fide courses.

*Semi-nude.* A state of dress in which clothing covers no more than the genitals, public region and areola of the female breast as well as portions of the body covered by supporting straps or devices.

*Sexual encounter center* A business or commercial enterprise that, as one of its principal business purposes, offers for any form of consideration, physical contact in the form of wrestling or tumbling, between persons of the opposite sex, or of the same sex when one or more of the persons is in a state of nudity or semi-nude.

*Specified anatomical areas.* Includes any of the following:

- (1) Less than completely and opaquely covered:
  - a. Human genital, public region;
  - b. Buttock;
  - c. female breast below a point immediately above the top of the areola; or
- (2) Human male genitals in a discernably turgid state, even if completely and opaquely covered.

*Specified sexual activities.* Includes any of the following:

- (1) The fondling or other erotic touching of human genitals, pubic region, buttocks, anus, or female breasts;
- (2) Sex acts normal or perverted, actual or simulated, including intercourse, oral copulation, or sodomy;
- (3) Masturbation, actual or simulated; or



- (4) Excretory functions as part of or in connection with any of the activities set forth in this definition.

*Town manager* The duly appointed manager for the town or any person designated by him to enforce or administer all or any part of this article.

(Ord. No. 6-99, 9-7-99)

**Sec. 24-23. Classification.**

Adult establishments may be classified as follows:

- (1) Adult arcades;
- (2) Adult book stores or adult video stores;
- (3) Adult cabaret;
- (4) Adult motel;
- (5) Adult motion picture theaters;
- (6) Adult theater;
- (7) Escort agency;
- (8) Nude model studios; or
- (9) Sexual encounter centers.

(Ord. No. 6-99, 9-7-99)

**Sec. 24-24. Prohibition; license required.**

(a) *Public nudity prohibited.* It shall be unlawful for any person to appear nude or in a state of nudity in any public place within the town.

The purpose of this subsection is to prohibit nude conduct in order to prevent the negative secondary effects noted in the preamble of this article that have been shown to accompany adult live entertainment. This subsection is not intended to prohibit any constitutionally protected form of expression. Rather, the purpose is to prohibit public nudity across the board. This subsection shall not be deemed to allow conduct prohibited by G.S. § 14-190.9 (Indecent Exposure). It shall be unlawful for any licensee covered under this article to be convicted of violating G.S. § 14-190.9.

The provisions of this subsection shall not apply to any theatrical production which contains nudity as defined under this article performed in a theater by a professional or amateur or musical company provided such productions is not in violation of G.S. § 14-190.1 (Obscenity).

(b) *Licensed required.* It shall be unlawful for any person to own, directly or indirectly, a legal, equitable or beneficial interest in, to operate or to manage an adult establishment, either as a principal or accessory use, herein defined without first acquiring and keeping in full force and effect at all times a license in compliance with the provisions of this article.

A separate license shall be required for each location, place or premise where an adult establishment is operated or conducted as an adult establishment shall not be operated, carried on or conducted in any place other than the place designated in or by the license secured under this article.

The license required by this article shall be issued solely in the individual name of the applicant or owner and may not be issued in the name of any corporation, partnership or other assumed name.

The license and fees required by this article shall be in addition to any other privilege license or permit required by the state, the county or the town.

(Ord. No. 6-99, 9-7-99)

**Sec. 24-25. Application.**

(a) *Form.* The application for the license required herein shall be in writing on a form approved by the town manager and shall include the following:

- (1) Full name, including aliases and address of the applicant.
- (2) The business trade name or logo specifically including the name as it appears on any sign or display subject to being seen by the public.
- (3) The address, including a brief description of the place at which business will be conducted.
- (4) Full name, including aliases, and address of the owners of the property at which business will be conducted.
- (5) Full name, including aliases, and address for the owner of a sole proprietorship, each member of a firm, association, general partnership or limited liability company, each general partner in a limited partnership, each officer, director or owner of more than ten percent of the stock of any corporation.
- (6) The legal form of the business ownership (i.e., proprietorship, partnership, etc.).
- (7) Full name; including aliases, and address for each on site manager.
- (8) For each individual disclosed above, a complete record of any conviction for any felony, or prostitution, or any ordinance or law relating to the operation of an adult establishment.
- (9) A statement of all prior revocations by any governmental unit of its license to operate an adult establishment held by or in the name of any person whose name is required to be disclosed above.
- (10) The name and address of any other adult establishment owned or operated by any person whose name is required to be disclosed above.
- (11) A brief description of the business activities to be conducted at the premises for which the application is being made.

(12) A statement under oath, notarized and subscribed to by the applicant that the information disclosed on the application is true.

(13) Any other reasonable information required by the town manager.

*(b)Term.* The license required under this article shall be valid for a period of one year and shall automatically expire one year from the date of its issuance.

*(c)Fee.* The applicant shall be required to pay an initial licensing fee in the amount of \$1,000.00 which fee includes the processing of the application; however, the fee may be amended from time to time by the town council as published in the schedule of fees and charges adopted by the town council as part of each annual budget. Furthermore, an additional processing fee may be charged to the applicant for each background investigation in excess of five for the names disclosed on the application as established by the council in the schedule of fees and charges.

Subsequent renewal fees for the reissuance of the license after the initial year of operation shall be one-half of the initial application fee.

(Ord. No. 6-99, 9-7-99)

**Sec. 24-26. Processing application.**

*(a) Filing.* The application, together with the required fee shall be filed with the town police department. The date and time of filing the application shall be noted thereon.

*(b) Background investigation.* Within 30 days, the town police department shall complete its background investigation of each of the individuals required to be disclosed on the application and make such other investigation as it deems appropriate, including any required inspection of the premises.

*(c) Inspection of premises.* Within 30 days of the date of filing of the application, the premises on which the proposed adult establishment is to be located shall be inspected by the town police department, by the building inspector and other appropriate personnel to determine if the premises comply with all applicable building codes, zoning regulations, fire hazard regulations and other applicable ordinances.

*(d) Issuance.* With the written endorsement of the town manager, the town police department shall issue the license to operate an adult establishment within 45 days after filing of the application, however a license shall not be issued to any applicant who:

- (1) Is not at least 18 years of age.
- (2) Has not paid all required fees and fully complies with the application procedure, including any required background investigation;
- (3) Has not permitted a full inspection of the premises;
- (4) Provides false information on the application;
- (5) Has been convicted of unlawfully selling alcoholic beverages or controlled substances;

- (6) Applies for a license required herein to operate an adult establishment in a location that is not zoned to allow adult establishments;
- (7) Does not conform to all the requirements of applicable building and fire prevention codes;
- (8) Has been convicted of any crime involving sexual misconduct or moral turpitude, including but not limited to, G.S. §§ 14-177-14-202.1, art. 26 (Offenses Against Public Morality and Decency) and §§ 14-203-14-208, art. 27 (Prostitution), or any violation of any federal statute relating to prostitution or of any violation of any law or ordinance of any governmental unit concerning or related to an adult establishment business. The fact that a conviction is being appealed shall have no effect on the disqualification of the applicant;
- (9) Is in violation of this article; or
- (10) Is required to be disclosed on the application and would be disqualified from obtaining a license for any of the reasons set out above.

(e) *Notice of denial.* Written notice of any denial shall be sent by certified mail to the applicant affected at the address stated in the application setting forth the reasons for the denial. Upon request, the applicant shall have reasonable access to the results of the background investigation, the inspection of the premises and other pertinent information. An amount equal to one-half of the initial licensing fee will be refunded to the applicant with the written notice required herein.

(Ord. No. 6-99, 9-7-99)

**Sec. 24-27. Prohibited conduct.**

Neither the applicant, the owner, the operator or any other individual whose name is required to be disclosed on the application, if different from the applicant, shall:

- (1) Engage in prostitution or suffer or permit any employee or other person on the licensed premises to engage in prostitution;
- (2) Possess, sell or use any controlled substance or suffer or permit any employee or other person on the licensed premises to possess, sell or use any controlled substance, as those terms are defined by the state statutes; or
- (3) Appear nude in violation of the terms of this article, or suffer or permit any employee or other person on the licensed premises to be nude in violation of this article. (Ord. No. 6-99, 9-7-99)

**Sec. 24-28. Regulations.**

The license issued hereunder shall be issued and remain valid only upon the continued compliance by the owner, operator or other individual whose name is required to be disclosed on the application with the following special rules and regulations:

(1) *General.*

- a. *Supervision.* There must be an adult at least 21 years of age managing the adult

establishment at all times during the hours of operation.

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b. *Hours of operation.* The adult establishment will close each night no later than 1:00 a.m. and remain closed until 8:00 a.m. the following day on each weekday and Saturday and between the hours of 1:00 a.m. and 10:00 a.m. on each Sunday.

In the event state law or regulations pertaining to the sale of alcoholic beverages are more restrictive, then, and in that event, the more restrictive hours of operation shall apply.

Adult motels are exempted from this requirement.

c. *Age limits.* No person who is less than 18 years of age may be allowed to remain on the premises. A sign posting the age requirement shall be displayed in a prominent place in or near the entrance to the main building on the premises.

d. *Inspection.* The licensed premises shall be made available for inspection by the town police department to verify compliance with this article at the reasonable request of the town police department during the hours of operation of the premises as well as the normal inspection for fire prevention and other public safety services provided by the town.

(2) *Regulations for escort agencies.* No person who is not at least 18 years of age may act as an escort or agree to serve as an escort for any other person nor shall any person act as an escort or agree to serve as an escort for any other person who is not at least 18 years of age.

(3) *Regulations pertaining to adult arcades.*

a. A person who operates or causes to be operated an adult establishment business, other than an adult motel, which either:

1. Exhibits on the premises in a viewing room of less than 150 square feet of floor space, a film, video cassette, or other video reproduction which depicts specified sexual activities or specified anatomical areas; or

2. Has a room or booth (excluding restrooms) of less than 150 square feet to which patrons are admitted for any reason, shall comply with the following additional requirements:

(i) Upon application for an adult establishment business license, the application shall be accompanied by a diagram of the premises showing a plan thereof specifying the location of one or more manager's stations and the location of all overhead lighting fixtures and designating any portion of the premises in which patrons will not be permitted. A manager's station may not exceed 32 square feet of floor area. The diagram shall also designate the place at which the license will be conspicuously posted, if granted. A professionally prepared diagram in the nature of an engineer's or architect's blue print shall not be required; however, each diagram should be oriented to the north or to some

designated street or object and shall be drawn with a designated scale with marked dimensions sufficient to show the

various internal dimensions of all areas of the interior of the premises. The town may waive the foregoing diagram for renewal applications if the applicant adopts a diagram that was previously submitted and certifies that the configuration of the premises has not been altered since it was prepared.

- (ii) No alteration in the configuration or location of a manager's station may be made without the prior approval of the town.
- (iii) It is the duty of the owners and operator of the premises to insure that at least one employee is on duty and situated in each manager's station at all times that any patron is present inside the premises. It is the duty of the owners and operators of the premises and the employees who are present to insure that no more than one person occupies a room or booth at any time, and that all other entrances to rooms, booths or viewing areas (and to the aisles, walkways and hallways leading to rooms, booths, or viewing areas) are maintained free of any obstructions such as a door, curtain, panel, board, slat, ribbon, chord, rope, chain or other device.
- (iv) The interior of the premises shall be configured in such a manner that there is an unobstructed view from a manager's station of every area of the premises which any patron is permitted access for any purpose, excluding restrooms. Restrooms may not contain video reproduction equipment, cameras or any other kind of photographic equipment. If the premises has two or more manager's stations designated, then the interior of the premises shall be figured in such a manner that there is an unobstructed view of each area of the premises to which any patron is permitted access for any purpose from at least one of the manager's stations. The view required in this subsection must be by direct line of sight from the manager's station.
- (v) It shall be the duty of the owners and operators, and it shall also be the duty of all employees present in the premises to insure that the line of sight and view area specified in paragraph (iv) above, remains unobstructed by any doors, walls, merchandise, display racks or other materials at all times that any patron is present in the premises.
- (vi) The premises shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access to an illumination of not less than one foot candle as measured at the floor level.
- (vii) It shall be the duty of the owners and operators and it shall also be the duty of all employees present on the premises to insure that the illumination described in paragraph (vi) above is maintained at all time that any patron is present in the premises.

- (viii) No operator, owner or employee shall allow openings of any kind to exist between rooms or booths.
- (ix) No person shall make or attempt to make any opening of any kind between rooms or booths.
- (x) The operator or owner, shall, during each business day, regularly inspect the walls between the rooms or booths to determine if any openings or holes exist.
- (xi) The owner or operator shall cause all floor covering in rooms, booths and viewing areas to be non-porous, easily cleanable surfaces, with no rugs or carpeting.
- (xii) The owner or operator shall cause all wall surfaces and seating surfaces in rooms, booths and viewing areas to be constructed of, or permanently covered by, non-porous, easily cleanable material. No wood, plywood, composition board or other porous material shall be used within 48 inches of the floor.

b. A person having a duty under paragraphs (i) through (xii) of subsection (3)a. above, is in violation of this article if the person fails to fulfill that duty.

(Ord. No. 6-99, 9-7-99)

#### **Sec. 24-29. Responsibility.**

Each owner, operator, manager and applicant whose name is required to be set forth on the application shall be individually responsible for compliance with each of the requirements set forth in this article and it shall not be a defense to any suspension, revocation, citation, failure to renew or other enforcement action that such person did not have knowledge of a condition, omission, failure or violation. Further, as a condition of the issuance of the license, each such person shall be deemed to have agreed to familiarize themselves with the continued operation and conditions existing on the premises at all times.

(Ord. No. 6-99, 9-7-99)

#### **Sec. 24-30. Suspension.**

The license for the operation of an adult establishment may be suspended by the town police department for a period not to exceed 60 days for any minor violation of this article which does not pose a direct and immediate threat to the public health or public safety.

(Ord. No. 6-99, 9-7-99)

#### **Sec. 24-31. Permanent revocation.**

(a) *Procedure.* The license for the operation of an adult establishment shall be revoked for any major violation of this article or any other action or failure to take action by the licensee which poses a direct and immediate threat to the public health or safety, including, but not limited to the following:

- (1) Providing false or misleading information on the application;



- (2) Possessing, using or selling any illegal drug or controlled substance as those terms are defined by the state statutes on the business premises;
- (3) Prostitution occurring on the premises or the conviction for any violations referred to in 24-26(d)(8) above, of any person whose name is required to be disclosed on the application or any employee of the business, even if the events occurred off the premises;
- (4) Operating the premises during any period of suspension;
- (5) Violation of 24-24(a);
- (6) Permitting or allowing any sexual intercourse, masturbation, oral copulation or sodomy to occur on the licensed premises;
- (7) Failing to pay any tax, fee or other charge imposed on the business or against the premises on which the business is located; or
- (8) Two or more suspensions of the license during the two year period immediately preceding the revocation.

(b) *Reinstatement.* A revocation shall be permanent and neither the applicant nor any person whose name is required to be set forth on the application shall thereafter be issued a license to operate an adult establishment. Provided, however, if the revocation has been in effect for at least six months, the license may be reinstated or a new license applied for and issued if it is determined that:

- (1) The grounds for the revocation have been corrected or abated;
- (2) Are unlikely to occur again; and
- (3) There has been no other prior revocation. (Ord. No. 6-99, 9-7-99)

**Sec. 24-32. Notice of suspension or revocation.**

Written notice of any suspension or revocation shall be sent by certified mail to the applicant affected at the address stated in the application setting forth the reasons for the suspension or revocation.  
(Ord. No. 6-99, 9-7-99)

**Sec. 24-33. Appeal.**

(a) *Procedure.* Any applicant whose license has been denied or any licensee whose license has been suspended, revoked, or whose reinstatement has been denied shall have the right to appeal such action to the town manager by filing written notice of the appeal with the town manager setting forth the reasons for the appeal. The appeal shall be scheduled for hearing by the town manager within 30 days of the date the appeal was filed. Written notice of the date, time and place of the hearing shall be provided to the appellant by certified mail, return receipt requested, to the address shown on the application or by leaving notice of such hearing with the person in charge of the licensed premises.

(b) *Stay.* A suspension shall be stayed during an appeal; however, a revocation shall not be stayed during an appeal except with the consent of the town manager and for good cause shown.

(c) *Hearing.* At the hearing conducted by the town manager, the applicant or licensee shall be permitted to present evidence and show cause why the denial, suspension, revocation or other enforcement action should not be issued. The hearing shall be informal in nature and evidence may be in the form of oral testimony, affidavits or other written records, documents and information if pertinent to the proceedings. Though not required, the applicant or licensee may be represented by an attorney. Within ten days from the date of the hearing, the town manager shall issue his decision in writing either affirming, reversing or modifying the prior decision of the town police department.

(Ord. No. 6-99, 9-7-99)

**Sec. 24-34. Transferability.**

The license issued hereunder shall not be transferred or assigned to any other person nor shall a license issued for one place of business be transferred or assigned to any other location or place of business.

(Ord. No. 6-99, 9-7-99)

**Sec. 24-35. Adult live entertainment license.**

(a) *Unlawful.* It shall be unlawful to engage in the business or profession of providing adult live entertainment without first having acquired a license from the town in compliance with the provisions of this section.

(b) *Application.* The application for a license to be an adult live entertainer shall be in writing, subscribed to under oath, on the form approved by the town manager and shall include the following:

- (1) Full name, including aliases and the address of the applicant.
- (2) The name and address of the applicant's employer for the previous two years including a brief description of the duties at each place of employment.
- (3) A full and complete statement of all convictions of the applicant of any crime involving sexual misconduct, including but not limited to G.S. §§ 14-177-14-202.1, art. 26 (Offenses Against Public Morality and Decency), and §§ 14-203-14-208, art. 27 (Prostitution), or of any violation of any federal statute relating to prostitution or any violation of any law or ordinance of any governmental unit concerning or related to an adult establishment business. The fact that a conviction is being appealed shall have no effect on the disqualification of the applicant.

(c) *Exemption.* The requirements of this section shall not apply to performers providing less than five performances in a calendar year or in any theater, restaurant, night club or other place of business which is not classified as an adult establishment. The license required herein is only applicable to individuals who will be performing adult live entertainment.

(d) *Fee.* An annual fee in the amount of \$500.00 shall be charged for each license issued; however, the fee may be changed from time to time by the town council as set forth in the schedule of fees and charges. The fee is intended to cover the cost of processing the application and completing the required background investigation.

(e) *Term.* The license required hereunder shall be an annual license which shall expire automatically one year from the date of its issuance.

(f) *Denial.* The license shall be issued by the town police department within 15 days of filing the application; however, the license shall not be issued to any applicant who:

- (1) Has not paid all required fees and fully complied with the application procedure, including any required background investigation;
- (2) Has provided false information on the application;
- (3) Is not at least 18 years of age;
- (4) Has been convicted of a misdemeanor or felony involving prostitution or any related offense specifically including any violation of G.S. §§ 14-177-14-202.1 or §§ 14-203-14-208, or of any federal law relating to prostitution or, of any violation of any law or ordinance of any governmental unit relating to the business or profession of adult live entertainment.
- (5) Has been convicted of any violation of this article; or
- (6) Has a sexually transmitted communicable disease.

(g) *Medical examination.* If there are reasonable grounds to suspect that an applicant or a licensee has a sexually transmitted communicable disease, the applicant or licensee may be required to submit a certificate from a licensed medical doctor with an office in the state verifying that the person does not have such a disease or that the disease is not communicable or does not pose a threat to the health of the community. The certificate shall comply with G.S. 130A-143 (Confidentiality of Medical Information Related to HIV Positive Status).

(h) *Revocation.* A license issued pursuant to this section shall be revoked by the town police department for the following:

- (1) The licensee has violated any provision of this section of this article;
- (2) The licensee has a sexually transmitted communicable disease;
- (3) The licensee has failed to submit the certificate required above; or
- (4) The licensee has been convicted of a misdemeanor or felony involving prostitution or any related offense specifically including any violation of G.S. §§ 14-177-14-202.1 or §§ 14-203-14-208, or of any federal law relating to prostitution, or for violation of any law or ordinance of any governmental unit relating to the business or profession of adult live entertainment.

(i) *Notice.* Any applicant who is denied a license or any licensee whose license is revoked shall be provided written notice setting forth the reasons for the denial or the revocation mailed to the address shown on the application within ten days of such action.

(j) *Appeal.* Any applicant denied a license or any licensee whose license has been revoked, shall have the right to appeal to the town manager in the same manner set forth in section 24-33 of this article.  
(Ord. No. 6-99, 9-7-99)

**Sec. 24-36. Enforcement penalty.**

(a) In addition to the remedies provided for herein, the violation of this articles shall constitute a misdemeanor and upon conviction shall be punished as prescribed in the Charter and Code of Ordinances for the town. Each and every violation shall constitute a separate and distinct offense.

(b) Further, the town specifically reserves its right to enforce this article in accordance with civil remedies of this code.  
(Ord. No. 6-99, 9-7-99)

Chapter 25

**RESERVED**

C h a p t e r 2 6

**OFFENSES AND MISCELLANEOUS PROVISIONS\***

- Sec. 26-1. Carrying of concealed handguns.
- Sec. 26-2. Possession or consumption of malt beverages and/or unfortified wine.
- Sec. 26-3. Loitering for the purpose of engaging in drug-related activity.
- Sec. 26-4. Marking of establishments with hazardous materials.

**\*Cross reference—Law** enforcement, ch. 22.

**State law reference—State** Criminal Code, G.S. ch. 14.

**Sec. 26-1. Carrying of concealed handguns.**

(a) *Signs prohibiting required.* The public works director is hereby authorized and instructed to post conspicuous signage at appropriate locations on or within each park and each building or portion of a building owned, leased as lessee, operated, occupied, managed or controlled by the town, as well as the appurtenant premises to such buildings, indicating that carrying a concealed handgun is prohibited therein.

(b) *Location of signs.* Signs on buildings shall be visibly posted on the exterior of each entrance by which the general public can access the building. The public works director shall exercise discretion in determining the number and appropriate location of signs to be placed on or within appurtenant premises and parks.

(Ord. of 11-7-95, § 2)

**State law reference—Authority** to adopt ordinances to permit the posting of a prohibition against carrying a concealed handgun, G.S. 14-415.23.

**Sec. 26-2. Possession or consumption of malt beverages and/or unfortified wine.**

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

*Malt beverage* means beer, lager, malt liquor, ale, porter, and any other brewed or fermented beverage containing at least one-half of one percent, and not more than six percent alcohol by volume, as described in G.S. 18B-101(9).

*Open container* means a container whose seal has been broken or a container other than the manufacturer's unopened original container, as described in G.S. 18B-300(c).

*Public street* means any highway, road, street, avenue, boulevard, alley, bridge or other way within and/or under the control of the town and open to public use, including the sidewalks of any such street.

*Unfortified wine* means wine that has an alcoholic content produced only by natural fermentation or by the addition of pure cane, beet or dextrose sugar, and that has an alcoholic content of not more than 17 percent alcohol by volume, as described in G.S. 18B-101(15).

(b) *Consumption on the public streets and on municipal property.* It shall be unlawful for any person who is not an occupant of a motor vehicle to consume malt beverages and/or unfortified wine on the public streets. Furthermore, it shall be unlawful for any person to consume malt beverages and/or unfortified wine on any property, whether located inside or outside the corporate limits, owned, occupied or controlled by the town including, but not limited to, public buildings and the grounds appurtenant thereto, municipal parking lots, public parks, playgrounds, recreational areas, tennis courts and other athletic fields.

(c) *Possession of open containers on the public streets and on municipal property.* It shall be unlawful for any person who is not an occupant of a motor vehicle to possess any open container of malt beverage and/or unfortified wine on the public streets. Furthermore, it shall

be unlawful for any person to possess any open container of malt beverage and/or unfortified wine on any property, whether located inside or outside the corporate limits, owned, occupied or controlled by the town including, but not limited to, public buildings and the grounds appurtenant thereto, municipal parking lots, public parks, playgrounds, recreational areas, tennis courts and other athletic fields.

*(d) Possession during special events.* It shall be unlawful for any person to possess malt beverages and/or unfortified wine on public streets, alleys or parking lots which are temporarily closed to regular traffic for special events, unless the town council adopts a resolution making other provisions for the possession of malt beverages and/or unfortified wine at the special event.

*(e) Exemptions.* Possession and consumption of malt beverages and/or unfortified wine shall be permitted within a building or premises on town-owned property where appropriate permits have been obtained as required by law for the possession and consumption of alcoholic beverages for the period of time permitted under such permits.

*(f) Penalty for violation of section.* Violation of this section shall constitute a misdemeanor punishable in accordance with section 1-6.  
(Ord. of 11-7-95, § 6)

**Sec. 26-3. Loitering for the purpose of engaging in drug-related activity.**

*(a) Public place defined.* For the purposes of this section, the term "public place" means any street, sidewalk, bridge, alley or alleyway, plaza, park, driveway, parking lot or transportation facility, or the doorways and entranceways to any building which fronts on any of those places, or a motor vehicle in or on any of those places, or any property owned by the town.

*(b) Prohibited acts.* It shall be unlawful for a person to remain or wander about in a public place under circumstances manifesting the purpose to engage in a violation of the North Carolina Controlled Substances Act, G.S. 90-89 et seq. Such circumstances are:

- (1) Repeatedly beckoning to, stopping or attempting to stop passersby, or repeatedly attempting to engage passersby in conversation;
- (2) Repeatedly stopping or attempting to stop motor vehicles;
- (3) Repeatedly interfering with the free passage of other persons;
- (4) Such person behaves in such a manner as to raise a reasonable suspicion that he is about to engage in or is engaged in an unlawful drug-related activity;
- (5) Such person repeatedly passes to or receives from passersby, whether on foot or in a vehicle, money or objects;
- (6) Such person takes flight upon the approach or appearance of a police officer; or
- (7) Such person is at a location frequented by persons who use, possess or sell drugs.



*(c) Penalty for violation of section.* Any person who violates the provisions of this section is guilty of a misdemeanor and, upon conviction, shall be punished in accordance with section 1-6. (Ord. of 9-1-92(1), §§ 1, 2)

**Cross reference—Streets** and sidewalks, ch. 30.

**Sec. 26-4. Marking of establishments with hazardous materials.**

All establishments storing or handling hazardous chemicals shall be plainly marked with signs at entrances to storage or use areas and at other such points as may be recommended by the fire chief. Such signs shall be in accordance with National Fire Protection Association for identification of the Fire Hazards of Materials, No. 704, pages 8-16. Degrees of hazard shall be assigned in accordance with National Fire Protection Association evaluation.

Chapters 27-29

**RESERVED.**

Chapter 30

**STREETS AND SIDEWALKS\***

**Article I. In General**

Secs. 30-1-30-30. Reserved.

**Article II. Parades and Demonstrations**

Division 1. Generally

- Sec. 30-31. Definitions.
- Sec. 30-32. Enforcement of article.
- Sec. 30-33. Delegation of enforcement.
- Sec. 30-34. Interference.
- Sec. 30-35. Signs.
- Sec. 30-36. Parking restrictions.
- Sec. 30-37. Violation of state law.
- Sec. 30-38. Sidewalk obstructions.
- Sec. 30-39. Exemptions. Secs.  
30-40-30-60. Reserved.

Division 2. Permit

- Sec. 30-61. Required.
- Sec. 30-62. Compliance with permit provisions required.
- Sec. 30-63. Applications; contents.
- Sec. 30-64. Issuance or denial.
- Sec. 30-65. Alternate permits.
- Sec. 30-66. Processing time and notice.
- Sec. 30-67. Revocation.

\*Cross references—Loitering for the purpose of engaging in drug related activity, § 26-3; traffic and vehicles, ch. 34; utilities, ch. 38; zoning, ch. 42; gas franchises, app. A; electrical service franchises, app. B; cable communications franchise, app. C.

**State law reference—Municipal** authority relative to streets and sidewalks, G.S. 160A296 et seq.

**ARTICLE I. IN GENERAL****Secs. 30-1-30-30. Reserved.****ARTICLE II. PARADES AND DEMONSTRATIONS\***

## DIVISION 1. GENERALLY

**Sec. 30-31. Definitions.**

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

*Block* means that portion of any street or road lying between its intersections with other streets or roads.

*Demonstration* means any assembly together or concert of action between more than four persons for the purpose of protesting any matter, making known any position or promoting certain persons or organizations or attracting attention to such assembly.

*Parade* means any parade, march, ceremony, show, exhibition or procession of any kind in or upon the public streets, sidewalks, alleys, roads, parks or other public places, involving more than four persons or more than three vehicles.

(Ord. No. 5, § 1, 11-3-87)

Cross reference—Definitions generally, § 1-2.

**Sec. 30-32. Enforcement of article.**

(a) Violation of this article shall be a criminal misdemeanor, punishable in accordance with section 1-6.

(b) In addition to or in lieu of criminal remedies, violation of this article shall subject the offender to levy of a civil penalty in the amount of \$25.00. Civil penalties remaining unpaid after seven days may be collected by means of a civil action in the nature of debt.

(c) This article may also be enforced by an appropriate equitable remedy issuing from a court of competent jurisdiction.

(Ord. No. 5, § 15, 11-3-87)

**\*State law references**—Picketing and parading, G.S. 14-225.1; regulation of motor vehicles in parades, G.S. 20-169; municipal authority to regulate mass gatherings, G.S. 130A-258.

**Sec. 30-33. Delegation of enforcement.**

The town reserves the right to designate a town officer, employee or other law enforcement officers or agencies as the enforcement authority for this article should the town not have in existence a town police department.

(Ord. No. 5, § 17, 11-3-87)

**Sec. 30-34. Interference.**

No person shall hamper, obstruct, impede or interfere with any parade or demonstration being conducted under authority of a lawfully issued permit. No driver of any vehicle shall drive between the vehicles or persons comprising a parade or demonstration when such vehicles or persons are in motion and identifiable as a parade or demonstration under this article.

(Ord. No. 5, § 9, 11-3-87)

**Sec. 30-35. Signs.**

Signs or posters carried by participants shall be made of cardboard no thicker than one-fourth of an inch. Supports for such signs or posters shall be made of a nonmetallic material no wider than 3<sup>1</sup>/<sub>2</sub> inches nor thicker than one inch. The diameter of round supports may not exceed two inches.

(Ord. No. 5, § 10, 11-3-87)

**Sec. 30-36. Parking restrictions.**

The chief of police, when reasonably necessary, may prohibit or restrict the parking of vehicles along a road, street or highway constituting a part of the route of a parade or demonstration. The chief of police shall cause signs to be posted to such effect, and, it shall be unlawful for any person to park or leave unattended any vehicle in violation of such signs. No person shall be liable for parking on a street if such signs are posted less than 24 hours in advance.

(Ord. No. 5, § 11, 11-3-87)

**Cross reference—Parking**, stopping and standing, § 34-31 et seq.

**Sec. 30-37. Violation of state law.**

The prohibitions contained in G.S. 14-277.2 against the possession of dangerous weapons and other provisions of state law shall be strictly enforced.

(Ord. No. 5, § 12, 11-3-87)

**Sec. 30-38. Sidewalk obstructions.**

Police officers observing unreasonable obstructions of sidewalks as a result of a parade or demonstration, such that pedestrians are unreasonably hindered or forced to step into the street, shall take reasonable steps to make the sidewalk available for pedestrian travel.

(Ord. No. 5, § 13, 11-3-87)

**Sec. 30-39. Exemptions.**

The provisions of this article shall not apply to:

- (1) Funeral processions;
  - (2) Students going to or from school classes or participating in educational or recreational activity where such activity is under the supervision and direction of the proper school authorities;
  - (3) Any governmental agency acting within the scope of its functions;
  - (4) Picketing or other orderly processions on the sidewalks, involving fewer than ten persons, and conducted entirely within one block, that do not violate any other municipal or state law; and
  - (5) A parade that is conducted under the sponsorship of the county, town, county chamber of commerce, county board of education or county schools.
- (Ord. No. 5, § 14, 11-3-87)

**Secs. 30-40-30-60. Reserved.**

## DIVISION 2. PERMIT

**Sec. 30-61. Required.**

It shall be unlawful for any person to organize, conduct or participate in any parade or demonstration in or upon any road, street, sidewalk, alley or other public place within the town unless a permit has been issued by the town in accordance with the provisions of this article. (Ord. No. 5, § 2, 11-3-87)

**Sec. 30-62. Compliance with permit provisions required.**

It shall be unlawful for any person to conduct or participate in any parade or demonstration for any purpose or in any manner other than those set out in the application and permit. (Ord. No. 5, § 3, 11-3-87)

**Sec. 30-63. Applications; contents.**

A written application on a form supplied by the town shall be made to the chief of police by persons desiring to have a parade or demonstration. Such applications shall be submitted at least 96 hours in advance. However, where good cause is shown or in the judgement of the chief of police, the activity would involve significant political or religious features and therefore be entitled to enhance deference or protection under the state and federal constitutions, the chief of police shall consider applications filed after the deadline. Employees of the police department shall immediately indicate the time of receipt on the face of the application. The application shall be signed by the applicant and shall include the following:

- (1) The name, address and telephone number of the applicant;

- (2) If the parade or demonstration is proposed to be conducted for, on behalf of or by an organization, the name, address and telephone number of the headquarters of the organization and of the authorized and responsible head of such organization;
- (3) The name, address and telephone number of the person to be present and responsible for the conduct of the parade or demonstration;
- (4) The date when the parade or demonstration will be conducted;
- (5) The location by roads or streets of any assembly areas for such parade or demonstration;
- (6) The time when units of the parade or demonstration will begin to assemble at any such assembly area or areas;
- (7) The times when the parade or demonstration will begin and terminate;
- (8) The route to be travelled, the starting point and the termination point, or the location if stationary;
- (9) A statement as to whether the parade or demonstration will occupy all or only a portion of the width of the roads, streets, sidewalks, parks, alleys, or other public places proposed to be traversed or occupied;
- (10) The approximate number of persons, animals and vehicles expected to participate, and the type of animals and a description of the vehicles; and
  - (11) Whether minors are likely to participate. (Ord. No. 5, § 4, 11-3-87)

**Sec. 30-64. Issuance or denial.**

(a) The application is expressly included as part of any permit granted. A permit shall be issued on a form supplied by the town, to the person who signed the application. Such person shall be required to accompany the parade or demonstration, and the permit shall be invalid unless in his possession. The permit shall be deemed issued under the terms and for the purposes stated in the application only, unless otherwise noted. The permit shall set the duration, speed of travel and space between persons or vehicles in the parade or demonstration; may prescribe the portions or areas of roads, streets, alleys, sidewalks or other public places to be used; and may impose such other reasonable requirements necessary for the control and free movement of pedestrian or vehicular traffic and to protect the safety and property rights of participants and the general public.

(b) The chief of police shall issue a permit unless he makes written findings based upon specified facts that:

- (1) The activity cannot be conducted without unreasonable interference with normal pedestrian or vehicular traffic in the area;
- (2) The activity cannot be held without unreasonably interfering with provision of normal policy and fire protection to the public;

- (3) The activity is being held for an unlawful purpose, or would violate a federal, state or local law or ordinance; or
  - (4) The event will require the closing of or unreasonably restrict the flow of vehicular traffic along a highway under the control of the state, in which case permission should be sought by the applicant from appropriate state officials.
- (Ord. No. 5, § 5, 11-3-87)

**Sec. 30-65. Alternate permits.**

The chief of police, in denying an application as submitted, may grant a permit for a date, time, place or over a route different from that named by the applicant, or subject to stated requirements and conditions. An applicant desiring to accept an alternate permit *shall*, within 24 hours after notice of the action of the chief of police, file a written notice of acceptance with the chief of police, on a form supplied by the town.

(Ord. No. 5, §. 6, 11-3-87)

**Sec. 3046. Processing time and notice.**

Applications shall be processed and decisions made as expeditiously as possible, and at least within 48 hours. If the application was submitted more than seven days in advance of the event, the permit, alternate permit or written notice of denial shall be mailed to the applicant. Otherwise, the police department shall exercise reasonable diligence in attempting to notify the applicant of the action taken as soon as possible by telephone or other means. Any person aggrieved by action taken on a permit application may file a written notice of appeal, first with the mayor and then with the town council. The mayor shall act on the appeal as expeditiously as possible, in good faith. The town council shall hear an appeal at the first meeting at which the law allows the matter to be considered.

(Ord. No. 5, § 7, 11-3-87)

**Sec. 30-67. Revocation.**

The chief of police may revoke any permit granted for a parade or demonstration for the following causes:

- (1) The substantial violation of this article **or** the terms and conditions of a permit; or
- (2) Violation of other laws by those participating in the parade or demonstration. (Ord. No. 5, § 8, 11-3-87)



Chapters 31-33

**RESERVED**

Chapter 34

**TRAFFIC AND VEHICLES\***

**Article I. In General**

Secs. 34-1-34-30. Reserved.

**Article II. Parking, Stopping and Standing**

Division 1. Generally

- Sec. 34-31. Stopping in streets generally.
- Sec. 34-32. Unattended motor vehicles.
- Sec. 34-33. Obstructing passage of other vehicles.
- Sec. 34-34. Prohibited in specified places.
- Sec. 34-35. Prohibited for certain purposes.
- Sec. 34-36. Moving vehicles into prohibited areas, etc.
- Sec. 34-37. Primary purpose of advertising prohibited.
- Sec. 34-38. Prohibited on certain streets and roads.
- Secs. 34-39-34-50. Reserved.

Division 2. Off Hours Prohibitions in Privately Owned Public Lots

- Sec. 34-51. Prohibited acts; signage required; penalties for violation of
- Sec. 34-52. division. Notice of illegality.
- Sec. 34-53. Night parking.
- Sec. 34-54. Penalty for violation of division.

**\*Cross reference—Streets** and sidewalks, ch. 30.

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

**ARTICLE I. IN GENERAL**

**Secs. 34-1-34-30.. Reserved.**

**ARTICLE II. PARKING, STOPPING AND STANDING\***

## DIVISION 1. GENERALLY

**Sec. 34-31. Stopping in streets generally.**

No vehicle shall stop in any street except for the purpose of parking as prescribed in this article, unless such stop is made necessary by the approach of fire apparatus, by the approach of a funeral or other procession which is given the right-of-way, by the stopping of a public conveyance, by the lowering of railway gates, by the giving of traffic signals, by the passing of some other vehicle or a pedestrian, or by some emergency. In any case covered by these exceptions such vehicles shall stop so as not to obstruct any footway, pedestrian aisle, safety zone, crossing, or street intersection if such can be avoided.

**Sec. 34-32. Unattended motor vehicles.**

No person having control or charge of a motor vehicle shall allow such vehicle to stand on any street or highway in the town, unattended, without first effectively setting the brakes thereon and stopping the motor of such vehicle, and, when standing upon any grade, without turning the front wheels of such vehicle to the curb or side of the street or highway.

**State law reference—Similar** state law, G.S. 20-163.

**Sec. 34-33. Obstructing passage of other vehicles.**

No vehicle shall so stand on any street as to interrupt or interfere with the passage of other vehicles.

**Sec. 34-34. Prohibited in specified places.**

No person shall stop, stand or park a vehicle except when necessary to avoid conflict with other traffic or in compliance with the directions of a police officer or traffic control device in any of the following places:

- (1) On a sidewalk.
- (2) Within an intersection, or within 20 feet thereof.
- (3) On a crosswalk.

**\*Cross references—Parking** restrictions during parades or demonstrations, § 30-36; off-street parking and loading, § 42-326 et seq.

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

- (4) Within 30 feet of any flashing beacon, stop sign or traffic control signal located at the side of a street or roadway.
- (5) No vehicle shall park on either side of any street approaching a grade crossing within 50 feet of the closest rail; provided, that where existing permanent structures are located along the street and closer than 50 feet, parking may be permitted in front of such structures, unless otherwise prohibited, if such parking does not interfere with the view in either direction of an approaching locomotive or train.
- (6) Alongside or opposite any street excavation or obstruction, when such stopping or standing or parking would obstruct traffic.
- (7) Upon any bridge or other elevated structure.
- (8) Within 15 feet in either direction of the entrance to a hotel, hospital or any public building where the street is so marked.
- (9) On the roadway side of any vehicle stopped, standing or parked at the edge or curb of a street.
- (10) In front of a public or private driveway.
- (11) In front of any motion picture theater, except bicycles.
- (12) Within 15 feet of a fire hydrant, or designated fire lane.
- (13) Within 20 feet of the driveway entrance to any fire station and on the side of a street opposite the entrance to any fire station within 75 feet of the entrance when properly signposted.
- (14) At any place where signs prohibit parking.

**State law reference**—Parking in front of fire hydrants, etc., G.S. 20-162.

**Sec. 34-35. Prohibited for certain purposes.**

(a) No person shall stand or park a vehicle upon any street for the principal purposes of:

- (1) Displaying it for sale.
- (2) Washing, greasing, changing tires or repairing such vehicle, except repairs necessitated by an emergency.
- (3) Storage thereof by garages, dealers or other persons when such storage is not incident to the bona fide use and operation of such automobile or other vehicles.
- (4) Storage of any detached trailer or van when the towing unit has been disconnected, or for the purpose of transferring merchandise, or freight, from one vehicle to another.

(b) Nothing contained in this section shall be construed to prevent parking for purposes of foreclosure and judicial sales or as otherwise authorized by this article.

**Sec. 34-36. Moving vehicles into prohibited areas, etc.**

No person shall move a vehicle not owned by such person into any prohibited area or sufficiently away from the curb to make such distance unlawful.

**Sec. 34-37. Primary purpose of advertising prohibited.**

No person shall stand or park on any street any vehicle for the primary purpose of advertising.

**Sec. 34-38. Prohibited on certain streets and roads.**

(a) All motor vehicle parking on County Park Road is prohibited.

(b) All motor vehicle parking on the east side of Barco Street is prohibited.

(c) Any person violating the provisions of this section shall pay a civil penalty in the amount of \$25.00 to the town clerk within 72 hours after receiving a citation for violation. Any unpaid civil penalties shall be collected by means of a civil action in the nature of debt. Violation of this section shall not constitute a misdemeanor or infraction punishable under G.S. 14-4. (Ord. of 7-7-98(1), §§ 1, 2; Ord. of 7-7-98(2), §§ 1, 2)

**Secs. 34-39-34-50. Reserved.**

## DIVISION 2. OFF HOURS PROHIBITIONS IN PRIVATELY OWNED PUBLIC LOTS\*

**Sec. 34-51. Prohibited acts; signage required; penalties for violation of division.**

(a) Parking is prohibited in those privately owned public vehicular areas listed in section 34-53 during the times enumerated therein.

(b) The prohibitions of this division shall be effective, provided that the businesses conspicuously display signs giving notice that parking is prohibited during the hours therein enumerated and that failure to abide by the times set forth therein shall be a violation of this division. The general form of such signs shall be as follows::

Parking prohibited 6:00 p.m. to 6:00 a.m.-or the closing time of the business whichever is later.

Violators subject to fine and towing under town ordinance.

(c) Cars parked in violation of this division shall be subject to removal at the direction of any appropriate law enforcement officer. A fine shall be levied upon any individual found in violation of this section and all towing and storage charges shall be incurred by the violator and paid prior to the claiming of the vehicle.

(Ord. of 9-1-92(2), § I)

**\*State law references--**Prima facie rule of evidence for enforcement of parking regulations, G.S. 20-162.1; authority to regulate parking in privately owned public vehicular areas, G.S. 160A-301(d).

**Sec. 34-52. Notice of illegality.**

(a) If any vehicle shall be found parked in violation of any of the provisions of this division on a first occasion, the chief of police, other police officer or designee of the town shall attach to the vehicle a notice of warning to the owner or operator thereof, if the owner or operator is absent; or to deliver to the owner or operator, if he is present, a notice of warning to the effect that the vehicle has been parked in violation of a provision of this division.

(b) If any vehicle shall be found parked in violation of any of the provisions of this division on a second occasion, the chief of police, other police officer or designee of the town shall attach to the vehicle a notice to the owner or operator thereof, if the owner or operator is absent; or to deliver to the owner or operator, if he is present, a notice to the effect that the vehicle has been parked in violation of a provision of this division and directing such owner or operator to report to the town office in regard to the violation.

(Ord. of 9-1-92(2), § II)

**Sec. 34-53. Night parking.**

The following is a listing of those privately owned public vehicular areas upon which parking is prohibited from 6:00 p.m. to 6:00 a.m. or the closing time of the business or building whichever is later:

- (1) Caswell County Mental Health Center.
- (2) North Village Shopping Center.
- (3) Piedmont Community College.
- (4) Bartlett Yancey Senior High School.
- (5) Caswell Tire Service, Inc.
- (6) Dillard Junior High School.
- (7) Bartlett Yancey Elementary School.
- (8) Caswell County Industrial Park.
- (9) Caswell County Recreation Park.
- (10) Caswell County Civic Center..
- (11) Hillcrest Shopping Center.
- (12) First Union National Bank.
- (13) American National Bank and Trust Company.
- (13) Farmer and Watlington, L.L.P.

(Ord. of 9-1-92(2), § III)

**Sec. 34-54. Penalty for violation of division.**

Any person who violates the provisions of this division is guilty of an infraction and, upon conviction, shall be subject to the penalty in section 1-6.

(Ord. of 9-1-92(2), § V)

Chapters 35-37

**RESERVED**

Chapter 38

**UTILITIES\***

**Article I. In General**

Secs. 38-1-38-25. Reserved.

**Article II. Sewer Use**

Division 1. Generally

- Sec. 38-26. Purpose and policy.
- Sec. 38-27. Definitions.
- Sec. 38-28. Abbreviations
- Sec. 38-29. Confidentiality.
- Sec. 38-30. Disclaimer of liability.
- Sec. 38-31. Damage and tampering prohibition.
- Sec. 38-32. General discharge prohibitions.
- Sec. 38-33. Specific pollutant limitations.
- Sec. 38-34. Accidental discharge.
- Sec. 38-35. Precedence of other legislation.
- Secs. 38-36--38-60. Reserved.

Division 2. Administration

- Sec. 38-61. Sewer connection permit.
- Sec. 38-62. Industrial wastewater discharge permits.
- Sec. 38-63. Reporting requirements.
- Sec. 38-64. Self-monitoring.
- Sec. 38-65. Monitoring and sampling by town.
- Sec. 38-66. Pretreatment of industrial wastewaters.
- Sec. 38-67. Employee notification of regulations.
- Sec. 38-68. Trade names.
- Sec. 38-69. Fees and charges levied by town.
- Sec. 38-70. Payment of fees and charges.
- Sec. 38-71. Sewer connection and. extension policy.
- Secs. 38-72--38-100. Reserved.

Division 3. Enforcement

- Sec. 38-101. Criteria constituting violation.
- Sec. 38-102. Actions following industrial violation.
- Sec. 38-103. Penalties for industrial violation.

**\*Cross references-Housing**, ch. 18; minimum standards for basic plumbing, heating and electrical equipment for housing, § 18-36; streets, sidewalks and other public places, ch. 30; zoning, ch. 42; gas franchises, app. A; electrical service franchise, app. B; cable communications franchises, app. C.

**State law reference**-Municipal authority to operate public enterprises, G.S. 160A-312.



YANCEYVILLE CODE

Sec. 38-104. Action following nonindustrial violation.

Sec. 38-105. Penalties for nonindustrial violation.

**ARTICLE I. IN GENERAL**

**Sees. 38-1-38-25. Reserved.**

**ARTICLE II. SEWER USE**

## DIVISION 1. GENERALLY

**Sec. 38-26. Purpose and policy.**

(a) *Scope.* This article sets forth requirements for all contributors to the wastewater collection and treatment system for the town and enables the town to comply with all applicable state and federal laws required by the Clean Water Act of 1977 and the General Pretreatment Regulations (40 CFR 403).

(b) *Objectives.* The objectives of this article are to:

- (1) Prevent the introduction of pollutants into the collection system and treatment works which will pass through the system, inadequately treated, into receiving waters or the atmosphere or otherwise be incompatible with the wastewater treatment system.
- (2) Prevent any introduction of pollutants into the wastewater treatment system which will interfere with the operation of the system or will contaminate the sludge.
- (3) Improve the opportunity to recycle and reclaim wastewaters and sludges from the system.
- (4) Provide for suitable distribution of the cost of construction, operation and maintenance of the wastewater treatment works.
- (5) Ensure the safety of the general public.

(c) *Applicability.* This article shall apply to the town and to persons outside the town who are users of the town's wastewater collection system.

(d) *Responsibility for administration.* Except as otherwise provided in this article, the town council shall administer, implement and enforce this article, unless such duties are conveyed to another individual or party under the council's direction.

(Ord. of 4-4-89, § 1001.1)

**Sec. 38-27. Definitions.**

Definitions for terms not specified in this section shall come from the "Glossary, Water and Wastewater Control Engineering," 1969, APHA, ASCE, AWWA, WPCF, or most recent edition. The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Accidental discharge* means an incident in which there is unintentional and temporary noncompliance with categorical pretreatment standards or this article.

*Act or the act* means the Federal Water Pollution Control Act, also known as the Clean Water Act, as amended, 33 USC 1251 et seq.

*Authorized representative of industrial user* means an authorized representative who may be:

- (1) A principal executive officer of at least the level of vice-president, if the industrial user is a corporation.
- (2) A general partner or proprietor, if the industrial user is a partnership or proprietorship, respectively.
- (3) A duly authorized representative of the individual designated in this definition, if such representative is responsible for the overall operation of the facilities from which the discharge to the POTW originates.

*Average flow* means the total flow in gallons in a normal operating day of 24 hours.

*Best management practices* means practices, such as preventive maintenance, scheduling of activities, or process alterations, which enable the user to comply with this article or any applicable state and federal guidelines.

*Biochemical oxygen demand (BOD)* means a standard test used in assessing wastewater strength; the measure of decomposable organic material in domestic or industrial wastewater as represented by the oxygen utilized over a period of five days at 20 degrees Celsius and as determined by the appropriate standard procedures.

*Building drain* means that part of the lowest horizontal piping of a drainage system which receives the discharge from waste and other drainage pipes inside the walls of the building and conveys it to the building sewer, beginning five feet outside the inner face of the building wall.

*Building sewer* means the extension from the building drain to the public sewer or other place of disposal.

*Categorical pretreatment standards* means regulations promulgated by the state or local agencies or by the EPA in accordance with section 307(b) and (1) of the act and designated as national categorical pretreatment standards or pretreatment standard.

*Compatible pollutants* means wastewater constituents for which the POTW was designed or is operated to adequately treat.

*Contractor* means any person who transports or disposes of septage; a septic tank contractor.

*Cooling water* means the water discharged from any system of condensation, air conditioning, cooling, refrigeration or other such system, but which has not been in direct contact with any substance. which could result in the addition of any polluting material to the water, other than an increased temperature of the water, and this increase not to exceed limits considered detrimental to any of the facilities of the town or result in any changes in the water characteristics which would be objectionable from the standpoint of odor or other nuisance. The water must be free of any oil and polluting material.

*Customer* means any individual, partnership, corporation, association or group who receives sewer service from the town under either an express or implied contract requiring payment to the town for the service.

*Developer* means an individual or a group of individuals who seeks to construct new facilities or a property.

*Effluent* means sewage, water or other liquid flowing out of any basin, treatment device or facility.

*Federal Register* means a federal government periodical dealing with federal legislation, published weekdays by the National Archives and Records Service.

*Garbage* means the animal and vegetable waste resulting from the handling, preparation, cooking and serving of foods. It is composed largely of putrescible organic matter and its natural moisture content.

*Grab sample* means a sample which is taken from a waste stream on a one-time basis, with no regard to the flow in the waste stream and without consideration

*Grease interceptor or grease trap* means a pretreatment device designed and installed to separate fats, oils and grease from wastewater.

*Individual in responsible charge* means the person at the local level who is in charge of the pretreatment facility and whose responsibility it is to ensure that the wastewater discharge is in compliance with this article and state and federal requirements.

*Industrial user* means any user of a publicly owned treatment works identified in the U.S. "Standard Industrial Classification Manual 1972," or latest revision under the following divisions:

- (1) Division A—Agriculture, Forestry, and Fishing.
- (2) Division B—Mining.
- (3) Division D—Manufacturing.
- (4) Division &—Transportation, Communications, Electric, Gas, and Sanitary Services.
- (5) Division I—Services.
- (6) Division J—Public Administration.
- (7) Division K—Nonclassifiable establishments.

*Industrial wastewater* means all water-carried wastes and wastewater, excluding domestic wastewater and unpolluted water. Includes all wastewater from any producing, manufacturing, processing, institutional, commercial, agricultural or other operations where the wastewater discharged includes wastes of nonhuman origin.

*Infiltration* means the entry of water into the sewer system from surrounding soil. Common points of entry include broken pipe and defective joints in the pipe or walls of manholes. Infiltration may result from sewers being laid below the groundwater table or from saturation of the soil by rainwater or irrigation water.

*Inflow* means the result of extraneous water entering the sewer system. Inflow includes water discharges into service connections and sewer pipes from foundation and roof drains, outdoor paved areas, unpolluted discharges from businesses and industries.

*Influent* means sewage, water or other liquid flowing into any basin, treatment device or facility.

*Instantaneous flow rate* means the flow rate at any given moment, measured in gallons per day.

*Interference* means the inhibition or disruption of the sewer system, treatment processes or operations, and includes inhibition due to discharge of compatible pollutants in amounts or concentrations greater than specified by discharge contract. The term also includes prevention of POTW sewage sludge use or disposal in the normal manner as regulated by section 405 of the Clean Water Act or regulations developed pursuant to the Solid Wastes Disposal Act, the Clean Air Act, the Toxic Substances Control Act, or more stringent state or local criteria applicable to the method of disposal employed by the POTW.

*Major contributing industry* means an industrial user that:

- (1) Has an average discharge flow of 50,000 gallons or more per normal operating day (if seasonal, the average flow shall be computed on the period of maximum seasonal use);
- (2) Has a flow or compatible pollutant loading greater than five percent of the design capacity of the sewer system;
- (3) Has in its wastes toxic pollutants; or
- (4) Is found to have significant impact, either singly or in combination with other contributing industries, on the sewer system or upon the quality of effluent from the sewer system.

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

*Noncompatible pollutants* means those pollutants which are forbidden or regulated by national pretreatment standards or which will pass through a POTW inadequately treated or interfere with the POTW operations or contaminate the resulting sludges or which can injure personnel.

*Nonindustrial user* means any individual, firm, company, association, society, corporation, institution or group user which is not identified in the U.S. "Standard Industrial Classification Manual, 1972," or latest revision under the following divisions:

- (1) Division A—Agriculture, Forestry, and Fishing.

- (2) Division B—Mining.
- (3) Division D—Manufacturing.
- (4) Division E—Transportation, Communications, Electric, Gas, and Sanitary Services.
- (5) Division I—Services.
- (6) Division J—Public Administration.
- (7) Division K—Nonclassifiable establishments.

*Normal operating day* means a 24-hour day in which the standard and routine operations and work of the facility are conducted. It includes but is not limited to daily cleaning, routine maintenance and production. It does not include work stoppages, scheduled and unscheduled shutdowns, holiday schedules, major cleanups and the like.

*Normal sewage* means waters having the following characteristics:

- (1) BOD<sub>5</sub>, 2,085 pounds per million gallons (250 mg/1) or less.
- (2) SS, 2,085 pounds per million gallons (250 mg/1) or less.
- (3) Oil/grease (hydrocarbon), 834 pounds per million gallons (100 mg/1) or less.
- (4) pH, not less than 5.0 and not more than 10.0.

*Oil and grease* means any animal, vegetable or hydrocarbon material which is extractable from an acidified sample of a waste by freon or other designated solvent and as determined by the appropriate standard procedure.

- (1) *Hydrocarbon oil / grease* means that oil and grease differentiated by method 502E of the 14th edition, Standard Methods for the Examination of Water and Wastewater.
- (2) *Animal / vegetable* means that oil and grease apart from that differentiated by method 502E of the 14th edition, Standard Methods for the Examination of Water and Wastewater.

*pH* means the logarithm (base 10) of the reciprocal of the hydrogen ion concentration, expressed in moles per liter, and indicates the degree of acidity or alkalinity of a substance. A pH value of 7.0 is neutral, being neither acid nor alkaline. Values below 7.0 are acid and those above 7.0 are alkaline

*Pollutant* means any dredged spoil; solid waste; incinerator residue; sewage; garbage; sewage sludge; munitions; chemical wastes; biological materials; radioactive materials; heat; wrecked or discharged equipment; rock; sand; cellar dirt; or industrial, municipal or agricultural waste discharged into water.

*Pretreatment standard* means any regulation containing pollutant discharge limits promulgated by the state or local agencies or by the EPA in accordance with section 307(b) and (c) of the act.

*Privies* means latrines, outhouses or any other permanently installed outdoor water closets.

*Proper connections* means those sewer pipe connections made in accordance with the state plumbing code or as stipulated by the town.

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

*Public sewer* means a sewer in which all owners of abutting properties have equal rights, and which is controlled by public authority.

*Qualified laboratory* means:

- (1) For commercial laboratories, laboratories accepted by the state department of natural resources and community development.
- (2) For all other laboratories, including in-house laboratories, laboratories accepted and approved by the town.

*Sanitary sewer* means a pipe or conduit which carries domestic waste and industrial wastes and to which stormwaters, surface waters, groundwaters and unpolluted waters are not intentionally admitted.

*Septage* means the sludge produced in individual domestic on-site wastewater disposal systems, such as septic tanks and cesspools.

*Sewage* means a combination of the water-carried wastes from residences, business buildings, institutions and industrial establishments.

*Sewage treatment plant* means any arrangement of devices, equipment or structures used for treating sewage.

*Sewage works* means all facilities for collecting, pumping, treating, and disposing of sewage.

*Sewer* means a pipe or conduit for carrying sewage.

*Sewer connection* means a sewer pipeline, normally a four-inch, cast iron soil pipe, running laterally from the street sewer, and off-street sewer, or a trunk sewer to an individual tract, lot or parcel of land to serve one or more houses or other buildings, whether or not connected to any house or building.

*Sewer system* means the structures, equipment and processes required to collect, carry away and treat domestic and industrial wastes and dispose of the effluent.

*Slug* means any discharge of water, sewage or industrial wastes which in concentration of any given constituent or in quantity of flow exceeds, for any period of duration longer than 15 minutes, five times the average 24-hour flows or concentration during a normal operating day or which in the opinion of the town adversely affects the sewer system.

*Standard industrial classification code* means a four-digit number signifying a particular type of establishment identified in the U.S. "Standard Industrial Classification Manual, 1972," or latest edition.

*Standard procedures* means those methods outlined in the most recent edition of the EPA manual, Methods for Chemical Analysis of Water and Wastes; in the APHA, AWWA, WPCF publication, Standard Methods for the Examination of Water and Wastewater; or in 40 CFR 136.

*State plumbing code* means the most recent edition of the state building code, entitled "Plumbing," published by the state building code council and the state department of insurance.

*Storm sewer or storm drain* means a pipe or conduit designed, constructed and intended to carry stormwaters, surface waters, drainage and other unpolluted waters, but not sewage or industrial wastes.

*Suspended solids* means solids that either float on the surface of or are in suspension in water, sewage or other liquids; solids that are not dissolved and which are measured by the appropriate standard procedures.

*Toxic substances* means any substance or mixture, whether gaseous, liquid or solid, which, when discharged into the sewer system, may tend to interfere with any wastewater treatment process, constitute a hazard to human beings or animals, inhibit aquatic life or create a hazard to recreation in the receiving waters of the effluent from the sewage treatment plant.

*Trunk sewer* means a major outfall or intercepting sewer installed along the valley line of a watershed to serve as a collector for street sewers and minor outfall lines serving subdivisions and developed property within an entire watershed.

*Unpolluted water* means water whose discharge will not cause any violation of receiving water standards of the state.

*Upset* means an incident in which there is unintentional and temporary noncompliance with categorical pretreatment standards or this article because of factors beyond the control of the industrial 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.

*User* means an individual, establishment or industry using any part of the sewer system.

*Wastewater* means the liquid and water-carried industrial or domestic waste, whether treated or untreated, from dwellings, commercial buildings, industrial facilities and institutions, together with any inflow and infiltration that may be present, which is discharged into or permitted to enter the town's treatment works.

*Water closet* means any self-contained toilet, including one in a recreational vehicle and a portable unit.



*Watercourse* means a channel in which a flow of water occurs, either continuously or intermittently.

(Ord. of 4-4-89, § 1001.2)

Cross reference—Definitions generally, § 1-2.

**Sec. 38-28. Abbreviations**

The following abbreviations, when used in this article, shall have the designated meanings:

BOD	Biochemical oxygen demand
CFR	Code of Federal Regulations
EPA	Environmental Protection Agency
G.S.	North Carolina General Statutes
I/I	Inflow and infiltration
mg/l	Milligrams per liter
NPDES	National Pollutant Discharge Elimination System
O/G	Oil and grease
POTW	Publicly owned treatment works
SIC	Standard industrial classification
SS	Suspended solids

(Ord. of 4-4-89, § 1001.3)

**Sec. 38-29. Confidentiality.**

Under this article, all information concerning a user obtained from reports, questionnaires, permit applications, permits and monitoring programs and from inspections shall be available to the public or to governmental agencies without restriction unless the user specifically requests and is able to demonstrate to the satisfaction of the town that the release of such information would divulge information, processes or methods which would be detrimental to the user's competitive position. Industrial effluent data is not eligible for confidential treatment. (Ord. of 4-4-89, § 1001.4)

**Sec. 38-30. Disclaimer of liability.**

The town shall not be liable to any person for the failure to furnish sewer service for any purpose or under any conditions or for the quantity or quality of the service furnished or for any damage from discontinuance of service. All connections and services are subject to this section. (Ord. of 4-4-89, § 1001.5)

**Sec. 38-31. Damage and tampering prohibition.**

- (a) Under this article, it shall be unlawful for any person to:
  - (1) Break, damage, destroy, uncover, deface or tamper with any equipment or materials belonging to the town used or\_ intended to be used for the purposes of making measurements, tests or examinations of sewage or wastes.

- (2) Remove, damage or interfere with the functioning of any pipe, main, manhole, manhole cover, building, apparatus or equipment used in the collection, conveyance or treatment of sewage or industrial wastes.
- (3) Place or cause to be placed in any manhole or sewer pipe or main any material which results or is likely to result in the stopping or obstructing of the normal flow of sewage or wastes.

(b) Any individual or firm determined to be responsible for any of the actions described in subsection (a) of this section shall be prosecuted to the fullest extent of the law seeking punitive action and penalties due to the malicious damage.

(Ord. of 4-4-89, § 1001.6)

**Sec. 38-32. General discharge prohibitions.**

(a) Under this article, all substances are to enter the sewer system through proper connections or at the POTW. The emptying of septic tank sludge or wastes from chemical toilets is restricted.

(b) It shall be unlawful for any person to introduce any substance, either solid, liquid or gaseous, into the sewer system of the town, at manholes or in any other way, except through a proper connection, under specific permit or as provided in this article.

(c) Any person engaging in the activities permitted by this subsection shall be referred to as a contractor. Contractors *shall* be allowed to empty septage or wastes from chemical toilets into the sewer system at designated structures located at the POTW, subject to the following limitations and conditions:

- (1) Before emptying septic tank sludge or wastes from chemical toilets into the sewer system at the POTW, contractors shall have obtained and shall have in their possession a valid permit to provide scavenger service issued by the county health department, in compliance with the county board of health regulations, certifying that the contractor's equipment has been inspected and approved. The number of such permit shall be prominently displayed by the contractor on the cab of the truck or on the tank in which sludge or waste is transported.
- (2) The contractor must apply for and receive a septage discharge permit prior to discharging to the POTW. The cost of the permit shall be levied by the town according to fees established by the town. By accepting the permit to introduce septic tank sludge and chemical toilet wastes derived only from domestic sources into the town's sewer system, the contractor agrees to dump or empty such sludge and waste only at designated structures and to maintain these structures and the area surrounding them in a proper condition of cleanliness. Septic tank discharges shall not contain grease trap wastes or industrial wastes.
- (3) The contractor shall supply with every load of septage a representative sample of the waste. The contractor shall supply the container.

(4) Upon failure to maintain structures in a proper condition of cleanliness, failure to have a currently valid permit from the county health department or failure to pay charges due to the town as provided in this subsection, the town may deny a contractor permission to dispose of septic tank sludge and waste from chemical toilets into the town sewer system. The town will notify the county health department of such denial of permission to any contractor.

(5) The contractor shall pay such fees as mandated by the town.

(d) It shall be unlawful for any person to discharge or cause to be discharged into any sanitary sewer any stormwater, surface water, groundwater, roof runoff, subsurface drainage, cooling water or other unpolluted water. It shall also be unlawful to discharge sewage, directly, or indirectly, into any storm sewer system.

(e) It shall be unlawful for any person to discharge into the sewer system or cause to be discharged into the sewer system the sludge resulting from pretreatment of waters or wastewaters.

(f) No user shall increase the use of process water or in any other way attempt to dilute a discharge as partial treatment to achieve compliance with the limitations contained in the federal pretreatment standards or the requirements in any other pollutant-specific limitation developed by the town or state.

(g) Any connection or entry point which could allow prohibited or restricted substances to enter the sewer system untreated shall be eliminated. Where such action is impractical or unreasonable, the town may require an industrial user to appropriately label such entry points to warn against discharge of such wastes in violation of this article.

(h) Except as provided in this article, it shall be unlawful for any person to discharge or cause to be discharged any of the following described materials, waters, liquids or wastes into any sanitary sewer:

(1) Wastes which limit the hydraulic capacity of town sewers and associated equipment and structures, such as grease, garbage with particles greater than one-fourth inch in any dimension, animal guts or tissues, paunch manure, bones, hair, hides or fleshings, whole blood, feathers, ashes, cinders, sand, spent lime, stone or marble dust, metal, glass, straw, shavings, grass clippings, rags, spent grains, spent hops, wastepaper, wood, plastics, gas, tar, paint, lacquer, varnish, asphalt residues, residues from refining or processing of fuel or lubricating oil, mud, solid or viscous pollutants, or glass grinding or polishing wastes.

(2) Wastes containing waxes, greases or oils which may solidify or become viscous at temperatures between 32 degrees Fahrenheit (0 degrees Celsius) and 140 degrees Fahrenheit (60 degrees Celsius): Fats, oils, greases or waxes which are free-floating shall not be discharged into the sewer system. Fats, oils and greases shall not be discharged to the sewer system if their concentration and physical dispersion results in separation and adherence to sewer structures and appurtenances. If there is

evidence of adherence of such materials to such structures or if such materials cause blockage in the sewer system, such materials must be removed prior to discharge into the sewer system.

- (3) Wastes which tend to damage sewers and associated structures and equipment such as grit, wastes having a pH lower than 5.0 or higher than 10, or other corrosive wastes as may be prescribed by the town.
- (4) Wastes which may prevent or make hazardous the maintenance or inspection of sewers and associated structures and equipment, such as gasoline, kerosene, fuel oil, solvents, strong acids and alkalis, cyanides, wastes which create a fire or explosion hazard, radioactive wastes, exhaust gases from internal combustion engines, and others as may be prescribed by the town.
- (5) Wastes which form excessive amounts of scum that may interfere with the operation of a sewage treatment plant or cause undue additional labor or expense in connection with its operation.
- (6) Waters or wastes containing dyes or other color which cannot be removed by biological processes and which require special chemical treatment in order for sewage treatment plant effluent to meet standards set by state law or rules or regulations or orders made pursuant to law.
- (7) Waters or wastes which require excessive quantities of chlorine for stabilization in addition to biological treatment.
- (8) Wastes containing any toxic or poisonous substances in sufficient quantity:
  - a. To interfere with the biological processes used in a sewage treatment system, singularly or in combination.
  - b. Which, singularly or in combination with other liquid wastes, upon passing through a sewage treatment plant, will be harmful to persons, livestock or aquatic life utilizing the receiving streams into which water from a sewage treatment plant is discharged.
- (9) Wastes which would cause an interference or contaminate the resulting sludges or other wastes as may be prescribed by the town.
- (10) Wastes which may cause a hazard to human life or create a public nuisance, including noxious or malodorous gases.
- (11) Wastes which may damage or interfere with the operation of the complete sewage works.
  - (i) Building sewers and connections.
    - (1) No unauthorized person shall uncover, make any connections with or opening into, use, alter or disturb any public sewer or appurtenance thereof without first obtaining a written permit from the town.

- (2) A separate and independent building sewer shall be provided for every building. However, where one building stands at the rear of another on an interior lot and no private sewer is available or can be constructed to the rear building through an adjoining alley, court, yard or driveway, the building sewer from the front building may be extended to the rear building and the whole considered as one building sewer.
- (3) Old building sewers may be used in connection with new building only when they are found, on examination and test by the town, to meet all requirements of this article.
- (4) The size, slope, alignment, materials of construction of a building sewer and the methods to be used in excavating, placing of the pipe, jointing, testing and backfilling the trench shall conform to the requirements of the building and plumbing code or other applicable rules and regulations of the town. In the absence of code provisions of or in amplification thereof, the materials and procedures set forth in appropriate specifications of the ASTM and WPCF Manual of Practice No. 9 shall apply.
- (5) Building sewers shall be at least four inches in diameter. Larger building sewers shall be used as necessary in order to carry the flow anticipated. Four-inch building sewers shall be laid on a grade that will produce a velocity when flowing full of at least 2.0 feet per second. Slope and alignment of all building sewers *shall* be neat and regular. Pipe materials, as specified in subsection (i)(6) of this section, shall be used. Pipe shall conform to the appropriate ASTM specification and shall be laid in conformance with the appropriate ASTM specification or with WPCF Manual of Practice No. 9.
- (6) A building sewer shall be constructed only of W concrete or clay sewer pipe using rubber or neoprene compression joints of approved type; (ii) cast iron soil pipe with leaded or compression joints; (iii) polyvinyl chloride pipe with rubber compression joints; (iv) ABS composite sewer pipe with solvent welded or rubber compression joints of approved type; or (v) such other materials of equal or superior quality as may be approved by the town. Under no circumstances will cement mortar joints be acceptable. Each connection to the public sewer must be made at a wye or service line stubbed out or, in the absence of any other provision, by means of a saddle or a type approved by the town attached to the sewer. No connection may be made by breaking into an existing sewer and inserting the service line. All such connections shall be made gastight and watertight.
- (7) The connection of the building sewer into the public sewer shall conform to the rules and regulations the town may establish and the procedures set forth in appropriate specifications of the ASTM and WPCF Manual of Practice No. 9. All such connections shall be made gastight and watertight. Any deviation from the prescribed procedures and materials must be approved by the town before installation.
- (8) The building sewer may be brought into the building below the basement floor when gravity flow from the building to the sanitary sewer is at a grade of one percent or more if possible. When basement or floor levels are lower than the ground elevation at the point of connection to the sewer, adequate precautions by installation of checkvalves or other backflow prevention devices to protect against flooding shall be provided by the

owner. In all buildings in which any building drain is too low to permit gravity flow to the public sewer, sanitary sewage carried by the building drain shall be lifted by an approved means and discharged to the building sewer at the expense of the owner.

- (9) The applicant for the building sewer permit shall notify the town when the building sewer is ready for inspection and connection to the public sewer. The connection shall be made under the supervision of the town.
- (10) All excavations for building sewer installation shall be adequately guarded with barricades and lights so as to protect the public from hazard. Streets, sidewalks, parkways and other public property disturbed in the course of the work shall be restored in a manner satisfactory to the town.

(j) Use of public sewers required.

- (1) It shall be unlawful for any person to place, deposit or permit to be deposited in any unsanitary manner on public or private property within the town or in any area under the jurisdiction of the town any human or animal excrement, garbage or other objectionable waste.
- (2) It shall be unlawful to discharge to any natural outlet within the town or to any that are under the jurisdiction of the town any sewage or other polluted waters, except where suitable treatment has been provided in accordance with this article.
- (3) Except as provided in this article, it shall be unlawful to construct or maintain any privy, privy vault, septic tank, cesspool or other facility intended or used for disposal of sewage.
- (4) The owner of every house, building or property used for human occupancy, employment, recreation or other purposes situated within the town and abutting on any street, alley or right-of-way in which there is located a public sanitary sewer of the town is required at his expense to install suitable toilet facilities therein and to connect the facilities directly with the proper public sewer in accordance with this article within 60 days after date of official notice to do so, provided the public sewer is within 200 feet of the building drain and further provided that no such notice shall be given to any owner so long as there is currently in use adequate septic facilities in good working order for so long as no major repair to the septic facility is needed.

(k) Private sewage disposal.

- (1) Where a public sanitary sewer is not available under subsection 0)(4) of this section, the building sewer shall be connected to a private sewage disposal system complying with this section.
- (2) Where any residence, office, recreational facility or other establishment used for human occupancy the building drain is below the elevation to obtain a one-percent grade in the building sewer but is otherwise accessible to a public sewer as provided in subsection 0) of this section, the owner shall provide a private sewage pumping station as provided in subsection (i)(8) of this section.

- (3) A private sewage disposal system may not be constructed within the town boundary unless and until a certificate is obtained from the town stating that a public sewer is not accessible to the property and no sewer is proposed for construction in the immediate future. No certificate shall be issued for any private sewage disposal system employing subsurface soil absorption facilities where the area of the lot is less than specified by the county health department.
- (4) Before commencement of construction of a private sewage disposal system, the owner shall first obtain a written permit signed by the town. The application for the permit shall be made on a form furnished by the town, which the applicant shall supplement by any plans, specifications and other information as is deemed necessary by the town.
- (5) A permit for a private sewage disposal system shall not become effective until the installation is completed to the satisfaction of the county. The county shall be allowed to inspect the work at any stage of construction, and the applicant for the permit shall notify the town when the work is ready for final inspection and before any underground portions are covered. The inspection shall be made within a reasonable period of time after the receipt of notice by the town.
- (6) The type, capacity, location and layout of a private sewage disposal system shall comply with all recommendations of the state and the county health department. No septic tank or cesspool shall be permitted to discharge to any natural outlet.
- (7) At such time as a public sewer becomes available to a property served by a private sewage disposal system, as provided in subsection (k)(6) of this section, a direct connection shall be made to the public sewer in compliance with this article, and any septic tanks, cesspools and similar private sewage disposal facilities shall be abandoned and filled with suitable material.
- (8) The owner shall operate and maintain the private sewage disposal facilities in a sanitary manner at all times, at no expense to the town.
- (9) No statement contained in this article shall be construed to interfere with any additional requirements that may be imposed by the health officer.
- (10) When a public sewer becomes available, the building sewer shall be connected to the sewer within 60 days, and the private sewage disposal system shall be cleaned of sludge and filled with clean bank-run gravel or dirt. However, this subsection shall not apply so long as there is currently in use adequate septic facilities in good working order for so long as no major repair to the septic facility is needed.
  - (l) Valve requirements. All plumbing fixtures or outlets connected with the sanitary sewer, which are located within four feet above the top level of the sewer main, shall be equipped with an approved back-pressure valve or checkvalve or the house sewer shall be so equipped. In addition, all houses or buildings with basements below street level shall be required to have backwater valves with covers.
  - (m) Prohibited connections. It shall be unlawful for any person to directly or indirectly connect or permit the connection of any open gutter, septic tank, privy vault or rainwater conductor to any sanitary sewer.

(n) Well water discharge prohibited. It shall be unlawful for any industrial or commercial user to discharge into the town sewer system any well water or water not otherwise treated by a municipal water treatment facility prior to use.  
(Ord. of 4-4-89, § 1001.7)

**Sec. 38-33. Specific pollutant limitations.**

(a) Under this article, no person shall discharge wastewater containing concentrations in excess of the following:

- (1) BOD, 500 mg/l.
- (2) SS, 500 mg/l.
- (3) Hydrocarbon O/G, 100 mg/l (must be emulsified).
- (4) pH, not less than 5.0 or more than 10.0.

The temperature of discharges shall not *exceed* 140 degrees Fahrenheit (60 degrees Celsius). No user may discharge a waste which shall cause the temperature at the POTW influent to exceed 104 degrees Fahrenheit (40 degrees Celsius).

Discharge limitations for specific pollutants will be determined by the town on individual industries and specified on that industry's wastewater discharge permit. In no case will limitations specified by less stringent than applicable federal or state guidelines.

(b) The instantaneous discharge flow rate shall not exceed the following limits:

<i>Average Flow in Gallons Per Day</i>	<i>Allowable Ratio of Instantaneous Flow Rate to Average Flow</i>
50,000 to 100,000	3
100,000 to 500,000	2
More than 500,000	1.5

Users whose average flow is less than 50,000 gallons per day shall not discharge an instantaneous rate of flow in excess of 150,000 gallons per day.

(c) No person shall discharge any wastes or wastewaters in .a slug, as defined in section 38-27.  
(Ord. of 4-4-89, § 1001.8)

**Sec. 38-34. Accidental discharge.**

Each user subject to this article shall provide protection from accidental discharge of prohibited materials. or other substances regulated by this article. Facilities to prevent accidental discharge of prohibited materials shall be provided and maintained at the owner's or user's own cost and expense. Detailed plans showing facilities and operating procedures to provide this protection shall be submitted to the town for review and shall be approved by the



town before construction of the facility. Review and approval of such plans and operating procedures shall not relieve the industrial user from the responsibility to modify the user's facility as necessary to meet the requirements of this article.

(Ord. of 4-4-89, § 1001.9)

**Sec. 38-35. Precedence of other legislation.**

Upon the promulgation of federal categorical pretreatment standards for a particular industrial subcategory subject to this article, the federal standard, if more stringent than state or local limitations, shall immediately supersede all other limitations imposed under this article. In any case, the most stringent limitation shall apply. The town shall notify all affected users of the applicable reporting requirements under 40 CFR 403.12. Written notification shall be given within 60 days of standards' promulgation.

(Ord. of 4-4-89, § 1001.10)

**Secs. 38-36-38-60. Reserved.**

DIVISION 2. ADMINISTRATION\*

**Sec. 38-61. Sewer connection permit.**

All sewer connections of a size of four inches or less may be made only after application is made to the town and all necessary fees are paid. All new sewer connections above four inches in diameter shall be made only after the potential user receives approval by the town. Every person desiring to make sewer connection to the town sewer system shall apply to the town for a permit. Upon payment of the tap fee to the town, a written permit may be issued to the applicant. The acceptance of such permit shall obligate the owner of the property referred to in the permit to comply with all resolutions and regulations in force at the time the permit is granted or which shall be in force at any time thereafter.

(Ord. of 4-4-89, § 1002.1)

**Sec. 38-62. Industrial wastewater discharge permits.**

(a) *Required.* It shall be unlawful to discharge without a permit to the POTW or components thereof any wastewater except as authorized by this article. Any person desiring to commence discharging industrial wastes after the effective date of the ordinance from which this article derives shall obtain a permit prior to commencing this discharge of such wastes into any sanitary sewer. Any person discharging industrial waste and not holding a valid discharge permit shall file a town-provided application for a permit. Permits shall be valid for five years. The town may change the restrictions and conditions of a permit as circumstances require. An industrial discharge shall be allowed a reasonable period of time to be brought into compliance with any changes required.

\***Cross reference**—Administration, ch. 2.

(b) *Application.* The discharge permit application must be completed by the industry and approved by the town before use of sewer system begins, in accordance with the following:

- (1) As set forth in 40 CFR 403.12, new industrial users shall be required to submit to the town a completed application form, including the following information:
  - a. The name and address of the industrial user.
  - b. The location of such industrial user.
  - c. The nature, average rate of production and standard industrial classification of the operation carried out by such industrial user.
  - d. The estimated average and maximum flow of the discharge from such industrial user to the POTW, in gallons per day.
  - e. The nature and concentration of pollutants in the discharge from each regulated process from such industrial user and identification of the applicable pretreatment standards and requirements. The concentration shall be reported as maximum or average level as provided for in the applicable pretreatment standard.
  - f. A plot of the property and of the proposed pretreatment facilities, reduced to 8 1/2 inches by four inches. Sampling and monitoring points must be noted on this plot.
  - g. The town may require that additional information be provided before a permit is issued by the town.
- (2) An industry discharging wastewaters which are more concentrated than normal sewage is required to resubmit an updated portion of this application.
- (3) Based on information provided by the industry, the town may decide to issue a discharge permit, issue a conditional permit or refuse to issue a permit or refuse to issue a permit to discharge.
- (4) Industrial users must obtain a new wastewater discharge permit when:
  - a. A change of ownership occurs;
  - b. A change in use of premises occurs;
  - c. A ten-percent change occurs in waste volume, strength or characteristics; or d. A change in name occurs.

(c) *Issuance.* Upon receipt of an industrial waste discharge permit application, the application will be reviewed for completeness, accuracy and compliance with all sections of this article. When all required information has been satisfactorily supplied, the town may issue an industrial waste discharge permit.

- (1) Within 30 days from the effective date of the permit, an industry may request from the town a variance of any requirements or limits contained in the permit. The town will review all requests for variances.

- (2) The applicant may receive a conditional discharge permit whereby the applicant agrees to institute procedures or install equipment to reduce or eliminate from the applicant's waste those pollutants or properties which may not otherwise be discharged into the sewer system under section 38-33. Prior to issuance of a conditional permit, the industrial user must specify in detail the following:
- a. The nature and volume of the waste which the applicant discharges or proposes to discharge.
  - b. The plans of the applicant for the establishment of procedures and installation of equipment to comply with this section.
  - c. A proposed schedule by which such procedures and equipment will be implemented or installed, in compliance with the following:
    1. The proposed schedule shall contain increments of progress in the form of dates for the commencement and completion of major events leading to the construction and operation of additional facilities required for the industrial user to meet the applicable discharge requirements (e.g., hiring an engineer, completing preliminary plans, completing final plans, executing a contract for major components, commencing construction, completing construction, etc.).
    2. No increment referred to in subsection (c)(2)c.1 of this section shall exceed nine months.
    3. Further information may be required by the town in order to thoroughly consider the application.
- The town shall determine conditional limits, self-monitoring report requirements and compliance schedules.
- (3) The holder of a conditional permit will be permitted to make discharges otherwise prohibited by this section so long as:
- a. Such discharges do not exceed amounts and types indicated by the conditional permit; and
  - b. Not later than 14 days following each date in the compliance schedule and the final date for compliance, the industrial user shall submit a progress report to the town. These reports shall include whether or not it complied with the increment of progress to be met on such date, and, if not, the date on which it expects to comply with this increment of progress and the reason for delay;
  - c. When the schedule for full compliance through the installation of equipment or procedures is progressing in accordance with its terms or conditions as set out by the conditional permit.
- (4) Upon expiration of the conditional permit, the user must comply with all sections of this article. If the user complies with all sections of this article prior to the expiration date of the conditional permit, a discharge permit may be issued.

(d) *Revocation.* Discharge permits and conditional discharge permits shall be subject to revocation by the town under subsection 38-103(b). Furthermore, conditional permits may be revoked if the procedures and equipment have not been implemented or installed by the specified final completion date. The town may permit an extension if it determines that the holder of the conditional permit has made a diligent effort to comply with the conditional permit within the time limits specified therein. When the town determines that the holder of a conditional permit is not proceeding according to the conditions and schedule specified in the conditional permit in a diligent manner, the final completion deadline having not passed, and the applicant fails or refuses to post a performance bond, the conditional permit shall be immediately revoked. The town shall also retain such authority under section 38-104. A discharger whose permit has been revoked shall immediately stop all discharges of any liquid-carried wastes covered by the permit to the sewer system. A discharger whose permit has been revoked must apply for a new permit and pay all fees, charges, penalties and such other sums as may be due to the town before issuance of a new permit is considered.

(Ord. of 4-4-89, § 1002.2)

### **Sec. 38-63. Reporting requirements.**

(a) *Pretreatment standard promulgation report.* Under this article, a pretreatment standard promulgation report shall be submitted as follows::

- (1) Any user subject to national pretreatment standards shall submit a 180-day baseline monitoring report (form supplied by the town) to the town by whichever of the following deadlines is later:
  - a. One hundred eighty days after the promulgation of a categorical pretreatment standard for that particular industry, under section 307(b) or (c) of the act; or
  - b. One hundred eighty days of the effective date of 40 CFR 403.
- (2) If additional pretreatment and operation and maintenance procedures will be required to meet the pretreatment standards, the director may issue a conditional permit. The completion date in the conditional permit shall not be later than the compliance date established for the applicable pretreatment standard.

(b) *Pretreatment compliance report.* Any user subject to national pretreatment standards shall submit a report within 90 days following the date for final compliance with such standards. On a reporting form supplied by the town, the user shall supply the following information:

- (1) The nature and concentration of all pollutants in the discharge from each process which is regulated by pretreatment standards.
- (2) The average and maximum daily flow in gallons per day for those process units of the industrial user which are limited by such pretreatment standards or requirements.
- (3) Whether applicable pretreatment standards and requirements are being met, and if not what additional pretreatment and operation and maintenance procedures are

needed to bring the user into compliance. This statement shall be signed by an authorized representative of the user and certified by a qualified professional, as specified in 40 CFR 403.12(b).

(c) *Self-monitoring reports.* If a self-monitoring report is required, the reporting schedule and requirements will be stated on each industrial user's discharge permit.

(d) *Interruption of operations report.* Notice by the user shall be given to the director in advance or at the earliest possible time when normal operations of the industry will be interrupted for 24 hours or longer, when wastes will not be available for discharge or prior to implementation of a process change which will alter demands on the POTW

(e) *Accidental discharges report.* For an accidental discharge into the sanitary sewer of any wastes which might pose a hazard to the POTW treatment processes, personnel or sludge disposal methods, the town must be notified within an hour after discovery. Notification shall include location of discharge, type of waste, concentration and volume and corrective actions. A written report must be submitted to the town within five days, stating what occurred and the corrective actions taken so the further accidental discharges will not occur.

(f) *Upset reporting.* The occurrence of an upset, as defined in section 38-27, shall constitute an affirmative defense for the industrial user to an action brought for noncompliance with national categorical pretreatment standards and local and state requirements. The burden of proof for such upset shall rest on the industrial user. The industrial user must notify the town within one hour of becoming aware of the upset. The industrial user must have evidence to demonstrate the following conditions:

- (1) An upset occurred and the industrial user can identify the specific cause of the upset.
- (2) The treatment facility was at the time being operated according to best management practices.
- (3) The industrial user has submitted the following information within 24 hours of becoming aware of the upset (if this information is provided orally, a written submission must be provided within five days):
  - a. A description of the discharge and cause of noncompliance.
  - b. The period of noncompliance, including exact date and times or, if not corrected, the anticipated time the noncompliance is expected to continue.
  - c. Steps being taken and planned to reduce, eliminate and prevent recurrence of the noncompliance.

The industrial user shall control production and all discharges 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.

(g) *Recordkeeping.*

- (1) Any industrial user subject to the reporting requirements established in this section shall maintain records of all information resulting from any monitoring activities required by this section and the user's wastewater discharge permit. Such records shall include for all samples:
  - a. The date, exact place, method and time of sampling and the name of the person taking the samples;
  - b. The dates analyses were performed;
  - c. Who performed the analyses;
  - d. The analytical techniques/methods used; and
  - e. The results of such analyses.
- (2) Any industrial user subject to the reporting requirements established in this article shall be required to maintain for a minimum of three years all records of monitoring activities and results. Records shall be made available for inspection and copying by the town. The period of retention shall be extended during the course of any unresolved litigation regarding the industrial user or the town.

(h) *Sludge documentation.* The transportation and disposal of sludges generated by pretreatment shall be subject to applicable federal, state and local regulations. The industrial user shall be responsible for documenting the transporting and disposal of all pretreatment sludges. Receipts and other documentation shall be kept for a minimum of three years and shall be made available to the town upon request.

(i) *Intercepted and separated materials.* Upon request by the town, a user having an interceptor or separator must state specifically how the waste oil, grease, solvent, paint, etc., is disposed of and must provide evidence of such disposal service when required by the town. Records and receipts must be kept which demonstrate that these waste materials were contained and transported in a safe manner as prescribed by the rules of regulatory agencies, including but not limited to the U.S. Department of Transportation, and handled by reputable persons who shall dispose of all such wastes in accordance with all federal, state and local regulations.

(j) *Truth in reporting.* The reports required by this section shall comply with the provisions of the United States Code (18 USC 1001) relating to fraud and false statements and the provisions of section 309(c)(2) of the act governing false statements, representations or certifications in reports required under the act.

(Ord. of 4-4-89, § 1002.3)

**Sec. 38-64. Self-monitoring.**

(a) *Requirements.* Under this article, periodic measurements of flow, suspended solids, BOD and other appropriate waste characteristics shall be made by those permittees specifically designated by the town and shall determine the number of 24-hour flow measurements and

samples required. All samples taken by the industrial user shall be divided with the town for testing as specified by the town. Continuous monitoring may be required in cases involving large fluctuations in quantity or quality of wastes or if the wastewater appears to have characteristics which may damage the treatment system. The acceptability of any monitoring results shall be determined by the town. Self-monitoring frequency, parameters and location shall be specified on the industrial waste discharge permit.

(b) *Measurements.*

- (1) All sampling and analysis for self-monitoring purposes shall be performed by qualified laboratories acceptable to the town in the manner described and certified under penalty of perjury by the permittee. Sample collection and analysis and the collection of other information shall be performed with sufficient care to produce evidence admissible in enforcement proceedings or in judicial action.
- (2) Samples shall represent the waste flow from the premises over the workday. The samples shall be time-composited or flow proportional, with such compositing being performed either manually or by automatic sampling equipment. The sample compositing technique must be approved by the town.
- (3) The handling, storage and analysis of all samples collected for the determination of the characteristics of waste discharged shall be performed in accordance with standard procedures.

(c) *Surcharges.* An industrial user may petition to the town for the privilege of self-monitoring for the purpose of surcharge calculation. The town will review all such petitions and will determine the frequency of such monitoring, the number of samples to be divided with the town for comparison analyses and the acceptability of all data generated by such self-monitoring. Costs for all comparison analyses performed by the town will be borne by the industrial user.

(Ord. of 4-4-89, § 1002.4)

**Sec. 38-65. Monitoring and sampling by town.**

(a) The town may inspect or monitor the effluent source or treatment facilities of any user to ascertain whether the purpose and requirements of this article are being met.

(b) Any person discharging industrial wastes into the sanitary sewer may be required to construct and maintain a suitable control or inspection manhole at the point where wastes enter the sewer or at some other location approved by the town.

(c) The town shall have the right to set up on the user's property such devices as are necessary to conduct sampling inspection, compliance monitoring and metering operations. Town equipment which is set up on a user's property may not be handled or tampered with, as provided in section 38-31.

(d) Where pretreatment or equalization facilities are provided by the user for any waters or wastes, they shall be maintained continuously to provide effective operation by the owner at his expense. All industrial user pretreatment units shall be subject to periodic inspection by the town.

(e) The town shall have a right of entry to, upon or through any premises in which an effluent source is located or in which any discharge records are located. The town shall also have access to review and be able to copy and date the user's effluent discharges coming into the sanitary sewer system.

(f) Where a user has security measures in force which would require proper identification and clearance before entry into the premises, the user shall make necessary arrangements with its security guards so that, upon presentation of suitable identification, personnel and vehicles from the town will be permitted to enter without delay for purpose of performing specific responsibilities.

(g) If the monitoring facility is inside the user's fence, there shall be accommodations to allow safe and immediate access for town personnel, such as a gate secured with a town lock. Access to the sampling site is not to be obstructed by any object, e.g., vehicles, supplies, equipment, landscaping. There shall be ample room in or near such facility to allow accurate sampling and compositing of samples for analysis. The industrial user's entire monitoring and sampling facility shall be maintained at all times in a safe and proper operating condition by and at the expense of the user.

(h) While performing the necessary work on private properties, the authorized town representatives shall observe all safety rules applicable to the premises as established by the company and conveyed in writing to the town. The town shall indemnify the company against loss or damage to its property by town employees. The town shall also indemnify the company against liability claims for personal injury or property damage asserted against the company resulting from the town's inspection or sampling operations. An exception to this would be such as may be caused by negligence or failure of the company to maintain safe conditions in connection with monitoring or inspection sites.

(i) Where a permittee operates as an integrated complex involving varying processes and having separate industrial waste sewer connections within the same contributory area, such permittee may be considered as one unit with multiple connections. An analysis for each connection may be combined in proportion to the flow from the connection, and the weighted average of the results thus obtained may be used as the measure of the total flow and concentration of the wastes discharged into the sewer system for the purpose of surcharge calculation.

(j) For integrated complexes involving various users with multiple water meters but a common discharge line (e.g., shopping centers), the town will monitor the common discharge line for the surcharge basis, and the surcharge will be billed to the owner of the complex. The frequency of town monitoring shall be based on the following:

- (1) If the industrial user discharge flow does not contain toxic or priority pollutants, the following sampling schedule will be followed:



<i>Flow</i>	<i>Monitoring Frequency</i>
Greater than 50,000 GPD	Quarterly
Less than 50,000 GPD	Semiannually
<p>(2) If the industrial user's discharge contains toxic or hazardous materials, more frequent spot checking may occur, as prescribed by the town.</p>	
<p>(3) Deviations from the sampling schedule in this subsection will be determined by the town.</p>	

(Ord. of 4-4-89, § 1002.5)

**Sec. 38-66. Pretreatment of industrial wastewaters.**

(a) *Authority and responsibility.* An industrial wastewater pretreatment system or device may be required by the town to pretreat industrial wastewater prior to discharge into the sewer system. Any person who is prohibited from discharging a substance as specified in this article or who is required to provide pretreatment under federal pretreatment standards and requirements shall have the sole responsibility to devise, at his own expense, the methods for eliminating the problem so as to make any waste discharge eligible for a permit and for compliance with this article and federal regulations.

(b) *Notice of federal standards.* The town shall notify industrial users by mail as to applicable federal pretreatment standards and requirements.

(c) *Review of systems or devices.* All pretreatment systems or devices shall be reviewed by the town; however, town approval shall not absolve the industrial dischargers of the responsibility of meeting any industrial effluent limitation required in the permits.

(d) *Inspections.* All pretreatment systems or devices shall be subject to periodic inspection by the town.

(e) *Grease, oil and sand interceptors.* Grease, oil and sand interceptors shall be provided, when deemed necessary by the town, for the proper handling of liquid wastes containing grease in excessive amounts, sand or other harmful ingredients. All interceptors shall comply with all applicable local and state plumbing codes, shall be acceptable to local and state plumbing codes, shall be acceptable to the town and shall be located as to be readily accessible for cleaning and inspection. All interceptors shall comply with the following:

(1) *General requirements.*

- a. All interceptors shall be designed so that they will not become air bound or permit siphonage and shall be equipped with a flow control fitting with external cleaning devices.
- b. All traps shall be properly vented, and a fresh air inlet or vent shall be installed on the house side of the interceptor. The outlet of the interceptor shall have a vacuum breaker or vent.

(2) *Oil and grease interceptors.*

- a. An approved interceptor shall be installed in the drainage system of the building or premises of the following uses or occupancies unless its omission is approved by the town: restaurants, public eating places, food preparation at institutions and schools, all wastes in meat preparation areas, pot sinks, dishwashing machines, can washers, commercial garages, repair shops, service stations, trucking docks, laundries and any other places whose wastes would be expected to contain oil or grease.
- b. Interceptors shall be so constructed as to be oiltight and shall have easily removable watertight and gastight covers as required.
- c. Every interceptor shall have a vent not less than two inches in diameter, connected to the interceptor tank to relieve vapor, and terminated in an approved manner.

(Ord. of 4-4-89, § 1002.6)

**Sec. 38-67. Employee notification of regulations.**

(a) In order that the user's employees be informed of town requirements under this article, the user shall make available to its employees copies of this article, together with such other wastewater information and notices as furnished by the town which are directed toward improving water pollution control.

(b) Employers shall ensure that all applicable employees who may cause prohibited discharges are advised of the emergency notification procedure, as set forth in subsection 38-64(e).

(Ord. of 4-4-89, § 1002.7)

**Sec. 38-68. Trade names.**

The town's mention of trade names, brands or commercial products in this article does not constitute endorsement or recommendation for use.

(Ord. of 4-4-89, § 1002.8)

**Sec. 38-69. Fees and charges levied by town.**

(a) *Waste treatment cost.* The town shall review the cost of wastewater collection and treatment annually and shall make adjustments to the sewer service charges accordingly. These charges will be billed to each individual customer by the town on a monthly basis.

(b) *Tap fees.* The town shall periodically review the value of tapping a municipal sewer line and make changes when necessary. Tap fees must be paid to the town before any taps are made or put into service.

(c) *Assessment fees.* The town shall periodically review the rates charged adjacent property owners for sewer line extensions in accordance with section 38-71. Such assessment will be paid to the town in a manner prescribed by the town.

(d) *Penalties and fines.* Any penalties or fines as provided for in this article shall be paid directly to the town, unless otherwise prescribed.

(e) *Sole flow contributor's charges.* Any user who is the sole contributor of flow to a wastewater treatment, collection, conveyance or measurement device constructed for the purpose of serving only that user may be required to pay to the town the entire cost of constructing, operating and maintaining such device. Such charges shall be paid as specified by a written agreement.

(f) *Surcharges.* A sewer service surcharge shall be levied from the industrial users of the sewer system who discharge industrial wastes based on BOD and suspended solids contributions. The surcharge is calculated on the basis of wastewater BOD and suspended solids concentrations in excess of 250 mg/l for both parameters. The surcharge rates for the BOD and suspended solids are to be established by the town.

(g) *Charges for monitoring.* An industrial user whose discharge is being periodically monitored by the town shall pay for specific sampling and analytical work performed by the town. If, during the course of normal monitoring by the town, a violation of this article is determined, additional monitoring may be imposed on the industrial user at a frequency defined by the town. The charges for the monitoring will be for only those wastewater parameters or conditions that are in violation of this article, and monitoring may continue until the violation ceases. The industrial user will pay for the additional monitoring charges. Any additional monitoring for surcharge purposes requested by an industrial user *shall* be paid for by the industrial user on a per analysis basis.

(h) *Penalty fees.* Any person found to be in violation of this article may be required to pay penalty fees to the town. (Ord. of 4-4-89, § 1004.1)

#### **Sec. 38-70. Payment of fees and charges.**

(a) Fees and charges collected by the town on a monthly basis under this article will include the following:

- (1) Treatment charges, based on volume of water used levied by the town.
- (2) Tap fees levied by the town.
- (3) Assessment fees levied by the town.
- (4) Penalties or fines levied by the town.
- (5) Sole contributor charges levied by the town.
- (6) Surcharges levied by the town.
- (7) Monitoring and sampling fees levied by the town.

(b) Payment of these charges shall be within 30 days from the date of the bill. (Ord. of 4-4-89, § 1004.2)

**Sec. 38-71. Sewer connection and extension policy.**

(a) *Application; fees; issuance of permit.*

- (1) All applications for connection and extension of sewer mains with the town sewer system for property situated inside and outside of the corporate limits shall be made in writing to the town. The application shall specify the following:
  - a. The name of the person by whom application is made;
  - b. The location of the property for which connection is made;
  - c. The size of the sewer main proposed to be connected with the town main;
  - d. The person by whom the work of constructing the sewer main is to be done;
  - e. The time when the work of constructing the sewer main is to begin;
  - f. The time when the main is to be connected with the sewer system of the town;
  - g. The estimated amount of wastewater flow;
  - h. The type of wastewater; and
  - i. Such other or additional information as may be required by the town.

Such applications shall be governed by all regulations made by the town for the control, maintenance and protection of its sewer system in force at the time the application is made or at any time thereafter.

- (2) Upon payment to the water and sewer department of the fees required by subsection (e) this section, a written permit shall be issued for the connection applied for. The acceptance of such permit shall obligate the applicant and his agents to comply with all ordinances and regulations of the town in force at the time the permit is granted or which are in force at any time thereafter.
- (3) The application shall be approved or disapproved by the town.
- (4) The title and ownership of the sewer connections and extensions shall, upon completion and acceptance and dedication of easements, be deeded to the town.

(b) *Extension of mains.* It shall be the policy of the town to permit, upon proper application therefor, the extension of sewer mains inside and outside the corporate limits. The town shall require the extension of sewer mains except in such cases as the town council finds it economically impractical to install both, and in such instances the town shall require the dedication of easements for water mains simultaneously with the extension of sewer mains, so that water mains may be installed at a later date.

(c) *Service to other properties.* Extensions shall serve the applicant's property and may be used by the town to serve any other properties either along or beyond such extensions. Where application is made for a sewer extension which will serve only the property of the applicant, permission for such extension will be granted only upon condition the applicant will pay the entire cost of the project and that, upon completion of the project and acceptance thereof by the town, the sewer lines and all necessary easements shall become the property of the town. In

such case, the applicant will not be entitled to any refund for connection to the sewer lines. If such extension involves the installation of a line between the boundary of the applicant's property and the town's existing sewer system, the applicant will be required to pay the entire cost of the project which, upon completion and acceptance, shall become the property of the town. In such a case the town will make a special privilege charge, as prescribed under subsection (d) of this section, for any connections thereafter made to that portion of the sewer line. The town will remit to the applicant, annually, all such special privilege charges collected by the town within but not exceeding five years from the completion of the project up to but not in excess of the applicant's investment, without interest, in the portion of the sewer line. All special privilege charges received after five years shall remain with the town.

*(d) Special privilege charge.* A special privilege charge will be charged in addition to the connection fees prescribed in subsection (e) of this section. There shall be a special privilege charge applicable only as stated in subsection (c) of this section, to be computed according to the frontage of properties to which the connection may be made, on the basis of total cost of the project, and shall be charged and paid in a lump sum. In advance of any connections, such special privilege charge shall only be paid once for any particular property to be served.

*(e) Schedule of connection fees.* The schedule for sewer connection fees made by town forces will be established by the town.

(Ord. of 4-4-89, § 1005)

**Secs. 38-72-38-100. Reserved.**

DIVISION 3. ENFORCEMENT

**Sec. 38-101. Criteria constituting violation.**

*(a)* A user subject to this article shall be considered in violation when guilty of any of the following, regardless of intent or accident:

- (1) Violation of the conditions of this article or applicable state and federal regulations.
- (2) Violation of the conditions of any permit described in this article.
- (3) Failure to factually report discharge characteristics.
- (4) Failure to submit any required reports in the prescribed time period.
- (5) Refusal of access to the user's premises for inspection or monitoring.
- (6) Failure to pay any fees, charges or surcharges.
- (7) Tampering with any monitoring device or method which knowingly results in inaccuracy.

*(b)* Each day during which any violation continues shall constitute a separate violation.

(Ord. of 4-4-89, § 1003.1)

**Sec. 38-102. Actions following industrial violation.**

(a) *Notice to industrial user of violation.* Under this article, a reasonable effort shall be made by the town to notify the violating party. Written notification shall be sent to the authorized representative, entitled "Notice of Violation," and specifying the nature and source of the violation. Following this notification, follow up determinations will be used to establish penalties as provided by section 38-101 and the corrective action to be taken by the violator. Where repetitive violations are occurring and the user is using best efforts and best management practices as determined by the town to avoid further failures or violations, the town may allow a reasonable time for satisfactory correction thereof. Depending upon the severity of the situation, the town may require disposal of the industrial waste in some manner other than into the sanitary sewer at the expense of the user. The user shall, within the period of time specified in the notification, satisfactorily correct the failure or violation. Extensions of this time limit may be granted by the town upon consideration of a written request by the user, which shall set forth the truthful reasons why compliance cannot be timely made. Correction of violation conditions shall not preclude assessment of penalties.

(b) *Show cause hearing.* The town may order any industrial violator to show cause why the proposed enforcement action should not be taken. A notice shall be served on the user specifying the time and place of a hearing regarding the violation, the reasons why the action is to be taken and the proposed enforcement action. After reviewing the evidence, the town may issue an order that the sewer service to the user be discontinued, if abatement is not achieved in a specified time period, and recommend that fines be imposed as authorized by section 38-103. Fines recommended by the town will be calculated as set forth in section 38-103. (Ord. of 4-4-89, § 1003.2)

**Sec. 38-103. Penalties for industrial violation.**

(a) *Sewer service discontinuation.* The town may suspend sewer service to any user by whatever means found necessary for a period of up to 30 days when such a suspension is necessary, in the opinion of the town, 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 to the environment, which causes interference to the POTW or its sludge disposal methods, or which may cause the town to violate any conditions of its NPDES permit. Any person notified of a suspension of sewer service shall immediately cease discharge of all wastewater. If the person fails to voluntarily comply with the suspension order, the town shall take such steps as deemed necessary, including immediate severance of the sewer and water connection, to prevent or minimize the danger to the POTW or endangerment to health or the environment. The town may reinstate sewer service upon proof of the elimination of the discharge which caused the violation. A detailed written statement by the user shall be submitted within 15 days of the date of notification of the violation. This statement shall describe the causes of the harmful contribution and the measures taken to prevent any future occurrence. Reinstatement of sewer service may also require the posting of a performance bond by the user.

(b) *Permit revocation.*

- (1) If, at the end of a 30-day suspension period, the violation has not been corrected, the town may revoke the user's discharge permit.
- (2) The town may revoke the discharge permit or conditional permit of any user found to be in violation of this article.
- (3) The town may disconnect or permanently block from the sewer system the industrial sewer connection of any discharger whose permit has been revoked if such action is necessary to ensure compliance with the order of revocation.
- (4) If the town finds that the holder of a conditional permit is not proceeding in accordance with the conditions and schedule specified in a diligent manner, the town may allow the applicant to continue to operate pursuant to the conditional permit upon the posting of a performance bond. This performance bond shall be in an amount estimated to be the cost of complying with the conditional permit; such bond being conditioned upon the faithful performance of the provisions of the conditional permit and being in a form approved by the town attorney.

(c) *Fines and expense fees.*

- (1) A special fine of not less than \$50.00 or more than \$5,000.00 per violation may be assessed for violation of this article. The amount assessed will be dependent upon a number of factors, including but not limited to the type and concentration of the pollutant, the volume discharged, the damages caused by or related to the discharge. The town will consider the following factors and present recommendations to the utility commission for final disposition in assessing the fine:
  - a. Sewer use resolution violations;
  - b. Profile and history;
  - c. Reason for the violation;
  - d. The response of the industrial user with regard to violation (e.g., notification to the POTW, attempts to stop, remedy or minimize problem);
  - e. Subsequent industrial user action so that similar problems do not recur;
  - f. Fines previously imposed; and
  - g. History of notifications in the largest local newspaper for significant violators.
- (2) Violators will be assessed the costs incurred by the town in revoking a permit and disconnecting an industrial sewer. Payment shall be made by the discharge before issuance of a new permit.
- (3) Violators will also be assessed the cost of the work required to clear and repair any part of the system affected by the discharge violation.
- (4) Assessments for fines shall be paid within 30 days after invoice. If a payment is not made within the allotted time, the town may levy an additional late charge of ten percent of the amount due.

- (5) Fines and penalties assessed under this article and not paid within the prescribed period of time may be collected in a civil action pursuant to G.S. 160A-175(c). In addition, the town may seek criminal prosecution for a violation of this article, which shall constitute a misdemeanor as provided for in G.S. 160A-175(c).

In addition to the penalties provided in this subsection, the town may recover reasonable attorneys' fees, court costs, court reporters' fees, and other expenses of litigation by appropriate suit at law against the person found to have been in violation.

(d) *Public notification of significant violators.* As required by 40 CFR 403.8(f)2(vii), public notification of violators shall be provided at least annually in the largest daily newspaper published in the town in which the POTW is located. The public shall be notified in this manner of those industrial users which, during the previous 12 months, were significantly violating applicable pretreatment standards or other requirements as determined by the town. For the purposes of this subsection, a significant violation would be a violation which:

- (1) Remains uncorrected 45 days after notifications of noncompliance;
- (2) Is part of a pattern of noncompliance over a 12-month period;
- (3) Involves a failure to accurately report noncompliance; or
- (4) Constitutes a hazard to public health or the continued operation of the POTW.

The newspaper advertisement shall summarize actions taken by the control authorities during the same 12 months.

(Ord. of 4-4-89, § 1003.3)

**Sec. 38-104. Action following nonindustrial violation.**

Any nonindustrial user found violating any section of this article shall be served by the town with written notice stating the nature of the violation and providing a reasonable time limit for the satisfactory correction thereof. The offender shall, within the period of time stated in the notice, permanently cease all violations. Failure to comply with the terms of the notice may result in discontinuance of service by the town and the assessment of fines in accordance with section 38-103.

(Ord. of 4-4-89, § 1003.4)

**Sec. 38-105. Penalties for nonindustrial violation.**

(a) Any person who shall continue any violation beyond the time limit provided for in section 38-104 shall be guilty of a misdemeanor. Each day in which any violation continues shall be deemed a separate offense.

(b) Any person violating any of the provisions of this article shall be liable to the town for any expenses, loss or damage occasioned the town because of such violation, together with any fines assessed.

(Ord. of 4-4-89, § 1003.5)



Chapters 39-41

**RESERVED**

## Chapter 42

### ZONING \*

#### Article I. In General

- Sec. 42-1. Title.
- Sec. 42-2. Definitions.
- Sec. 42-3. Purpose.
- Sec. 42-4. Authority.
- Sec. 42-5. Interpretation, purpose and conflict.
- Sec. 42-6. Jurisdiction.
- Sec. 42-7. Farm exemption.
- Sec. 42-8. Uses.
- Sec. 42-9. One main building per lot.
- Sec. 42-10. Minimum yards.
- Sec. 42-11. Minimum regulations.
- Sec. 42-12. Effect of chapter on outstanding building permits.
- Secs. 42-13-42-40. Reserved.

#### Article II. Administration and Enforcement

- Sec. 42-41. Zoning enforcement officer.
- Sec. 42-42. Building permit required.
- Sec. 42-43. Application for building permit.
- Sec. 42-44. Building permit fees.
- Sec. 42-45. Certificate of occupancy required.
- Sec. 42-46. Penalty for violation.
- Secs. 42-47-42-80. Reserved.

#### Article III. Districts

##### Division 1. Generally

- Sec. 42-81. Established.
- Sec. 42-82. Locations and boundaries.
- Sec. 42-83. Rules governing boundaries.
- Sec. 42-84. Scope of article.
- Sec. 42-85. Descriptions.
- Sec. 42-86. Adult establishments.
- Secs. 42-87-42-120. Reserved.

##### Division 2. Watershed Overlay Districts

- Sec. 42-121. General provisions applicable to both districts.
- Sec. 42-122. Fullers Creek Lake watershed critical area (FCLWS-CA).

**\*Cross references**-Administration, ch. 2; floods, ch. 14; streets and sidewalks, ch. 30; utilities, ch. 38.

**State law reference**-Municipal authority to zone, G.S. 160A-381.

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Sec. 42-123. Fullers Creek Lake watershed balance of watershed (FCLWS-BW). Sec. 42-124. Exceeding basic density/built-upon limitations; permit to exceed. Secs. 42-125-42-160. Reserved.

### Division 3. Permitted Uses

Sec. 42-161. Table of permitted uses.  
Sec. 42-162. Notes to table of permitted uses.  
Secs. 42-163-42-199. Reserved.

### Division 4. Special Uses

Sec. 42-200. Objectives and purposes.  
Sec. 42-201. Special use permits granted by town council on recommendation of planning board.  
Sec. 42-202. Regulations for special use permits.  
Secs. 42-203-42-235. Reserved.

### Division 5. Area, Yard and Height Requirements

Sec. 42-236. Table of area, yard, and height requirements (see notes in section 42-237).  
Sec. 42-237. Notes to table of area, yard and height requirements in section 42-236.  
Sec. 42-238. Note 1, height limitations.  
Sec. 42-239. Note 2, visibility at intersections.  
Sec. 42-240. Note 3, townhouses, condominiums.  
Secs. 42-241-42-275. Reserved.

## **Article IV. Signs**

Sec. 42-276. Definitions.  
Sec. 42-277. Purpose and scope.  
Sec. 42-278. Sign compliance.  
Sec. 42-279. Signs exempted.  
Sec. 42-280. Temporary signs.  
Sec. 42-281. On premise signs.  
Sec. 42-282. Home occupations.  
Sec. 42-283. Subdivision and multi-family development entrance signs.  
Sec. 42-284. Industrial park entrance signs.  
Sec. 42-285. Off-premise advertising signs.  
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## **Article V. Off-Street Parking and Loading**

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### **Article VI. Nonconforming Uses**

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Sec. 42-456. Appeals from decisions of board.

**ARTICLE I. IN GENERAL****Sec. 42-1. Title.**

This chapter shall be known as the Zoning Ordinance of the Town of Yanceyville, North Carolina.

(Ord. of 8-27-87, art. I, § 1)

**Sec. 42-2. Definitions.**

(a) *Generally.* Except where specifically defined in this section, all words used in this chapter shall carry their customary dictionary meanings. The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Accessory building* means a detached subordinate structure operated and maintained under the same ownership and located on the same lot as the main building. No such building may be inhabited or used by other than the owners, lessees or tenants of the premises or their employees.

*Accessory use* means a use incidental to and customarily associated with the use by right and located on the same zone lot with the use by right and operated and maintained under the same ownership with the operation of the use by right.

*Alley* means a public or private roadway which affords only a secondary means of access to abutting property.

*Alter* means to make any structural changes in the supporting or loadbearing members of a building, such as bearing walls, columns, beams, girders, floor joists.

*Apartment house:* See *Dwelling, multiple-family.*

*Assembly* means a joining together of completely fabricated parts to create a finished product.

*Board of adjustment* means a semijudicial body, appointed by the town council, that is given certain powers under this chapter.

*Buffer strip* means an approved wall, fence or planted strip at least five feet in width, composed of deciduous or evergreen trees or a mixture of each, spaced not more than ten feet apart, and not less than one row of dense shrubs, spaced not more than five feet apart.

*Building* means any structure enclosed and isolated by exterior walls, constructed or used for residence, business, industry or other public or private purposes or accessory thereto, and including tents, lunch wagons, dining cars, trailers, and similar structures where stationary or movable. The term "building" includes the word "structure."

*Building, height of* means the vertical distance measured from the grade to the highest point of the coping of a flat roof; to the deck line of a mansard roof; or to the mean height level between the eaves and ridge of a gable, hip or gambrel roof.

*Building line* means a line establishing the minimum allowable distance between the nearest portion of any building, excluding the outermost three feet of any uncovered porches, steps, gutters, and similar fixtures, and the right-of-way line of any street when measured perpendicular thereto.

*Chapter* means this chapter, including any amendments. Whenever the effective date of the ordinance from which this chapter derives is referred to, the reference includes the effective date of any amendment to it.

*Condominium development* means a development of one or more structures containing two or more units intended for owner occupancy, where the land beneath each unit and all common areas, as defined in the North Carolina Unit Ownership Act, are owned proportionately by each unit owner in the development. Units and the land on which they are built do not meet conventional lot requirements for street frontage and yard sizes, and walls between units are constructed in accordance with state building code requirements. All such projects shall conform to the density requirements of the district in which the development is located and shall be approved in accordance with division 4 of article III of this chapter.

*Detached building* means a building having no party or common wall with another building except an accessory building.

*District* means any section of the town in which zoning regulations are uniform.

*Dwelling* means any building, or portion thereof, which is designed for living and sleeping purposes.

*Dwelling, multiple-family* means a building arranged or designed to be occupied by three or more families living independently of each other.

*Dwelling, single-family* means a building arranged or designed to be occupied by one family, the structure having only one dwelling unit.

*Dwelling, two-family* means a building arranged or designed to be occupied by two families living independently of each other, the structure having only two dwelling units.

*Dwelling unit* means a dwelling or that portion of a multiple dwelling used or designed as a residence for one family. In nursing homes, homes for the aged, convalescent homes and other such multiunit facilities, two resident persons shall be equivalent of one dwelling unit.

*Erect* means build, construct, erect, rebuild, reconstruct or reerect, as such terms are commonly defined.

*Fabrication* means manufacturing, excluding the refining or other initial processing of basic raw materials such as metal ones, lumber or rubber. Fabrication relates to stamping, cutting, or otherwise shaping the processed materials into useful objects.

*Family care home* means a home with support and supervisory personnel that provides room and board, personal care and habitation services in a family environment for not more than six resident handicapped persons.

*Fine arts and crafts* means individual art pieces not mass-produced, consisting of one or more of the following: paintings, drawings, etchings, sculptures, ceramics, inlays, needlework, knitting, weaving, and craftwork, leather, wood, metal or glass.

*Flea market* means buildings or open areas in which sales areas or stalls are set aside or rented and which are intended for use by one or more individuals or by educational, religious or charitable organizations to sell a variety of articles such as those that are either homemade, homegrown, handcrafted, old, obsolete or antique.

*Frontage* means all property abutting on one side of a street measured along the street line.

*Garage, private* means a building or space used as an accessory to or a part of the main building permitted in any residence district, and providing for the storage of motor vehicles and in which no business, occupation or service for profit is in any way conducted.

*Garage, public* means any building or premises, except those described as a private or storage garage, used for the storage or care of motor vehicles for the public or where any such vehicles are equipped for operation, repaired or kept for remuneration, hire or sale.

*Garage, storage* means any building or premises, other than a private or public garage, used exclusively for the parking or storage of motor vehicles.

*Home occupation* means any use conducted for gain within a dwelling and carried on by the occupants thereof, which use is clearly incidental and secondary to the use of the dwelling for residential purposes and does not change the character thereof, and in connection with which there is no display; only one person not a resident on the premises shall be employed specifically in connection with the activity; no equipment shall be installed or used except such as is normally used for domestic or professional purposes; and not over 25 percent of the total floor space or 400 square feet of any structure, whichever is less, shall be used for home occupations.

*Home for the aged* means a boardinghome with more than six beds meeting all of the requirements of the state for the boarding and care of persons who are not critically ill and who do not need regular professional medical attention.

*Hotel* means a building used as an abiding place of more than fourteen persons who for compensation are lodged with or without meals and in which no provision is made for cooking in any individual room or suite.

*Junkyard* means the use of more than 600 square feet of any lot or tract for the outdoor storage and sale of wastepaper, rags, scrap, metal or other junk, and including storage of motor vehicles and dismantling of such vehicles or machinery.

*Lot* means a parcel of land occupied or to be occupied by a main building or group of main buildings and accessory buildings, together with such yards, open spaces, lot width and lot area as are required by this chapter, and having not less than the minimum required frontage upon a street, either shown on a plat of record or considered as a unit of property and described by metes and bounds. The term "lot" includes the term "plot" or "parcel."

*Lot, corner* means a lot which occupies the interior angle at the intersection of two street lines which make an angle of more than 45 degrees and less than 135 degrees with each other. The street line forming the least frontage shall be deemed the front of the lot, except where the two street lines are equal, in which case the owner shall be required to specify which is the front when requesting a zoning permit.

*Lot, depth of* means the average horizontal distance between front and rear lot lines. *Lot*

*line, rear* means:

- (1) If the lot has one front line, the boundary opposite that front line shall be the rear line;
- (2) If the lot has two front lines, the boundary opposite the shorter of the two front lines shall be the rear line, provided that if both front lines are of equal length, the rear line shall be fixed by the town manager, subject to review by the board of adjustment, on the basis of orientation of existing structures; and
- (3) If the lot has three or more front lines, there shall be no rear line.

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

Where the owner of a lot of official record in any residential .district at the time of the adoption of the amendment to the ordinance from which this section derives (September 30, 1993) or his successor in title thereto does not own sufficient contiguous land to enable him to conform to the minimum lot size requirements of this chapter, such a lot may be used as a residential building site, provided that a variance is obtained from the board of adjustment. Notwithstanding the foregoing, whenever two or more adjoining vacant lots of record are in single ownership at any time after adoption of the amendment to the ordinance from which this section derives (September 30, 1993) and such lots individually have less area or width than the minimum requirements of the district in which such lots are located, such lots shall be considered as a single lot of several lots which meet the minimum requirements of thins chapter for the district in which such lots are located. However, nothing in this section shall require the combining of lots of record to meet the additional requirements of the watershed overlay districts.

*Lot, width of* means the average horizontal distance between side lot lines.

*Manufactured home (also known as mobile home)* means a residential dwelling unit, designed for transportation after fabrication on its own wheels or on flatbeds or other trailers and arriving at the site where it is to be occupied as a dwelling unit complete and ready for occupancy except for minor unpacking and assembly operations. Travel trailers and campers shall not be considered mobile homes.



*Manufactured home, class A* means a manufactured home constructed after July 1, 1976, that meets or exceeds the construction standards promulgated by the U.S. Department of Housing and Urban Development that were in effect at the time of construction and that satisfies the following additional criteria:

- (1) The manufactured home has a length not exceeding four times its width (e.g., a doublewide unit);
- (2) The pitch of the manufactured home's roof has a minimum vertical rise of 2.2 feet for each 12 feet of horizontal run and the roof is finished with shingles;
- (3) The exterior siding consists predominately of vinyl or aluminum horizontal lap siding, wood or hardboard;
- (4) A continuous, permanent masonry curtain wall or foundation, unpierced except for ventilation and access, is installed under the manufactured home.

*Manufactured home, class B* means a manufactured home constructed after July 1, 1976, that meets or exceeds the standards promulgated by the U.S. Department of Housing and Urban Development that were in effect at the time of construction, but which does not meet the definition of a class A manufactured home.

*Manufactured home, class C* means a manufactured home that does not meet the definition of either a class A or a class B manufactured home.

*Map or zoning map* means the official zoning map of the town.

*Mobile home park* means land used or intended to be used, leased or rented for occupancy by three or more mobile homes, anchored in place by a foundation or other stationary support, to be used for living purposes and accompanied by automobile parking spaces and incidental utility structures and facilities required and provided in connection therewith. This definition shall not include trailer sales lots on which the unoccupied trailers are parked for purposes of inspection and sale.

*Motels or motor lodges* means a building or a group of buildings containing sleeping rooms, designed for or used temporarily by automobile transients, with garage or parking space conveniently located to each unit.

*Nonconforming lot* means a lot existing at the effective date of the ordinance from which this chapter derives or any amendment to it, and not created for the purpose of evading the restrictions of this chapter, that cannot meet the minimum area or lot width requirements of the district in which the lot is located.

*Nonconforming project* means any structure, development or undertaking that is incomplete at the effective date of the ordinance from which this chapter derives and would be inconsistent with any regulations applicable to the district in which it is located if completed as proposed or planned.

*Nonconforming situation* means a situation that occurs when, on the effective date of the ordinance from which this chapter derives or any amendment to it, an existing lot or structure

or use of an existing lot or structure does not conform to one or more of the regulations applicable to the district in which the lot or structure is located. Among other possibilities, a nonconforming situation may arise because a lot does not meet minimum acreage requirements, because structures do not satisfy maximum height limitations, because the relationship between existing buildings and the land (in such matters as density and setback requirements) is not in conformity with this chapter or because land or buildings are used for purposes made unlawful by this chapter.

*Nonconforming use* means a nonconforming situation that occurs when property is used for a purpose or in a manner made unlawful by the use regulations applicable to the district in which the property is located (for example, a commercial office building in a residential district may be a nonconforming use). The term also refers to the activity that constitutes the use made of the property (for example, all the activity associated with running a bakery in a residential zoned area is a nonconforming use).

*Nonconformity, dimensional* means a nonconforming situation that occurs when the height or size of a structure or the relationship between an existing building and other buildings or lot lines does not conform to the regulations applicable to the district in which the property is located.

*Open storage* means unroofed storage areas, whether fenced or not.

*Parking space* means the storage space for one automobile of not less space than prescribed by this chapter, plus the necessary access space. It shall always be located outside the dedicated street right-of-way.

*Planned unit development (PUD)* means a development which shall consist of a group of buildings on a single lot or tract or structures on a site where the developer may reduce the size of individual lots. A PUD must be in accordance with section 42-202.

*Planning board* means a board appointed by the town council to study the city and its environs, to recommend plans and policies for the future and to advise the town council in matters pertaining to planning and zoning.

*Preschool* means a facility for the care and education of children of preschool age, including kindergartens and day care centers.

*Processing* means any operation changing the nature of materials, such as chemical composition or physical qualities. This definition does not include operations described as fabrication.

*Retail trade* means businesses which sell goods that are not for resale to the public and which are open on a regular basis for consumer shopping. At least 40 percent of the floor space of a retail business must be open to the public and devoted to the sale and display of goods on the premises.

*Roominghouse* means a building or portion thereof which contains guestrooms which are designed or intended to be used, let or hired out for occupancy by or which are occupied by four or more but not exceeding nine individuals for compensation, whether the compensation is paid directly or indirectly.

*Service station* means any building or land used for the dispensing, selling or offering for sale at retail of any automobile fuels, lubricants or tires, except that indoor car washing, minor motor adjustment and flat tire repair are only performed incidental to the conduct of the service station.

*Shall* is always mandatory.

*Sign* means any words, lettering, parts of letters, pictures, figures, numerals, phrases, sentences, emblems, devices, design, trade names or trademarks by which anything is made known, such as the designation of an individual, a firm, an association, a profession, a business, a commodity or product, which are visible from any public way and used to attract attention. Specific types of signs are defined as follows::

- (1) *Freestanding sign* means a sign attached to, erected on or supported by a structure whose primary function is to support a sign and which is not itself an integral part of a building or other structure and including signs attached to or painted on a motor vehicle if such motor vehicle is located on a site in such a way as to serve as a sign, as defined in the definition of "sign."
- (2) *Projecting sign* means a sign attached to and supported by a building and extending beyond the building to which it is attached at a right angle.
- (3) *Wall sign* means a sign attached to or painted on a wall of a building, with the exposed display surface of the sign in a plane parallel to the plane of the wall to which it is attached or painted, and including signs affixed to or otherwise displayed on or through a facade window.

*Special use* means a use permitted in a zone district only after recommendation by the planning board and specific findings by the town council.

*Story* means that portion of a building, other than the basement, included between the surface of any floor and the surface floor next above it or, if there is no floor above it, the space between the floor and the ceiling next above it.

*Story, half* means a space under a sloping roof, which has the line of intersection of roof decking and wall face not more than three feet above the top floor level and in which not more than two-thirds of the floor area is finished off for use.

*Street* means a public thoroughfare which affords the principal means access to abutting property, including avenue, place, way, drive, land, boulevard, highway, road and any other thoroughfare except an alley.

*Street line* means the dividing line between a street or road right-of-way and the contiguous property.

*Structure* means anything constructed or erected, the use of which requires permanent location on the ground or attachment to something having a permanent location on the ground, including signs.

*Tourist home* means a dwelling where lodging only is provided for compensation for not exceeding 14 persons and which is open to transients.

*Townhouse development* means a development of one or more structures containing a total of two or more units intended for owner occupancy, where ownership of the land beneath each unit runs with that unit, where units and the individually owned lands on which they rest do not meet conventional lot requirements for street frontage and yard sizes, and where walls between units are constructed in accordance with state building code requirements. All such projects shall conform to the density requirements of the district in which the development is located and shall be approved in accordance with division 4 of article III of this chapter.

*Use* means the purpose for which land or structures thereon is designed, arranged or intended to be occupied or used or for which it is occupied, maintained, rented or leased.

*Use, accessory: See Accessory use.*

*Use by right* means a use which is posted as a use by right in any given zone district in this chapter.

*Use, special: See Special use.*

*Used or occupied*, as applied to any land or building, is construed to include the terms "intended, arranged or designed to be used or occupied."

*Variance* means a modification or alternation of zoning requirements. This can be done only by the board of adjustment after specific findings of fact. See article VIII of this chapter.

*Warehouse* means a building or compartment in a building used and appropriated by the occupant for the deposit and safekeeping or selling of his own goods at wholesale, or for the purpose of storing the goods of others placed there in the regular course of commercial dealing and trade, to be again removed or reshipped.

*Warehousing* means the depositing or securing of goods, wares and merchandise in a warehouse.

*Wholesale* means sale for resale, not for direct consumption.

*Yard* means an open space on the same lot with a principal building unoccupied and unobstructed by any structure from the surface of the ground upward except for drives, sidewalks, lampposts, entrance steps, retaining walls, fences, landscaping and as otherwise provided in this chapter.

*Yard, front* means an open space on the same lot with a building, between the front line of the building, exclusive of steps, and the front property or street right-of-way line and extending the full width of the lot.

*Yard, rear* means an open space between the rear line of the principal building, exclusive of steps, and the rear line of the lot and extending the full width of the lot; may be used for accessory building.

*Yard, side* means an open, unoccupied space on the same lot with building between the side line of the building, exclusive of steps, and the side line of the lot and extending from the front yard line to the rear yard line.

*Zoning enforcement officer* means the official charged with the enforcement of this chapter and who is the building inspector for the town.

(b) *Supplemental special watershed overlay district definitions.* The following supplemental special definitions apply to the watershed overlay district regulations:

*Balance of watershed (BW)* means the remainder of a watershed outside the critical area.

*Best management practices (BMP)* means a structural or nonstructural management-based practice used singularly or in combination to reduce nonpoint source inputs to receiving waters in order to achieve water quality protection goals.

*Buffer* means an area of natural or planted vegetation through which stormwater runoff flows in a diffuse manner so that the runoff does not become channelized and which provides for infiltration of the runoff and filtering of pollutants. The buffer is measured landward from the normal pool elevation of impounded structures and from the bank of each side of streams or rivers.

*Built-upon area* includes that portion of a development project that is covered by impervious or partially impervious cover including buildings, pavement, gravel roads, drives and parking areas, recreation facilities (e.g., tennis courts), etc. (Note: Wooden slatted decks and the water area of a swimming pool are considered pervious.)

*Critical area* means the area adjacent to a water supply intake or reservoir where risk associated with pollution is greater than from the remaining portions of the watershed. The critical area is defined as extending either one-half mile from the normal pool elevation of the reservoir in which the intake is located or to the ridgeline of the watershed, whichever comes first; or one-half mile upstream from the intake located directly in the stream or river (run-of-the-river); or the ridgeline of the watershed, whichever comes first. Local governments may extend the critical area as needed. Major landmarks such as highways or property lines may be used to delineate the outer boundary of the critical area if these landmarks are immediately adjacent to the appropriate outer boundary of one-half mile.

*Development* means any land disturbing activity which adds to or changes the amount of impervious or partially impervious cover on a land area or which otherwise decreases the infiltration of precipitation into the soil.

( Section Missing: CD42:14 –CD42:19)

(c) The official zoning map and any amendments shall be identified by the signature of the town clerk and shall bear the seal of the town, under the following words: "This is to certify that this is the Official Zoning Map referred to in the Zoning Ordinance of the Town of Yanceyville, North Carolina," together with the date of the adoption of the ordinance from which this chapter derives.

(Ord. of 8-27-87, art. IV, § 2)

**Sec. 42-83. Rules governing boundaries.**

When uncertainty exists with respect to the boundaries of districts as shown on the official zoning map, the following rules shall apply:

- (1) District boundary lines are intended to be along or parallel to property lines or lot lines of a platted addition and to the centerlines of streets, alleys, railroads, easements, other rights-of-way and creeks, streams or other water channels.
- (2) In the absence of specified distances on the map, dimensions or distances shall be determined by the use of the scale shown on the official zoning map.
- (3) The board of adjustment shall interpret the intent of the map as to the location of district boundaries upon appeal from decision of the zoning officer.
- (4) Where the district boundary of the FCLWS-CA district is indicated as being a one-half mile measured distance, such boundary shall be one-half mile measured from the normal pool elevation of Fullers Creek Lake. The normal pool elevation is 463.4 feet above mean sea level. In addition, in the Fullers Creek Lake watershed, the zoning enforcement officer shall adjust the exterior boundary of the watershed when he finds, based upon topographic evidence, that all or part of a piece of property actually lies outside the drainage area of the watershed. In performing this function, the zoning enforcement officer may require the owner to produce such information as the officer may deem necessary to make such finding.

(Ord. of 8-27-87, art. IV, § 3; Ord. of 9-30-93, art. IV, § 3.4)

**Sec. 42-84. Scope of article.**

Regulations for the various classes of zoning districts shall be as set forth in this article. (Ord. of 8-27-87, art. V)

**Sec. 42-85. Descriptions.**

(a) *R-A residential agricultural district.* This district is defined as low-density residential areas of single-family dwellings, some agricultural uses and open areas where low-density residential development will likely occur. This district is generally found in outlying areas not served by sewer service. Requests for proposed development will be adequately provided with approved water and sewer service.





(b) *R-12 residential suburban district.* This district is defined as low-density single-family areas plus open areas where similar development will likely occur. Water and sewer systems must be provided and approved by appropriate authorities.

(c) *RR-8 restricted residential (medium density) district.* This district is defined as medium-density single-family areas with water and sewer, plus open areas where similar development will likely occur.

(d) *R-8 residential medium density district.* This district is defined as medium-density areas for mixed residential uses, primarily single-family and multifamily developments with water and sewer, as well as certain classes of manufactured housing on individual lots.

(e) *R-MH mobile home park district.* This district is a planned district for the location of mobile home parks as defined and described in division 4 of article III of this chapter. Other residential uses including single and multifamily are permitted. The regulations of this district are designed to encourage planned development and to discourage over-concentration and congestion.

(f) *OI office and institutional district.* This district is established primarily for office and institutional uses.

(g) *B-1 central business district.* This district is defined as the centrally located commercial, office and service area of the community. The regulations of this district are designed to encourage the continued use of land for trade and business, professional and financial services and to permit a concentrated development of permitted uses, while discouraging over-intensive development and congestion.

(h) *H-B highway business district.* This district is defined as certain areas along major highways where commercial and service establishments are located to serve industrial areas, residents of the community and travelers. The variety of services and businesses in this district is greater than in the business, office and institutional district.

(i) *M-1 restricted manufacturing district.* This district is defined as certain areas more suited for industrial use than residential use, but situated where residential development or prospective development is in close proximity on one or more sides of the district. The uses which are permitted in this district are those characterized by low traffic density, low land coverage, buffers and landscaping and absence of objectionable external effects. Landscaping in keeping with residential area is encouraged.

(j) *M-2 manufacturing district.* This district is defined as certain lands so situated as to be suitable for industrial development, usually along railroad sidings or major thoroughfares, but where certain operations could adversely affect nearby properties. The purpose of this district is to permit the normal operations of almost all industries except those that would be detrimental to adjoining properties. Selected business uses are also appropriate in this district.

(k) *Watershed overlay districts.* The watershed overlay districts are established to provide protection of the Fullers Creek Lake water supply consistent with the WS-II critical area and balance of watershed management rules as adopted by the state environmental management commission.

(Ord. of 8-27-87, art. V, § 1; Ord. of 9-30-93, art. V, § 1.10)

**Sec. 42-86. Adult establishments.**

(a) *Location requirements.* No adult establishment shall be located within 500 feet of any zoning district boundary line of any office and institutional, restricted residential, residential and agricultural, and restricted manufacturing districts; and/or within 1,000 feet of a property line of any school, park, church, or similar place of religious service; and/or within one-half mile of any other adult establishment.

(b) *Use.* No adult establishment shall be issued a zoning permit until all town license requirements, set forth in the this Code, have been met. Further, the establishment must comply with all requirements set forth in G.S. art. 26A, § 14-202.11 as amended.

(c) *Enclosed building.* The adult establishment must be conducted within an enclosed building so that viewing, display, or sound from inside the building cannot be experienced outside the walls of the building.

(d) *Yard requirements.* Any building containing an adult establishment must be at least 50 feet from all property lines.

(e) *Screening.* All adult establishments located adjacent to residential uses, must be screened along all common property lines by the screening devise set forth in this Code.

(f) *Signage.* Signs shall comply with all requirements set forth in this Code. Further, signs shall not contain materials, words, objects, images or displays that suggest or relate to specified anatomical areas and/or specified sexual activities as defined by G.S. § 14-202.10, or contain display that has been determined by community standards to be harmful to minors as defined by G.S. §§ 14-190.13-15.

(Ord. No. 5-99, 9-7-99)

**Secs. 42-87-42-120. Reserved.**

DIVISION 2. WATERSHED OVERLAY DISTRICTS

**Sec. 42-121. General provisions applicable to both districts.**

(a) The construction of new roads and bridges and nonresidential development should minimize built-upon area, divert stormwater away from surface water supply waters as much as possible, and employ best management practices (BMPs) to minimize water quality impacts in the watershed overlay districts. To the extent practicable, the constriction of new roads in

the critical area should be avoided. The department of transportation BMPs as outlined in its document entitled "Best Management Practices for the Protection of Surface Waters" shall be used in all road and bridge construction projects in the watershed overlay districts.

(b) All development activities within watershed overlay districts, in addition to those activities specifically regulated by this chapter, are subject to the standards, usage conditions and other regulations contained in the rules and requirements of the surface water supply protection rules adopted by the state environmental management commission.

(c) A minimum 30-foot vegetative buffer for development activities is required along all perennial waters, including streams, rivers and impoundments, indicated on the most recent versions of the United States Geodetic Survey (USGS) 1:24,000 scale topographic maps, provided that a 100-foot buffer shall be required along Fullers Creek Lake. Nothing in this subsection shall prevent artificial streambank or shoreline stabilization. No new structures and public works projects such as road crossings and greenways may be allowed where no practicable alternative exists. These activities shall minimize built-upon surface area, shall direct runoff away from the surface water and shall maximize the utilization of BMPs.

(d) Existing development, as defined in this chapter, is not subject to the requirements of the overlay provisions. Expansions to structures, other than single-family, classified as existing development must meet the requirements of these provisions; provided, however, the built-upon area of the existing development is not required to be included in the density calculations. In determining expansions to existing development, the maximum permitted additional built-upon area is derived by multiplying the area of the portion of the property that is not built upon by the appropriate percent built-upon limitation for the overlay district in which the property is located.

(e) A preexisting lot created prior to the effective date of the ordinance from which this section derives, regardless of whether or not a vested right has been established, may be developed or redeveloped for single-family residential purposes without being subject to the restrictions of these overlay provisions.

(f) Any existing building or built-upon area not in conformance with the limitations of these provisions that has been damaged or removed for any reason may be repaired and reconstructed, provided:

- (1) Repair or reconstruction is initiated within 12 months and completed within two years of such damage or removal.
- (2) The total amount of space devoted to built-upon area may not be increased.
- (3) The repair or reconstruction is otherwise permitted under this chapter.

(g) Clustering of development, if permitted by the underlying use district, is allowed on a project-by-project basis as follows: overall density of the project meets associated density or stormwater control requirements; built-upon areas are designed and sited to minimize stormwater runoff impact to the receiving waters and minimize concentrated stormwater flow; remainder of tract to remain in vegetated or natural state.

(h) No activity, situation, structure or land use shall be permitted or allowed to operate within a watershed which poses a threat to water quality and the public health, safety and welfare. Such conditions may arise from inadequate on-site sewer systems which utilize ground absorption; inadequate sedimentation and erosion control measures; the improper storage or disposal of junk, trash or other refuse within a buffer area; the absence or improper implementation of a spill containment plan for toxic and hazardous materials; the improper management of stormwater runoff, or any other situation found to pose a threat to water quality.

(i) The zoning enforcement officer may require such information of subdivision, zoning permit and development plan applications, including density/built-upon area calculations, as he may deem necessary to determine compliance with watershed overlay district provisions. Preliminary and final subdivision plat approval and other such plan approvals may be required to note density/built-upon limitations on the plat. For example, plats may be required to show such information as total area of the development, the amount and percent of impervious area in other public improvements, and the amount and percent of impervious area that is allocated to the various lots for future development. Such information shall be displayed in such a manner that the zoning enforcement officer can readily determine compliance with these provisions on a project-by-project basis.

(j) The zoning enforcement officer may, prior to the issuance of any permit in a watershed overlay district, require evidence of a valid sedimentation control permit issued by the state or evidence satisfactory to the officer that no permit is required.

(k) The zoning enforcement officer shall maintain records of the administration of the watershed overlay district regulations and shall submit any modifications of the regulations and map to the division of environmental management, division of environmental health and division of community assistance. The zoning enforcement officer shall also maintain a record of variances issued and shall submit an annual report of each project receiving a variance and the reason for the variance to the division of environmental management.

(Ord. of 9-30-93, art. V, § 1.11)

**Sec. 42-122. Fullers Creek Lake watershed critical area (FCLWS-CA).**

(a) *General development standards.* General development standards for the Fullers Creek Lake watershed critical area (FCLWS-CA) shall be as follows:

- (1) No new sites for land application of sludge/residual or petroleum contaminated soils are allowed.
- (2) No new landfills are allowed.
- (3) Existing nonresidential development shall maintain an inventory of *all* toxic and hazardous materials and *shall* implement a spill/failure containment plan approved by the fire chief or his designated agent.
- (4) No new use which uses, stores or manufactures hazardous or toxic materials on the premises shall be allowed.
- (5) No new use which is first permitted in either the M-1 or M-2 manufacturing district shall be allowed.
- (6) No new underground fuel or chemical storage tanks are allowed.

(b) *Density/built-upon limitations.* Density/built-upon limitations shall be as follows:

- (1) Residential development *shall* not exceed one dwelling unit per two acres or, optionally, six percent built-upon area on a project-by-project basis.
- (2) Nonresidential development *shall* not exceed six percent built-upon area on a project-by-project basis.

(Ord. of 9-30-93, art. V, § 1.12)

**Sec. 42-123. Fullers Creek Lake watershed balance of watershed (FCLWS-BW).**

(a) *General development standards.* General development standards for Fullers Creek Lake watershed balance of watershed (FCLWS-BW) shall be as follows:

- (1) No new discharging landfills are allowed.
- (2) Existing nonresidential development shall maintain an inventory of all toxic and hazardous materials and shall implement a spill/failure containment plan approved by the fire chief or his designated agent.

(b) *Density/built-upon limitations.* Density/built-upon limitations shall be as follows:

- (1) Residential development shall not exceed one dwelling unit per acre or, optionally, 12 percent built-upon area, on a project-by-project basis.
- (2) Nonresidential development shall not exceed 12 percent built-upon area, on a project-by-project basis.
- (3) Notwithstanding the limitations of subsection (b)(2) of this section, five percent (26 acres) of the FCLWS-BW area (520 acres) may be developed with new nonresidential development projects of up to 70 percent built-upon area as special nonresidential intensity allocations (SNIAs). SNIAs shall be allocated and developed in accordance with the following:
  - a. SNIAs shall be allocated by the zoning enforcement officer through the zoning permit/development plan process. The zoning enforcement officer shall maintain a record of the total acreage in the FCLWS-BW area eligible for SNIAs, the acreage that has been allocated and the acreage that has been used as of the latest date. In no case shall allocated acreage exceed the acreage eligible for allocation.
  - b. SNIAs shall be allocated on a first come, first served basis upon the approval and issuance of the appropriate permit, provided that no SNIA shall be allocated to a development unless it is served by or is to be served by town water and sewer service.
  - c. The right to develop a SNIA shall terminate with the loss of the right to develop due to the expiration of a zoning permit, zoning permit with vested right or building permit. In such a case, the allocated acreage or unused allocated acreage shall be returned to the unallocated total acreage eligible for allocation.
  - d. All SNIA development shall be located so that all stormwater from the development drains into an engineered stormwater control facility designed and constructed in accordance with all the requirements of section 42-124.

(Ord. of 9-30-93, art. V, § 1.13)

**Sec. 42-124. Exceeding basic density/built-upon limitations; permit to exceed.**

(a) *Conditions for compliance.* Development in the watershed overlay districts may exceed the basic density/built-upon limitations established in sections 42-122 and 42-123 upon the receipt of a permit to exceed from the zoning enforcement officer. No permit to exceed shall be issued except for development which is in conformance with the conditions and limitations in this section.

(b) *Built-upon limitations.* In no case shall the built-upon area of any development, on a project-by-project basis, exceed the following limitations, and all development shall be calculated on a built-upon area basis only:

- (1) FCLWS-CA, 24 percent built-upon area.

- (2) FCLWS-BW, 30 percent built-upon area.

Nothing in this section, however, shall permit any development to exceed the maximum permissible lot coverage limitations for principal and accessory buildings as set forth in this chapter for use districts.

(c) *Buffer.* A minimum 100-foot vegetative buffer is required for any new development activity which exceeds the basic density/built-upon limitations along all perennial waters indicated on the most recent versions of USGS 1:24,000 scale topographic maps. Nothing in this subsection shall prevent artificial streambank or shoreline stabilization. No new development is allowed in the buffer, except that water-dependent structures and public works projects such as road crossings, utilities and greenways may be allowed where no practicable alternatives exist. These activities shall minimize built-upon surface area, direct runoff away from surface water and maximize the use of BMPs.

(d) *Development location.* All development which exceeds the basic density/built-upon limitations shall be located so that all stormwater from the development drains into an engineered stormwater control facility (referred to in this section as "facility") designed and constructed in conformance with the requirements of this section.

(e) *Facility approval.* No permit to exceed shall be issued for any development until such facility is fully constructed and approved by the zoning enforcement officer or his agent to be capable of functioning in accordance with the requirements of this section. Prior to inspection by the zoning enforcement officer or his agent to determine compliance, the developer shall furnish a certification sealed by an engineer or landscape architect stating that the facility is complete and consistent with the approved plans and specifications.

(f) *Facility requirements.* Engineered stormwater control facilities intended to serve development which exceed the basic density/built-upon limitations of this chapter shall conform with the following:

- (1) *Developer responsible for costs.* The developer or his designee shall be responsible for all costs associated with the construction, operation, maintenance and repair of any such facility.
- (2) *Plans required.* No construction shall begin on any such facility until the construction, operation and maintenance and related plans have been submitted to and approved by the zoning enforcement officer. The maintenance and operation plan shall specify the facility ownership plan and the entity to be responsible for maintenance, operation and repair. The plan shall designate sufficient area and access to perform inspections, maintenance, repairs and reconstruction. The plan shall also provide a cost estimate for routine and non-routine maintenance over a 20-year period. At the time the plans are submitted, the developer shall pay to the town a plan review and construction inspection fee as set by the town council.
- (3) *Design standards.* All stormwater control facilities shall use wet detention ponds as a primary treatment system. Wet detention ponds shall be designed for specific pollutant

removal according to modeling techniques approved by the state division of environmental management. Specific requirements for these systems shall be in accordance with the following design criteria:

- a. Wet detention ponds shall be designed to remove 85 percent of total suspended solids in the permanent pool and store runoff from a one-inch rainfall from the watershed above the permanent pool, assuming maximum permitted development.
- b. The designed runoff storage volume shall be above the permanent pool.
- c. The discharge rate from these systems following the one-inch rainfall design storm shall be such that the runoff does not draw down to the permanent pool level in less than two days and that the pond is drawn down to the permanent pool level within at least five days.
- d. The mean permanent pool depth shall be a minimum of three feet.
- e. The inlet structure shall be designed to minimize turbulence using baffles or other appropriate design features.
- f. Vegetative filters shall be constructed for the overflow and discharge of all stormwater wet detention ponds and shall be at least 30 feet in length. The slope and width of the vegetative filter shall be determined so as to provide a non-erosive velocity of flow through the filter for a ten-year, 24-hour storm with a ten-year, one-hour intensity with a slope of five percent or less. Vegetation in the filter shall be natural vegetation, grasses or artificially planted wetland vegetation appropriate for the site characteristics.
- g. In addition to the vegetative filters required in subsection (f)(3)f of this section, all disturbed land areas outside of the pond shall be provided with a ground cover sufficient to restrain erosion within 30 days after any land disturbance. Upon completion of the stormwater control structure, a permanent ground cover shall be established and maintained as part of the maintenance and operations plan.

*(g) Financial guarantee and maintenance agreement.*

(1) Before the zoning enforcement officer shall approve the completed facility and issue any permit to exceed, the developer or maintaining entity shall furnish the town with a financial guarantee ensuring future maintenance, operation and repair of the facility. The financial guarantee *shall* be in the form of cash, an irrevocable letter of credit or other instrument readily convertible to cash at face value and shall be deposited and made payable to the town. The amount of the deposit *shall* be equal to 40 percent of the total cost of constructing the facility. The initial cost estimates shall be the responsibility of the developer, but the approval of the final cost estimate shall be made by the zoning enforcement officer or his agent. At this time the developer or maintaining entity shall also pay to the town a fee as set by the town council to cover annual inspections by the town for 20 years.



- (2) The initial duration of the financial guarantee shall be for 20 years. At the end of that period the town may, at its own option, require extension of the guarantee for an additional period of up to 20 years based upon future maintenance cost or may take whatever lawful action it may deem appropriate at that time. The financial guarantee may be dissolved at any time in its lifetime by mutual agreement when the need for such guarantee no longer exists.
- (3) The agreement shall pledge the financial guarantee in support of the agreement, but also shall acknowledge that default does not release the entity from liability/responsibility for operation, maintenance and repair/reconstruction. The agreement shall provide that for default by the operating entity, the town, at any time after default, may on its own motion assume actual maintenance and operation of the facility and convert for its use in maintenance and operation any and all funds remaining in the financial guarantee. The agreement shall be recorded with the appropriate county register of deeds by the zoning enforcement officer after it is executed by both parties. No changes to the agreement or its terms including ownership and responsible entity shall be made except upon agreement of the parties.
- (4) As part of the financial guarantee, the developer or maintaining entity shall enter into a binding operation and maintenance agreement in a form acceptable to and enforceable by the town. Such agreement shall require the responsible entity to maintain, repair and, if necessary, reconstruct the facility in accordance with the approved operation and maintenance plan.

(h) *Inspections.* The zoning enforcement officer or his agent shall inspect all facilities at least on an annual basis to determine whether the controls are performing as designed or intended and whether maintenance is being performed as required. Records of inspections shall be maintained on forms approved or supplied by the state division of environmental management. The first annual inspection shall be made during the 12 months following the date of certification.

(i) *Failure to perform.* If the zoning enforcement officer should find that the facility is not performing as designed or intended or that maintenance and repairs are not being made as required or that any action is being done or not done that is in violation of this division or the agreement related to the facility, the zoning enforcement officer shall notify the responsible entity who shall be given a reasonable time to correct the defect. If the responsible entity fails to act, fails to act in a timely manner or otherwise fails to correct the defect, the zoning enforcement officer shall institute appropriate action to obtain compliance, including criminal or civil penalties or both. In addition, the town may declare the responsible entity in default of the agreement and financial guarantee and use part of all of the proceeds of the guarantee to correct the defect and may assume actual operation and maintenance. Default in the agreement does not release the responsible entity from liability/responsibility for the defect or release the entity from the agreement. Likewise, default in the agreement does not prevent the town from taking criminal or civil action or both.

(Ord. of 9-30-93, art. V, § 1.14)

**Secs. 42-125-42-160. Reserved.**

DIVISION 3. PERMITTED USES

**Sec. 42-161. Table of permitted uses.**

In the following table, zoning districts in which particular uses are permitted as a use by right are indicated by "X." Districts in which particular uses are permitted as a use by right with certain conditions are indicated by "X" with a reference to a note to this table in section 42-162. Districts in which particular uses are permitted by a Special Use Permit in accordance with division 4 of this article are indicated by an "S." Districts in which particular uses are prohibited are indicated by a blank.

<i>Permitted Uses</i>	<i>R-A</i>	<i>R-12</i>	<i>RR-8</i>	<i>R-8</i>	<i>R-MH</i>	<i>OI</i>	<i>B-1</i>	<i>H-B</i>	<i>M-1</i>	<i>M-2</i>	<i>Notes</i>
Accessory building, including but not limited to fallout shelters, garages, guesthouses, tool sheds, swimming pools	X	X	X	X	X	X	X	X	X	X	SEE NOTE 1
Agencies, including but not limited to travel, brokers, insurance, loan, employment						X	X	X	X		
Agricultural uses	X										
Antiques and gift retail sales							X	X			
Arts and craft and supply retail sales							X	X			
Assembling of electrical appliances, electronic instruments and devices, radios and phonographs, including electroplating; and the manufacturing of small parts only such as coils, capacitors, transformers, crystal holders and the like								X	X		
Athletic fields, recreational buildings, playgrounds (not for commercial gain); no automobile or motorcycle racing	X	X	X	X				X	X		
Auditoriums, indoor theaters, assembly halls						X	X	X	X		
Automobile accessories sales							X	X	X	X	
Automobile assembling, painting, upholstering, rebuilding, reconditioning, body and fender work, truck repairing or overhauling, tire retreading or recapping, and similar uses										X	
Automobile repair shops including body and fender work conducted within a completely enclosed building								X	X	X	
Automobile sales, new and used								X	X	X	

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<i>Permitted Uses</i>	<i>R-A</i>	<i>R-12</i>	<i>RR-8</i>	<i>R-8</i>	<i>R-MH</i>	<i>OI</i>	<i>B-1</i>	<b><i>H-B</i></b>	<i>M-1</i>	<i>M-2</i>	<i>Notes</i>
Automobile carwash, part of retail service station							X	X	X	X	
Automobile carwash, freestanding							X	X	X	X	
Automobile parking lot serving uses permitted in district in which lot is located	X	X	X	X	X	X	X	X	X		
Automobile parking lot, commercial						X	X	X	X	X	
Automobile service station, not including outside storage of used, wrecked, inoperable or dismantled automobiles							X	X	X	X	
Bakeries selling at retail products produced on premises							X	X	X	X	
Bakeries, bottling works								X	X	X	
Banks, savings and loan and similar financial institutions						X	X	X	X		
Bicycle and motorbike sales and repair								X	X		
Book and stationery stores							X	X			
Broadcasting studios, radio, TV							X	X	X	X	
Boardinghouse,. roominghouse, bed and breakfast	X			X		X	X	X			
Building supply sales								X	X	X	SEE NOTE 1
Churches, synagogues, temples and other places of worship, rectories, Sunday schools	X	X	X	X	X	X	X	X	X		
Cleaners and dyers							X	X	X	X	
Cleaners, self-service							X	X	X	X	
Clothing sales							X				
Clubs and lodges, private, nonprofit	S	S	S	S		X	X	X	X		
Coal, coke, wood lots									X	X	SEE NOTE 1
Community buildings, not for commercial gain	S	S	S	S	S	X	X	X	X	X	
Compartmentalized storage for individual storage of residential and commercial goods								X	X	X	
Condominiums (business)						S	S	S	S	S	
Craft studios (not a home occupation)							X	X			

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<i>Permitted Uses</i>	<i>R-A</i>	<i>R-12</i>	<i>RR-8</i>	<i>R-8</i>	<i>R-MH</i>	<i>OI</i>	<i>B-1</i>	<i>H-B</i>	<i>M-1</i>	<i>M-2</i>	<i>Notes</i>
Day care facilities	S	S	S	S		X	X	X			
Drive-through restaurants, banks, cleaners, etc.								X	X	X	
Dwellings, one-family detached	X	X	X	X	X	X					
Dwellings, two-family (duplex)				X	X						
Dwellings, multifamily				X							
Dwellings, planned unit developments (PUD)	S	S	S	S							
Dwellings, condominiums				S							
Dwellings, townhouses				S							
Electrical shops								X	X	X	
Fairgrounds, carousels, roller coasters, Ferris wheels, super slides and the like								S	S	S	
Family care home	X	X	X	X							
Fences and walls	X	X	X	X	X	X	X	X	X	X	
Foundry casting, lightweight, nonferrous metal not causing noxious fumes, noise or odors									X	X	
Funeral homes						X	X	X			
Furniture, retail sales							X	X			
Garbage landfills, incinerators	S									S	
Golf courses	X	X									
Golf, miniature								X	X		
Hardware and building materials. sales							X	X	X	X	
Home occupations	X	X	X	X	X	X					
Hospitals, homes for aged, nursing homes	S					S		S			
Hotels, motels							X	X			
Junkyards										S	
Laboratories, medical, research							X	X	X		
Laundries							X	X	X		
Laundries, self-service					X		X	X	X		
Locksmiths and gunsmiths							X	X	X	X	
Machine shops									X	X	
Manufactured housing on individual lot											
Class A or B	X			X	X						

<i>Permitted Uses</i>	<i>R-A</i>	<i>R-12</i>	<i>RR-8</i>	<i>R-8</i>	<i>R-MH</i>	<i>OI</i>	<i>B-1</i>	<i>H-B</i>	<i>M-1</i>	<i>M-2</i>	<i>Notes</i>
Class A	X	X	X	X	X	X					
Manufacturing, compounding, assembling or treatment of articles or merchandise from the following previously prepared materials: bone, cellophane, canvas, cloth, cork, feathers, felt, fibre, fur, glass, hair, horn, leather, paper, plastics, precious or semiprecious metals or stones, shell, textiles, wood (excluding planing mills), tars and paint not employing a boiling process										X	
Manufacturing, compounding, processing, packaging or treatment of such products as bakery goods, candy, cosmetics, dairy products, drugs, perfumes, pharmaceuticals, toilet soap, toiletries, and food products									X	X	
Manufacturing and maintenance of electric and neon signs, billboards and commercial advertising structures and light sheet-metal products, including heating and ventilating ducts and equipment, cornices, eaves and the like									X	X	
Manufacturing of pottery and figurines or similar ceramic products, using only previously pulverized clay and kilns fired only by electricity or gas									X	X	
Medical, dental, paramedical, chiropractor offices						X	X	X			
Metal shops involving fabrication of sheet-metal only									X	X	
Mobile home, agricultural implements, heavy machinery sale, repair, rental or storage								X	X	X	
Mobile home parks					S						
Monument works, stone works									X	X	
Motels, hotels							X	X			
Movie studios	X										
Nightclubs							X	X			
Nurseries, greenhouses	X							X	X		
Offices						X	X	X	X	X	

ZONING

§ 42-161

<i>Permitted Uses</i>	<i>R-A</i>	<i>R-12</i>	<i>RR-8</i>	<i>R-8</i>	<i>R-MH</i>	<i>O1</i>	<i>B-1</i>	<b>H-B</b>	<i>M-1</i>	<i>M-2</i>	<i>Notes</i>
Open air sales	X						X	X	X	X	
Photographic developing, processing and finishing							X	X	X	X	
Physical fitness centers							X	X	X		
Planing mills or sawmills										X	
Planned business developments (commercial)						S		S	S	S	
Planned unit developments	S	S	S	S							
Pool halls, game rooms							X	X			
Printing or binding shop								X	X	X	
Prison camp									X		
Public buildings, libraries, fire stations and the like	S	S	S	S	S	S	S	S	S	S	
Public parks, recreational facilities	X	X	X	X	X	X	X	X	X		
Public utility stations, water and sewer facilities, radio and television towers and transmitting or relay stations	S	S	S	S	S	S	S	S	S	S	
Rehabilitation homes, such as halfway houses	S					S					
Repair and servicing of office and household equipment							X	X	X	X	
Restaurants							X	X			
Retail business, not otherwise listed							X	X			
Schools (academic), public or private	S	S	S	S		X		S	S		
Schools (nonacademic) commercial, vocational, public or private, to include music and dance studios						X	X	X	X		
Service establishments, including but not limited to barbershops, small item repair shops, rental shops, custom fabrication, tailor shops, beauty parlors							X	X			
Sheetmetal, roofing shops								X	X	X	
Shoe repair							X	X			
Signs	X	X	X	X	X	X	X	X	X	X	SEE ARTICLE IV

<i>Permitted Uses</i>	<i>R-A</i>	<i>R-12</i>	<i>RR-8</i>	<i>R-8</i>	<i>R-MH</i>	<i>OI</i>	<i>B-1</i>	<b>H-B</b>	<i>M-1</i>	<i>M-2</i>	<i>Notes</i>
Storage, outdoor as a principal use (not including junkyards)								X	X	X	SEE NOTE 1
Stores or shops, retail, but not automobile sales or repair and not otherwise listed							X	X			
Temporary buildings incidental to a construction project	X	X	X	X	X	X	X	X	x	x	
Tobacco processing and storage									X	x	
Townhouses (business)						S	S	S	S		
Transportation terminals, freight								X	x	x	
Transportation terminals, passenger								x	x	X	
Upholstery, paper hanging and decorator shops							X	x	X		
Veterinary establishments						X		x	X	X	
Wholesale establishments								x	x	X	
Warehouses, sales or service								x	x	X	

(Ord. of 8-27-87, art. § V, 2)

**Sec. 42-162. Notes to table of permitted uses.**

(a) *Generally.* The notes in this section provide regulations and conditions for certain uses which are unusual in their nature or complexity or are potentially incompatible with their surroundings unless special protective restrictions are applied. Each use listed shall comply with the regulations of the district in which it is located, with the requirements specified in this section, and conditions for uses requiring special use permits.

(b) *Note 1, outdoor storage as accessory or principal use.* Outdoor storage as an accessory use to a commercial enterprise or as a principal use such as building supply sales, coal sales etc., is permitted only if the storage yard is enclosed by a fence not less than eight feet in height which completely screens from view the stored materials.

(c) *Note 2, home occupations.*

(1) A home occupation is permitted only as an incidental use inside of the home and is limited to the following:

- a. The office or studio of an artist, musician, lawyer, teacher or other like professional person residing on the premises, provided no chattels or goods, wares or merchandise are commercially created, displayed, exchanged or sold.
- b. Workshops.
- c. Customary home occupations such as millinery, dressmaking, laundering or pressing and tailoring, conducted by a person residing on the premises.
- d. Rooming or boarding of not more than two persons.
- e. Single operator beauty shops and barbershops.

(2) Home occupations listed in subsection (c)(1) of this section shall be permitted subject to the following limitations:

- a. No display of products shall be visible from the street.
- b. No mechanical or electronic equipment shall be installed or used except such as is normally used for domestic or professional purposes and which does not cause noises or other interference in radio and television reception.
- c. No accessory buildings or outside storage shall be used in connection with the home occupation.
- c. Not over 25 percent of the total actual floor area or 400 square feet, whichever is less, shall be used for a home occupation.
- d. Only residents of the dwelling may be engaged in the home occupation.
- e. No odors, noise, dust or other objectionable effects shall be emitted to the outside of the building.

(Ord. of 8-27-87, art. V, § 2)

**Secs. 42-163-42-199. Reserved.**



## DIVISION 4. SPECIAL USES

**Sec. 42-200. Objectives and purposes.**

(a) Permitting special uses adds flexibility to this chapter. Subject to high standards of planning and design, certain property uses are allowed in the several districts where these uses would not otherwise be acceptable. By means of controls exercised through the special use permit procedures, property uses which would otherwise be undesirable in certain districts can be developed to minimize any bad effects they might have on surrounding properties.

(b) The uses for which special use permits are required are listed in the chart **in** section 42-202, along with a detailed description of the procedures which must be followed in the issuance of each such permit. Uses specified in this division, shall be permitted only upon the issuance of a special use permit.

(Ord. of 8-27-87, art. V, § 3.1)

**Sec. 42-201. Special use permits granted by town council on recommendation of planning board.**

(a) Special use permits may be granted by the town council for the uses enumerated in the regulations for special uses in section 42-202 and after planning board review and recommendations.

(b) The owners of all the property included in the petition for a special use permit shall submit an application to the town clerk at least three weeks prior to the regular monthly planning board meeting at which it is to be heard. Such application shall include all of the requirements pertaining to it in this section.

The planning board shall forward the application and its recommendations to the town council within 30 days after its review of the application, unless the board requests and is granted an extension by the council. Failure to submit a recommendation within this period without an extension shall be deemed a favorable recommendation.

On receiving the application and the recommendations of the planning board, the town council shall give notice of a public hearing on the application, in the manner as is required for the hearing on an amendment to this chapter. At the public hearing, all interested persons shall be permitted to testify.

The town council may request a meeting with the planning board pertaining to the special use permit requested.

(c) The town council shall consider the application and the recommendations of the planning board and may grant or deny the special use permit requested. The special use permit, if granted, shall include approval of plans as may be required. In granting the permit, the town council shall find:

- (1) The use will not materially endanger the public health or safety if located where proposed and developed according to the plan as submitted and approved;

- (2) The use meets all required conditions and specifications;
- (3) The use will not substantially injure the value of adjoining or abutting property, or the use is a public necessity; and
- (4) The location and character of the use, if developed according to the plan as submitted and approved, will be in harmony with the area in which it is to be located and in general conformity with the plan of development of the city and its environs.

(d) In granting the special use permit, the planning board may recommend and the town council may designate only those conditions, in addition and in connection therewith, as will, in its opinion, ensure that the use in its proposed location will be harmonious with the area in which it is proposed to be located, with the spirit of this chapter and clearly in keeping with the public welfare. All such additional conditions shall be entered in the minutes of the meeting at which the special use permit is granted, on the special use permit certificate itself, and on the approved plans submitted therewith. All specific conditions shall run with the land and shall be binding on the original applicants for the special use permit, their heirs, successors and assigns.

(e) If the planning board recommends the disapproval of the special use permit and if the town council denies the permit, each body shall enter the reason for its action in the minutes of the meeting at which the action is taken. No appeal may be taken to the board of adjustment from the action of the town council in granting or denying a special use permit. Any such action by the town council shall be considered as the equivalent of action on a \*proposed zoning amendment and shall be reviewable only in the same manner as action on a proposed amendment.

(f) In addition to the conditions specifically imposed in this subsection and such further conditions as the town council may deem reasonable and appropriate, special uses shall comply with the height, area and parking regulations for the zone district in which they are located. All special uses other than condominiums, townhouses, planned unit developments and planned building groups, commercial shall comply with yard regulations for the zone district where they are located. No structure in any planned unit development or planned building group shall be located closer than 25 feet to any external property line of the tract on which it is situated or closer to any street right-of-way line than the distance specified as a front yard requirement for the zone district in which it is located.

(g) For failure to comply with the plans approved by the town council or with any other conditions imposed upon the special use permit, the permit shall thereupon immediately become void and of no effect. No building permits for further construction or certificates of occupancy under this special use permit shall be issued, and all completed structures shall be regarded as nonconforming uses subject to this chapter; provided, however, the town council shall not be prevented from thereafter rezoning the property for its most appropriate use.

(h) Where plans are required to be submitted and approved as part of the application for a special use permit, modifications of the original plans may be authorized by the town council after review and recommendation by the planning board.

(Ord. of 8-27-87, art. V, § 3.2)

**Sec. 42-202. Regulations for special use permits.**

(a) *Generally.* Detailed regulations for the special uses subject to this division are set forth in the regulations for special uses and the notes related to those provisions in this section.

(b) *Clubs and lodges, private, nonprofit community buildings, not for commercial gain.*

(1) *Approval.* Approved by town council.

(2) *Special use districts.* R-A, R-12, RR-8, R-8.

(3) *Minimum lot area.* Sufficient to meet setback and dimensional requirements of district where located.

(4) *Parking and loading.* One space for each five members or families or one space for each five seats in principal room.

(5) *Plans required.* Plans required must show the following:

a. *Structures.* Location and approximate size of all existing and proposed structures, playfields and facilities.

b. *Parking and loading.* Proposed off-street parking. See subsection (b)(6)b of this section.

(6) *Other requirements.*

a. No improvements, structures, sidewalks or play areas or equipment *shall* be closer than 50 feet to any *adjoining* property lines. Parking areas may be permitted within 20 feet of an *adjoining* property line if the 20-foot strip is used for *planting* designed to grow at least six feet high.

b. Lights *shall* be located and shielded so as not to adversely affect adjacent property.

(c) *Condominiums, residential and business (unit ownership development).*

(1) *Approval.* Approved by town council.

(2) *Special use districts.* Residential condominiums R-8; business condominiums 01, B-1, H-B, M-1.

(3) *Plans and declarations.* Before a declaration establishing a unit ownership development may be recorded in the office of the county register of deeds as prescribed in the North Carolina Unit Ownership Act, the declaration and plan shall be approved by the town council. No unit shall be conveyed until the declaration and plan have been approved by the town council and recorded in the office of the county register of deeds. In addition, compliance with the following shall be required:

a. The "declaration" shall be a complete legal document prepared strictly in accordance with the North Carolina Unit Ownership Act and shall be submitted in five copies to the *planning* department at least two weeks prior to a regularly scheduled *planning* board meeting, along with a plan drawing described in subsection (c)(3)b of this section.

b. The plan of the proposed development shall be prepared and shall contain the following particulars:

1. The unit designation of each unit and a statement of its location, approximate area, number of rooms and immediate common area to which it has access and any other data necessary for its proper identification.
2. Description of the general common areas and facilities as defined in the North Carolina Unit Ownership Act and the proportionate interest of each unit owner therein.
3. Description of all boundary lines between portions of the structures designed for different ownership.
4. Description of all garages, balconies, patios, etc., which form a part of each unit.
5. Description of any special common areas and facilities, stating what units shall share the common areas and facilities and in what proportion.
6. Statement of the purpose for which the building and each of the units are intended and restricted as to use.
7. Description of signing and parking areas.
8. Description and heights of all fences, walls and hedges.
9. Description and location of solid waste storage facilities.
10. Description of all structures and zoning within 300 feet of the property.

The overall density of the project shall be no greater than that permitted by any applicable zoning requirements.

Because a final plan may not be possible until an engineering survey has been made of the constructed condominium, town council may permit the applicant to build under the special use permit, providing all items other than final engineering survey data of boundary line have been provided by the applicant and approved by the council. No declaration and plan shall be recorded until all final boundary descriptions have been added to the plan and approved by the zoning enforcement officer.

(d) *Planned unit development.* A planned unit development is an area of land under unified control to be developed as a single entity for a number and variety of dwelling units both attached and detached housing, the plan for which may not correspond in lot size, type of dwelling or lot coverage to the regulations of the residential zoning district in which the PUD is located. With permission of the town council, a planned unit development may also include an approved commercial or business use.

- (1) *Special use districts.* R-A, R-12, RR-8, R-8.
- (2) *Minimum area.* Five acres, provided development is consistent with requirements for water and septic tank installation.

(3) *Modifications of dimensional requirements and density.* The yard regulations and height regulations set forth in division 5 of this article may be modified for a planned unit development, provided that, for such development as a whole, excluding driveways and streets but including parks and other permanent open spaces, there shall not be less than the required area per dwelling unit for the district in which such development is located. The development itself shall have a minimum frontage of 80 feet, which shall be used only for driveways, landscaping and screening.

(4) *Site considerations.*

- a. Points of ingress and egress shall consist of a driveway or roadway at least 20 feet in width and *shall* be located a sufficient distance from highway intersections to minimize traffic hazards, inconvenience and congestion.
- b. The number, width and location of curb cuts shall be such as to minimize traffic hazards, inconvenience and congestion.
- c. Parking areas shall have a paved surface, and all parking areas and traffic lanes shall be clearly marked.
- d. Storm and sanitary sewage shall be provided as approved by the planning board.
- e. A greenbelt planting strip, not less than 20 feet in width, shall be planted prior to opening of the housing, along the street side of the property. Such greenbelt shall be planted with evergreens and other trees, at least 11 plants per 100 linear feet planted at random, which eventually will grow to a height not less than 12 feet.
- f. Topographic or other natural features offering screening shall be acceptable in lieu of foliage. The greenbelt at the front of the property shall be located so as to provide reasonable continuity in alignment with the greenbelt of adjacent property.
- g. Adequate screening shall be provided by means of planting or fencing as needed to project adjacent property.

(5) *Homeowners' association.* The developer shall submit a draft of the articles of incorporation for the homeowners' association. The articles of incorporation shall provide that all owners of property within the development share automatic membership rights and assessment obligations for the maintenance of these areas. The automatic membership rights and assessment obligations of all owners of property within the PUD shall be so covered by covenants running with the land and other contractual provisions as to ensure the property maintenance of all commonly owned areas and shall include provisions for liens against the individual properties and legally enforceable personal obligations on the part of the individual property owners within the development. Before grant of a special use permit, the articles of incorporation shall be approved by, the town attorney.

(6) *Required plans.* Plans as may be required shall be submitted showing:

- a. Topography of the site, at contour intervals no greater than five feet.

- b. Dimensions of the property and adjacent lots and streets.
  - c. Location, use and ownership of all buildings, with dimensions and ground area thereof.
  - d. Public and private streets, parking areas with spaces and channelization.
  - e. All pedestrian ways.
  - f. A title, giving the names of the developers, the date, the scale of the plan and the person preparing the plan.
  - g. Proposed landscaping, with property buffers between other uses.
  - h. Storm drainage and sanitary sewers, where applicable.
  - i. Size and location of signs.
  - j. Proposed water system and firefighting facilities such as hydrants or sprinkler connections.
  - k. The location and heights of all fences, walls and hedges.
  - l. Profiles of publicly maintained water and sewer lines
  - m. Profiles, cross sections and slopes of on-site, off-site ditches carrying water runoff.
  - n. Erosion and sedimentation control plan.
  - o. Lighting plan where applicable.
  - p. Location and amount of recreation area.
- (7) *Common areas.* Land not shown as lots or reserved for residential development shall be commonly owned land. Such land shall be designated on the development plan as common area to be held in separate ownership for the use and benefit of residents of the PUD.
- (8) *Parking.* Off-street parking and loading shall be provided in accordance with article V of this chapter.
- (9) *Signs.* Signs on premises shall be regulated as follows:
- a. *Type of sign:* Identification.
  - b. *Permitted number of signs:* One ground sign per entrance to the development.
  - c. *Maximum area of ground sign:* 16 square feet.
  - d. *Permitted illuminations:* Indirect lighting, non-flashing illumination and motionless.
  - e. *Permitted location:* Within the bounds of the property.
- (e) *Planned business development.* Planned business development is an area of land under unified control developed for business, commercial or industrial uses, consisting of one or more principal structures or buildings and accessory structures or buildings on a plot not subdivided into customary streets and lots.
- (1) *Special use districts.* OI, H-B, M-1, M-2.

(2) *Minimum area.* One acre, 250-foot minimum plot width.

(3) *Site considerations.*

a. Such developments shall abut a major highway or a collector street and shall have direct access thereto.

b. Minimum setback of buildings from the street right-of-way shall be 40 feet. This setback shall be measured from the major access street abutting the development. The first ten feet from the right-of-way shall be developed for grass, plants and sidewalks and shall not be used for any purpose except necessary entrances and exits and shall not be used for off-street parking.

c. Points of ingress and egress shall consist of a driveway or roadway at least 20 feet in width and shall be located a sufficient distance from highway intersections to minimize traffic hazards, inconvenience and congestion.

d. The number, width and location of curb cuts shall be such as to minimize traffic hazards, inconvenience and congestion.

e. Parking areas shall have a paved surface, and all parking areas and traffic lanes shall be clearly marked.

f. Required buffers when planned business development adjoins or abuts a residential zone or residential use permitted by this chapter.

g. A greenbelt planting strip, not less than ten feet in width, shall be planted prior to opening of the business along the side of the property abutting or joining a residential district. Such a greenbelt shall be planted at random with evergreens and other trees which eventually will grow to a height not less than ten feet.

(4) *Required plans.* Plans shall be submitted as may be required, showing:

a. Topography of the site, at contour intervals no greater than five feet.

b. Dimensions of the property and adjacent lots and streets.

c. Location and proposed use of all buildings with dimensions and ground area thereof.

d. Streets, traffic circulation and parking areas with spaces.

e. Service areas, off-street loading facilities, service drives and dimensions thereon.

f. All pedestrian ways.

g. A title, giving the names of the developers, the date, the scale of the plan and the person preparing the plan.

h. Proposed landscaping, with property buffers between other uses.

i. Size and location of signs.

j. Proposed water system and firefighting facilities, such as hydrants or sprinkler connections.

k. The location and heights of all fences, walls and hedges.

1. Profiles of publicly maintained water and sewer lines.
- m. Profiles, cross sections and slopes of on-site, off-site ditches carrying water runoff.
- n. Erosion and sedimentation control plan.
- o. Lighting plan, where applicable.

*(f) Townhouses (residential and business).*

- (1) Approval. Approved by town council.
- (2) *Special use districts.* Residential townhouses, R-8; business townhouses, OI, B-1, H-B, M-1.
- (3) *Plats required.* A preliminary plat of a proposed townhouse development and a final plats of the development shall be submitted pursuant to the provisions of the special use permit to the planning board with the following:
  - a. *Location of facilities.* The site plan shall show the location of the buildings, streets, alleys, walks, parking areas, recreation areas and facilities, numbered and dimensioned residential sites, and common areas to be conveyed to an owners' association, the members of which shall be all of the owners of sites within the development.
  - b. *Design standards.* The design standards for planned unit developments shall be applicable to townhouse developments and, in addition, compliance with the following shall be required.
    1. *Sites.* The site plan shall number and show the location and, dimensions of sites within the development. The site shall be that property intended for conveyance to a fee simple owner after the construction thereon of a structure and shall be sufficient in size to contain the structure to be constructed thereon; the site may be of any larger size desired by the developer, provided that in no case shall a. site be located within 20 feet of any public right-of-way.
    2. *Common areas.* All areas on the site plan, other than public streets and sites, shall be shown and designated as common areas, the fee simple title to which shall be conveyed by the developer to the owners' association. Such common areas shall not be subdivided or conveyed by the owners' association.
    3. *Covenants and restrictions.* The developer shall file with the application for preliminary approval a declaration of covenants and restrictions governing the common areas, the owners' association and sites. The restrictions shall contain but not be limited to provisions for the following:
      - i. The owners' association shall be organized and in legal existence prior to the sale of any structures in the development.
      - ii. Membership in the owners' association shall be mandatory for each original purchaser and each successive purchaser of a site.



- iii. The owners' association shall be responsible for the payment of premiums for liability insurance, local taxes, maintenance of facilities located on the common areas, payment of assessments for public and private capital improvements made to or for the benefit of the common areas, maintenance and repair to the exterior of all structures located within the development. It shall be further provided that, upon default, by the owners' association in the payment to the governmental authority entitled thereto of any ad valorem taxes levied against the common areas or assessments for public improvements to the common areas, which default shall continue for a period of six months, each owner of a site in the development shall become personally obligated to pay to the taxing or assessing governmental authority a portion of such taxes or assessments in an amount determined by dividing the total taxes and assessments due to the governmental authority by the total number of sites in the development. If such sum is not paid by the owner within 30 days following receipt of notice of the amount due, such sum shall become a continuing lien on the site of the owner, his heirs, devisees, personal representatives and assigns, and the taxing or assessing governmental authority may: either bring an action at law against the owner personally obligated to pay the sum or may elect to foreclose the lien against the lot of the owner.
- iv. The owners' association shall be empowered to levy assessments against the owners of sites within the development for the payment of expenditures made by the owners' association for the items set forth in subsection (f)(3)b.3a.ii of this section, and any such assessments not paid by the owner against whom such are assessed shall constitute a lien on the site of the owner.
- v. Easements over the common areas for access, ingress and egress from and to public streets and walkways and easements for enjoyment of the common areas, as well as for parking, shall be granted to each owner of a site.
- vi. All common walls between individual residences shall be party walls, and provisions for the maintenance thereof and restoration for destruction or damages shall be established.

4. The overall density of the project shall be no greater than that permitted by any applicable zoning requirement.

(g) *Day care facility (state licensed).*

(1) *Approval.* Approved by town council.

(2) *Special use districts.* R-A, R-12, RR-8, R-8.

(3) *Minimum lot area.* As prescribed by state regulations.

- (4) *Parking and loading.* One space for each regular employee and one additional space for every six children or adult client or fraction thereof.
- (5) *Screening and fencing.* Play space shall be enclosed by a fence at least three feet high.
- (6) *Plans required.* Plans required must show the following:
- a. *Structures.* Location and approximate size of all existing and proposed buildings and structures within the site and on the lots adjacent thereto.
  - b. *Circulation.* Proposed points of access and egress and pattern of internal circulation.
  - c. *Parking and loading.* Layout of parking spaces.
  - d. *Other details.* Location and extent of open play areas.
  - e. *Other requirements.* In residential districts, a preschool shall not be operated between the hours of 7:00 p.m. and 6:00 a.m.
- (7) *Parking.* Off-street parking and loading shall be provided in accordance with article V of this chapter.
- (8) *Signs.* Signs on premises shall be regulated as follows:
- a. *Type of sign permitted:* Identification.
  - b. *Permitted number of signs:* One ground sign per entrance to the development. There shall be no more than one sign attached to and flat against the exterior of each business in the development.
  - c. *Maximum area of ground sign:* 15 square feet.
  - d. *Permitted location:* Within the bounds of the property.
- (h) *Fairgrounds, carousels, roller coasters, Ferris wheels, super slides and the like; garbage landfills, incinerators, junkyards.*
- (1) *Approval.* Approved by town council.
- (2) *Special use districts.*
- a. Fairgrounds, etc., H-B, M-1, M-2.
  - b. Garbage landfills, incinerators, R-A, M-1, M-2. c. Junkyards, M-2.
- (3) *Minimum lot area.* None.
- (4) *Screening and fencing.*
- a. Garbage landfills, incinerators and junkyards shall be entirely surrounded by a fence not less than eight feet high which completely screens the use from view and prevents public access except through a gate. In addition, where such uses abut a residential use, there shall also be a permanently maintained screen not less than eight feet high of dense plant material.

- b. Ferris wheels, carousels, roller coasters, super slides and the like shall be buffered from residential lots and uses by a permanently maintained screen not less than eight feet high of dense plant material.
- (5) *Plans required.* Plans required must show the following:
- a. Internal circulation pattern and provisions for parking.
  - b. Control of noise, dust, traffic, visual impact.
  - c. Signing (size and locations).
  - d. Surrounding land uses within 500 feet of the property.
  - e. Safeguards against contamination of water supply.
- (6) *Other requirements.* In junkyards storage of cars with gas or oil in them shall not be permitted.
- (i) *Hospitals, homes for the aged, nursing homes.*
- (1) *Approval.* Approved by town council.
- (2) *Special use districts.* R-A, 01, H-B.
- (3) *Minimum lot area.* Minimum lot area of district in which located plus 1,000 square feet for each person to be accommodated.
- (4) *Parking and loading.*
- a. *Nursing homes and homes for aged:* One space for each regular employee, plus one space for each four persons to be accommodated.
  - b. *Hospitals:* One space. for each bed space.
- (5) *Plans required.* Plans required must show the following:
- a. *Structures.* Location and approximate size of all existing and proposed buildings and structures within the site and on the lots adjacent thereto.
  - b. *Circulation.* Proposed points of access and egress and pattern of internal circulation.
  - c. *Parking and loading.* Layout of parking spaces.
- (6) *Other requirements.* Must meet all requirements for licensing by the state. Where located in a residential district, there must be ample site area, adequate open space on all sides of the proposed structure and other considerations, including landscaping, to the character of the neighborhood so that its residential nature will be preserved.
- (j) *Public buildings, libraries, fire stations, etc.*
- (1) *Approval.* Approved by town council.
- (2) *Minimum lot area.* Same as district where located.
- (3) *Parking and loading.* Plans shall show layout of parking spaces.
- a. Fire stations and other public buildings: One space for each person on normal shift.

- b. Libraries, museums, art galleries: One space for each 15d square feet of gross floor area.
- (4) *Screening and fencing.* A screen of dense plant material not less than four feet high where any off-street parking abuts a residential lot.
- (5) *Other requirements.*
  - a. Lighting shall be shielded so as to cast no direct light on adjacent property.
  - b. For libraries, museums and art galleries, plans must be presented which show points of access and egress and pattern of internal circulation.
- (k) *Public utilities, including water and sewer facilities.*
  - (1) *Approval.* Approved by town council.
  - (2) *Special use districts.* Any district.
  - (3) *Minimum lot area.*
    - a. One-half acre for public utility station.
    - b. One acre for telephone exchange.
    - c. Three acres for radio and television towers or stations.
    - d. Eight thousand square feet for water and sewer facilities.
  - (4) *Parking and loading.* One space for each two regular employees.
  - (5) *Screening and fencing.* A screen of not less than six feet in height of dense plant material shall be provided where a lot abuts a residential lot. Substations shall be fenced in.
  - (6) *Plans required.* Plans required must show the following:
    - a. *Structures.* Location and approximate size of all existing and proposed structures within the site and all buildings and structures within 500 feet.
    - b. *Circulation.* Proposed points of access and egress.
    - c. *Parking and loading.* Location and arrangement of all proposed off-street parking.
    - d. *Other details.*
      - 1. Proposed provisions for fencing and other protective screening at the lot lines adjacent to abutting residential property.
      - 2. The anticipated service area of the facility to be constructed.
- (l) *Rehabilitation facility.*
  - (1) *Approval.* Approved by town council.
  - (2) *Special use districts.* R-A, R-12, RR-8, 01.
  - (3) *Minimum lot area.* According to zoning district where located.

(4) *Parking and loading.* One space for every five temporary residents or fraction thereof, plus one parking space for each employee on the premises.

(5) *Other requirements.*

a. One sign permitted, not to exceed two square feet in area, which shall be flat mounted against the building or fence.

b. All rehabilitation residences shall be licensed or sponsored by the appropriate state or local agency.

c. The zoning lot on which one rehabilitation residence is proposed shall not be located within 500 feet of a zoning lot containing another such facility.

(m) *Schools, academic.*

(1) *Special use districts.* R-A, R-12, RR-8, R-8, OI, H-B.

(2) *Parking and loading.* See article V of this chapter for academic school parking requirements.

(3) *Plans required.* Plans required must show the following:

a. *Structures.* Location and approximate size of all existing and proposed buildings and structure within the site and on the lots adjacent thereto.

b. *Circulation.* Proposed points of access and egress and pattern of internal circulation.

c. *Parking and loading.* Layout of parking spaces.

d. *Other details.*

1. Location and extent of open recreation or training area.

2. Estimated number of students.

3. Subjects to be taught outside of regular classroom facilities (for example, in laboratories, gyms, etc.).

(n) *Mobile home park.* A mobile home park is a plot which has been planned or improved for three or more mobile homes for dwelling or sleeping purposes.

(1) *Approval.* Approved by town council.

(2) *Special use district.* R-MH.

(3) *Minimum lot size.*

a. For a single-wide mobile home hooked to municipal water and sewer, 5,000 square feet.

b. For a double-wide mobile home hooked to municipal water and sewer systems, 6,000 square feet.

c. For a triple-wide mobile home hooked to municipal water and sewer, 7,000 square feet.

- d. Any and all lot sizes may be increased by the planning board to protect the public health, safety and welfare.
- (4) *Density*. Not to exceed seven units per gross acre.
- (5) *Setbacks and separations*.
- a. From the intersection of the park entrance road and a public street, 50-foot minimum setback.
  - b. From the public street right-of-way, 25-foot minimum setback; 15 feet from the road edge of a private park street.
  - c. Minimum clearance between any mobile home unit and any property line or other piece of property, 15 feet.
  - d. Minimum between any mobile home and a nonresidential use allowed to operate within the park (e.g., convenience shop or Laundromat), 30 feet.
  - e. Minimum separation between units, 30 feet. Units placed at obtuse or right angles will be allowed a minimum 20-foot separation.
- (6) *Buffers*. A greenbelt planting strip shall be planted and maintained by the park operator. It shall be at least ten feet wide composed of shrubs, deciduous or evergreen trees which will grow to a height of five feet or more after the first full growing season and which will grow to at least 12 feet at maturity.
- (7) *Park entrance and streets*.
- a. Mobile home parks containing more than 25 spaces shall have at least two street connectors with a public street.
  - b. All mobile home parks shall be provided with a network of streets, roads or driveways that will allow safe and convenient vehicular access to an improved public street from each mobile home lot, but no individual mobile home within a park may have direct driveway access to an abutting public street.
  - c. The intersection of the public street with the entranceway or private access road to the mobile home park shall be designed to facilitate the free movement of traffic on the public street and to minimize the hazards caused by traffic entering or leaving the park development.
- (8) *Signs*.
- a. Signs shall be erected or curb markings painted to indicate that parking on the entranceway or private access road within 100 feet of its intersection with the public street is prohibited.
  - b. A mobile home park identification sign, which may be double faced, no larger than 16 square feet in area on each side and nonblinking may be placed near each entrance to the park, provided it is located so as not to obstruct the visibility of motorists entering or leaving the park.

(9) *Interior street system.*

a. *Definitions.*

1. A collector street is one which serves as the most probable and convenient access route between any public street with street connectors to the mobile home park and 30 mobile home spaces.
2. All other streets are considered minor streets.

b. *Circulation.* The street system shall provide convenient circulation by means of minor streets and properly located collector streets. Dead-end streets shall be no longer than 1,000 feet, and their closed end shall have a turnaround such as a "T" or "Y" turn on a cul-de-sac with a minimum diameter of 60 feet.

c. *Pavement widths.* In all cases, pavements shall meet the following minimum requirements:

1. Collector streets with parking allowed on both sides, 32 feet.
2. Collector streets without parking allowances, 24 feet.
3. One-way minor streets serving less than 20 lots, with no parking allowed, 14 feet.

d. *Street grades.* Grades of all streets shall be sufficient to ensure adequate surface drainage, but shall not be more than eight percent. Short runs may have a maximum grade of 12 percent, if traffic safety is ensured.

e. *Intersections.* Street intersections shall generally be at right angles. Off-sets at intersections and intersections of more than two streets at one point shall be avoided.

f. *Paving.*

1. Mobile home parks containing more than ten spaces shall have streets which are paved with a hard surface, such as asphalt or concrete. The surface shall be kept free of cracks and holes, its edges suitably protected to prevent raveling and shifting of the base.
2. Streets in mobile home parks containing ten or fewer spaces may be hard-packed crushed gravel, crowned to drain.

(10) *Parking.*

a. *Off-street parking.* A minimum of two off-street parking spaces shall be provided for each mobile home site. Such spaces may be located on the individual lot or grouped to serve two or more mobile home sites. Grouped parking spaces shall be no more than 100 feet from any mobile home unit which they are intended to serve.

b. *Storage space for auxiliary vehicles.* No travel trailer, camper, boat, snowmobile or other auxiliary vehicles or conveyances shall be stored for long periods on the street.

(11) *Maintenance and responsibilities of park management.*

- a. The person to whom a special use permit for a mobile home park is issued shall operate the park in compliance with local ordinances and shall provide adequate supervision to maintain the park, its grounds, facilities and equipment in good repair and in a clean and sanitary condition.
- b. The operator shall notify park occupants of all applicable provisions of local ordinances and inform them of their responsibilities under such ordinances and any regulations thereunder.
- c. The mobile home park operator will check and ascertain that the owner of a mobile home moving into his park has all the required permits and meets the regulations as set forth by the local and state governments before allowing the mobile home unit to be connected for occupancy.
- d. The park operator shall supervise the placement of each mobile home on its stand. This includes ensuring unit stability and supervising the placement of tie-downs and utility connections.
- e. The park operator shall maintain a register containing the names of all occupants and the make and year of each mobile home. Such register shall be available to any authorized person inspecting the park.
- f. On January 1 of each year, the operator of a park renting space for one or more mobile homes shall furnish to the county tax supervisor the name of the owner and a description of each mobile home located in the park.

(12) *Support / foundation of mobile home unit.*

- a. Each mobile home site, whether in a mobile home park or individual lot, shall be provided with a stand which will give a firm base and adequate support. A mobile home unit must be maintained level. Such stand shall have a dimension equal to the width and length of the home and any expansions or extensions thereto.
- b. Installation of any mobile home in the town must comply with all "State of North Carolina Regulations for Mobile Homes," including any amendments thereto, as published by the state department of insurance.

(13) *Fire safety.*

- a. Access to a mobile home for fire protection services shall be such as to permit fire apparatus to approach within 100 feet of each mobile home.
- b. Water supplies for fire department operations shall be as required by the authority having jurisdiction. Where there are no such requirements, water supplies shall be adequate to permit the effective operation of at least two 1½-inch hose streams on any fire in a mobile home or elsewhere in the mobile home park.
- c. Each lot shall be clearly marked by a permanent lot number sign or marker that can be easily identified by emergency personnel.



(14) *Recreation areas.*

- a. In all mobile home parks designed to accommodate 25 or more mobile homes on lots less than 10,000 square feet, there shall be provided one or more developed recreation areas which are easily accessible to all park residents. The size of such recreation areas shall be based on a minimum of 200 square feet per mobile home unit served.
- b. Such space shall be located and of sufficient size so that it can be used for active recreation purposes and shall be stabilized by grass or some other form of ground cover which will prevent dusty or muddy areas.
- c. The 15-foot perimeter setback surrounding the park may be designated as either (i) part of the open space, or (ii) part of the individual lots. This option is to allow adaptation of a mobile home community to a particular site.

(15) *Utilities and lighting.*

- a. Electric lines shall be installed underground
- b. All mobile home parks shall be furnished with adequate lights to illuminate streets, driveways and walkways for the safe movement of vehicles and pedestrians at night.
- c. The park operator may provide a common antenna and make hookups available at each space. The operator may prohibit individual antennas on mobile homes.

(16) *Solid waste management.*

- a. All solid waste shall be stored in durable rust-resistant, nonabsorbent, watertight insect proof and rodent proof containers that are covered with close-fitting lids. Solid waste storage facilities may be placed at individual home sites or grouped to several homes. Waste may be placed at individual home sites or grouped to several homes (bulk containers).
- b. Solid waste shall be collected at least once weekly.

(o) *Tower, communication, radio, TV, microwave or other telecommunication tower.*(1) *General:* The following provisions shall govern the issuance of special use permits:

- a. Minimum lot or leased area mat aside for the use of a tower facility, shall be equal to minimum lot size for district in which it is located and in no case shall be less than 100 percent of the fall zone of the tower and shall include all required buffers and setbacks as required by this subsection.
- b. Special use districts: Residential agricultural (RA), office and institutional (OI), highway business (HB), restricted manufacturing (M-1).
- c. Any information of an engineering nature that the applicant submits, whether civil, mechanical, or electrical shall be certified by a licensed professional engineer.

(2) *Definitions:* As used in this special use ordinance, the following terms shall have the meanings indicated:

- a. *Alternative tower structure* shall mean man-made trees, clock towers, bell steeples, light poles, and similar alternative-design mounting structures that camouflage or conceal the present of antennas or towers.
- b. *Antenna* shall mean any exterior apparatus designed for telephonic, radio, or television communication through the sending and/or receiving of electromagnetic waves.
- c. *FAA* shall mean the Federal Aviation Administration.
- d. *FCC* shall mean the Federal Communications Commission.
- e. *Fall zone* shall mean the radius around the base of the tower wall to the height of the tower.
- f. *Governing authority* shall mean the approving authority for the tower, the town council
- g. *Preexisting towers and antennas* shall have the meaning set forth in section (3)d. of this subsection.
- h. *Height* shall mean, when referring to a tower or other structure, the distance measured from ground level to the highest point on the tower or other structure, even if said highest point is an antenna.
- i. *Tower* shall mean any structure that is designed and constructed primarily for the purpose of supporting one or more antennas, including self-supporting lattice towers, guy towers, or monopole towers. The term includes radio and television transmission towers, microwave towers, common-carrier towers, cellular telephone towers, alternative tower structures, and the like.

(3) *Applicability:*

- a. District height limitation. The requirements set forth in this subsection shall govern the location of towers that exceed, and antennas that are installed at a height in excess of the height limitations specified for each zoning district. The height limitations applicable to buildings and structures shall not apply to towers and antennas.
- b. Public property antennas or towers located on property owned, leased, or otherwise controlled by the town shall be exempt from the requirements of this subsection, provided a license or lease authorizing such antenna or tower has been approved by the town council after a public hearing and adjoining owners notification.
- c. Amateur radio, receive-only antennas. This subsection shall not govern any tower, or the installation of any antenna, that complies with the height require-

ment for the district in which it is located and is owned and operated by a federally-licensed amateur radio station operator or is used exclusively for receive-only antennas.

- d. Pre-existing towers and antennas. Any tower or antenna for which a permit has been properly issued prior to the effective date of this subsection shall not be required to meet the requirements of this subsection, other than the requirements of Sections (4)e. and (4)f. Any such towers or antennas shall be referred to in this subsection as "pre-existing towers" or "pre-existing antennas."

(4) *General guidelines and requirements:*

- a. *Purpose, goals.* The purpose of this subsection is to establish guidelines for the siting of towers and antennas. The goals of this subsection are to:
1. Encourage the location of towers in non-residential areas and minimize the total number of towers throughout the community;
  2. Encourage strongly the joint use of new and existing tower sites;
  3. Encourage users of towers and antennas to locate them, to the extent possible, in areas where the adverse impact on the community is minimal;
  4. Encourage users of towers and antennas to configure them in a way that minimizes the adverse visual impact of the towers and antennas; and
  5. Enhance the ability of the providers of telecommunications services to provide such services to the community quickly, effectively and efficiently.
- b. *Principal or accessory use.* Antennas and towers may be considered either principal or accessory use. A different existing use or an existing structure on the same lot shall not preclude the installation of an antenna or tower on such lot. For purposes of determining whether the installation of a tower or antenna complies with district development, regulations, including but not limited to setback requirements, lot coverage requirements, and other such requirements, the dimensions of the entire lot shall control, even though the antennas or towers may be located on leased parcels within such lots. Towers that are constructed, and antennas that are installed, in accordance with the provisions of this subsection shall not be deemed to constitute the expansion of a nonconforming use or structure,
- c. *Inventory of existing sites.* Each applicant for an administrative approval or a special use permit shall provide to the zoning administrator an inventory of its existing towers that are either within the jurisdiction of the governing authority or within one mile of the border thereof, including specific information about the location, height, and design of each tower. Applicants are encouraged to submit an inventory of potential future tower sites within the jurisdiction of the town. The zoning administrator may share such information with other applicants applying for administrative approvals or special use permits under this subsection or other organizations seeking to locate antennas within the jurisdiction of

the governing authority; provided, however, that the zoning administrator is not, by sharing such information, in any way representing or warranting that such sites are available or suitable.

d. *Aesthetics lighting.* The guidelines set forth in this section (4)d. shall govern the location of all towers, and the installation of all antennas, governed by this subsection; provided, however, that the governing authority may waive these requirements if it determines that the goals of this subsection are better served thereby.

1. Towers shall either maintain a galvanized steel finish or, subject to any applicable standards of the FAA, be painted a neutral color, so as to reduce visual obtrusiveness.
2. At a tower site the design of the buildings and related structures shall to the extent possible, use materials, colors, textures, screening, and landscaping that will blend the tower facilities to the natural setting and built environment.
3. If an antenna is installed on a structure other than a tower, the antenna and supporting electrical and mechanical equipment must be of a neutral color that is identical to, or closely compatible with, the color of the supporting structure so as to make the antenna and related equipment as visually unobtrusive as possible.
4. Towers shall not be artificially lighted, unless required by the FAA or other applicable authority if lighting is required, the governing authority may review the available lighting alternatives and approve the design that would cause the least disturbance to the surrounding views.

e. *Federal requirements.* All towers must meet or exceed current standards and regulations of the FAA, the FCC, and any other agency of the federal government with the authority to regulate towers and antennas, If such standards and regulations are changed, then the owners of the towers and antennas governed by this subsection shall bring such towers and antennas into compliance with such revised standards and regulations within six months of the effective date of such standards and regulations, unless a more stringent compliance schedule is mandated by the controlling federal agency. Changes to the height or lighting requirements would require additional review by the planning board. Failure to bring towers and antennas into compliance with such revised standards and regulations shall constitute grounds for the removal of the tower or antenna at the owner's expense.

f. *Building codes; safety standards.* To ensure the structural integrity of towers, the owner of a tower shall ensure that it is maintained in compliance with standards contained in applicable local building codes and the applicable standards that are published by the Electronic Industries Association, as amended from time to

time. If, upon notice being provided to the owner of the tower, the governing authority shall not issue a certificate of occupancy and power will not be permitted until such noncompliance's are corrected.

g. *Coverage need.* Need of coverage shall be demonstrated by the wireless provider.

(5) *Specific development guidelines:*

a. *Information required.* Each applicant requesting a special ordinance shall submit a scaled site plan and a scaled elevation view and other supporting drawings, calculation, and other documentation, signed and sealed by appropriate licensed professional engineers, showing the following information:

1. Location and dimensions of all improvements on lease or purchased area;
2. Information concerning topography;
3. Property lines of site;
4. Radio frequency coverage;
5. Tower height requirements;
6. Setbacks;
7. Proposed points of ingress and egress;
8. Parking;
9. Fencing;
10. Landscaping and buffers;
11. Adjacent uses within 500 feet of the tower tall zone;
12. Proposed number of telecommunication carriers;
13. Any other information deemed by the governing authority to be necessary to assess compliance with this subsection;
14. Lease agreement signed by property owners (if applicable).

b. *Factors considered in granting special use permits.* The governing authority shall consider the following factors in determining whether to issue a special use permit, although the governing authority may waive or reduce the burden on the applicant of one or more of these criteria if the governing authority concludes that the goals of this subsection are better served thereby:

1. Height of the proposed tower;
2. Proximity of the tower to residential structures and residential district boundaries;
3. Nature of uses on adjacent and nearby properties;
4. Surrounding topography;
5. Surrounding tree coverage and foliage;
6. Design of the tower, with particular reference to design characteristics that have the effect of reducing or eliminating visual obtrusiveness;

7. Proposed ingress and egress;
  8. Availability of suitable existing towers and other structures as discussed in section (5)c. of this subsection; and
  9. Co-location of other telecommunications carriers as discussed in section (5)d. of this subsection.
- c. *Availability of suitable existing towers or other structures.* No new tower shall be permitted unless the applicant demonstrates to the reasonable satisfaction of the governing authority that no existing tower or structure can accommodate the applicant's proposed antenna. Evidence submitted to demonstrate that no existing tower or structure can accommodate the applicant's proposed antenna may consist of any of the following:
1. No existing towers or structures are located within the geographic area required to meet applicant's engineering requirements;
  2. Existing towers or structures are not of sufficient height to meet applicant's engineering requirements;
  3. Existing towers or structures do not have sufficient structural strength to support applicant's proposed antenna and related equipment;
  4. The applicant's proposed antenna would cause electromagnetic interference with the antenna on the existing towers or structures, or the antenna on the existing towers or structures would cause interference with the applicant's proposed antenna;
  5. The fees, costs, or contractual provisions required by the owner in order to share an existing tower or structure or to adapt to an existing tower or structure for sharing are unreasonable. Costs exceeding new tower development are presumed to be unreasonable;
  6. The applicant demonstrates that there are other limiting factors that render existing towers and structures unsuitable.
- d. *Co-location of other telecommunication carriers.* All new towers or structures shall be designed to accommodate multiple carriers. The minimum number of carriers will be height dependent based on the following ranges:
1. One carrier for towers up to 90 feet in height;
  2. Three carriers for towers from 90 to 120 feet in height;
  3. Five or more carriers for towers over 120 feet in height;
- Applicants shall agree to lease space at commercially reasonable rates and shall also make tower(s) available for use by county emergency service agencies at no charge to the county.
- e. *Setbacks and separation.* The following setbacks and separation requirements shall apply to all towers and antennas for which at special use permit is required;

provided, however, that the governing authority may reduce the standard setbacks and separation requirements if the goals of this subsection would be better served thereby.

1. Towers must be set back a distance equal to 100 percent the height or the tower from any occupied structure, flammable or explosive material or property line may be reduced to 50 percent of tower fall zone from the property line if an easement is obtained from the affected property owner. Also to encourage the construction of monopole structures, monopole towers may have a 20 percent reduction in the required setbacks. To encourage location of towers in existing forested area with a minimum depth of 100 feet, the tower may have a 20 percent reduction in the required setbacks. In no case shall the setback be less than those required for the underlying zoning district. Said setback reductions shall only be allowed upon a professional engineering certification which states that the structure's construction will cause the tower to crumble inward so that in the event of collapse no damage to structures adjacent zoning lots will result.
2. Towers, guys, and accessory facilities must satisfy the minimum zoning district setback requirements.
3. No tower shall be allowed within the airport hazard overlay district.
4. More than one tower may not be placed on a lot provided that it:
  - (i) Complies with the minimum setback requirements; and
  - (ii) It's fall zone does not overlay with the fall zone of another tower.

*f. Security fencing.* Towers, supporting cables anchors and any accessory buildings shall be enclosed by security fencing not less than six feet in height and shall also be equipped with an appropriate anti-climbing device; provided, however, that the governing authority may waive such requirements, as it deems appropriate.

*g. Landscaping.* The following requirements shall govern the landscaping surrounding towers for which a special use permit is required provided however, that the governing authority may waive such requirements if the goals of this subsection would be better served thereby.

1. Tower facilities shall be landscaped with a buffer of plant materials that effectively screens the view of the tower compound from adjacent property.
2. In locations where the visual impact of the tower would be minimal, the landscaping requirement may be reduced or waived altogether.
3. Existing mature tree growth and natural land forms on the site shall be preserved to the maximum extent possible. In some cases, such as towers sited on large wooded lots natural growth around the property perimeter may be a sufficient buffer.

- (6) *Removal of abandoned antennas and towers:* Any antenna or tower that is not operated for a continuous period of 12 months shall be considered abandoned, and the owner of such antenna or tower shall remove same within 60 days. Applicants shall provide proof of a performance bond for the cost of removal of towers.
- (7) *Administrative approvals.* The following uses may be approved by the zoning administrator after conducting an administrative review:
  - a. Installing an antenna on an existing nonresidential structure other than a tower (such as a building, sign, light pole, water tower, utility pole, or other freestanding nonresidential structure) in any commercial, industrial, highway business or manufacturing district that is less than 50 feet in height so long as such addition does not add more than ten feet to the height of the existing structure.
  - b. Installing an antenna on an existing tower of any height, including a pre-existing tower, and further including the placement of additional buildings or other supporting equipment used in connection with said antenna so long as the addition of said antenna adds no more than 20 feet to the height of the existing tower.
  - c. Replacing an existing tower which adds no more than ten feet to the overall height of the existing structure with only one replacement allowed.
  - d. Installing an antenna on an existing structure other than a tower (such as a building, sign light pole, water tower, or other freestanding, non residential structure) that is more than 50 feet in height, so long as such addition does not add more than 20 feet to the height of the existing structure.

(Ord. of 8-27-87, art. V, § 3.3; Ord. No. 2-00, 5-2-00)

**Secs. 42-203-42-235. Reserved.**

DIVISION 5. AREA, YARD AND HEIGHT REQUIREMENTS

**Sec. 42-236. Table of area, yard, and height requirements (see notes in section 42-237).**

The following is the table of area, yard, and height requirements for all zoning districts:

*Minimum Yard Regulations*

District	Minimum Lot Size Area in Square Feet	Frontage at Building Line	Front Yard Setback in Feet	Rear Yard Depth in Feet	Side Yard Width in Feet	Maximum Height of Structure in Feet
R-20 residential Single Unit	20,000	100	45	35	12(a)	35(b)
Nonresidential use R-12 Residential	30,000	200	45	35	20 (a)	35(b)
Single Unit	12,000	80	35	20	10(a)	35(b)



District	Minimum Lot Size Area in Square Feet	Frontage at Building Line	Minimum Yard Regulations			Maximum Height of Structure in Feet
			Front Yard Setback in Feet	Rear Yard Depth in Feet	Side Yard Width in Feet	
Nonresidential use	20,000	150	35	20	20(a)	35(b)
RR-8 residential						
Single unit	8,000	80	35	20	10(a)	35(b)
Nonresidential use	20,000	120	35	20	10(a)	35(b)
OR-8 residential		80	35	20	10(a)	35(b)
Single unit	8,000	90	35	20	10(a)	35(b)
Double unit	13,000	90	35	20	10(a)	35(b)
Multifamily	13,000 + 3,000 for each unit over 2	90	35	20	10(a)	35(b)
Condominium	13,000 + 3,000 for each unit over 2	90	35	20	10(a)	35(b)
Townhouse	13,000 + 3,000 for each unit over 2	60 70	35 35	20 20	10(a) 10(a)	35(b) 35(b)
R-MH residential						
Single unit	6,000	80	20	20		
Duplex	9,000					
Mobile home parks	(See special use parks provisions for mobile home parks in section 42-202(n))	100	15	15(d)	10(a) (c) 15(d)	35(b) 40(b) 40(b)
01 office and institutional	8,000	100	50	20(d), (e)	15(d), (f)	40(b)

Note: Planned unit development in residential areas do not have to meet minimum lot sizes. (Ord. of 8-27-87, art. V, § 4)

**Sec. 42-237. Notes to table of area, yard and height requirements in section 42-236.**

- (a) Corner lots must have an additional width of ten feet along the side street line in residential districts and a minimum of ten feet along the side street line in the B-1 district.
- (b) From the highest buildable portion of the lot.
- (c) Where the side or rear of a lot abuts a residential use, the abutting side or rear yard shall be at least ten feet wide, and it shall be densely planted with trees or shrubbery capable of reaching at least ten feet in height.
- (d) Where the required side or rear yard abuts a residential use, there shall be a buffer densely planted with trees capable of reaching at least ten feet in height.
- (e) When abutting a residential use, add ten feet to required rear yard.

(f) When abutting a residential use add 20 feet to required side yard.  
(Ord. of 8-27-87, art. V, § 4)

**Sec. 42-238. Note 1, height limitations.**

The height limitations of this chapter shall not apply to church spires, belfries, cupolas and domes not intended for human occupancy or to monuments, water towers, observation towers, transmission towers, chimneys, smokestacks, conveyors, flagpoles, radio towers, television towers, masts, aerials and similar structures.

(Ord. of 8-27-87, art. V, § 4)

**Sec. 42-239. Note 2, visibility at intersections.**

On a corner lot in any residential district, no planting, structure, fence, wall or obstruction to vision more than three feet high, measured from the centerline of the street, shall be placed or maintained within the triangular area formed by the intersecting street right-of-way lines and a straight line connecting points on the right-of-way lines, each of which is 25 feet from the point of intersection.

(Ord. of 8-27-87, art. V, § 4)

**Sec. 42-240. Note 3, townhouses, condominiums.**

For all townhouse and condominium developments, there shall be no more than eight units per building.

(Ord. of 8-27-87, art. V, § 4; Ord. of 6-7-88, art. V, § 4)

**Secs. 42-241-42-275. Reserved.**

**ARTICLE IV. SIGNS\***

**Sec. 42-276. Definitions.**

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

*Sign* means any words, lettering, parts of letters, pictures, figures, numerals, phrases, sentences, emblems, devices, design, trade names or trademarks by which anything is made known, such as the designation of an individual, a firm, an association, a profession, a business, a commodity or product, which is visible from any public way and used to attract attention.

(Ord. of 8-27-87, art. VI, § 2)

**Cross** reference—Definitions generally, § 1-2.

**\*Editor's** note—Ord. No. 1-00, adopted Feb. 1, 2000 has been treated by the editor as having repealed sections 42-277-42-282 in their entirety and added new sections 42-277-42-291 to article IV. Former sections 42-277-42-282 pertained to similar material and derived from Ord. of 8-27-87, art. VI, §§ 1, 6-10.

**Sec. 42-277. Purpose and scope.**

This article is intended to address the placement of signs within the town's jurisdiction for the following purposes: to promote traffic safety; to prevent business and advertising signs from conflicting with public safety signs; to ensure that permitted signs do not become a hazard or nuisance; to prevent the overcrowding of land; to facilitate fire and police protection; to protect and enhance the value of properties; to provide a pleasing overall environmental setting and good community appearance which is deemed vital to the continued economic attractiveness of the town; and to promote the public safety and welfare of the town.

(Ord. No. 1-00, 2-1-00)

**Sec. 42-278. Sign compliance.**

No sign shall be constructed, erected, modified, placed, maintained, or moved, except as authorized by this article. Unless otherwise exempted, a zoning permit must be obtained before a sign is erected, modified, or moved on a zoning lot. No sign shall be placed within a public right-of-way or within the sight triangle of a road way intersection as would be determined by the state department of transportation. Any sign authorized in this article is allowed to contain non-commercial copy in lieu of any other copy.

(Ord. No. 1-00, 2-1-00)

**Sec. 42-279. Signs exempted.**

The following signs shall be exempt from regulations under this article, regardless of whether they may be considered "signs".

- (1) Commemorative tablets or signs, historical or memorial markers or monuments, erected by or with the permission of the county board of commissioners, town council or the state department of transportation;
- (2) Any official traffic control or other public sign;
- (3) Lights and decorations with no commercial message temporarily displayed on traditionally adopted civic, patriotic or religious holidays;
- (4) Signs carried by people;
- (5) Signs located on the interior of buildings, courts, lobbies, stadiums or other structures which are not intended to be seen from the exterior of such structures;
- (6) Signs not visible from a public or private street. (Ord. No. 1-00, 2-1-00)

**Sec. 42-280. Temporary signs.**

The following temporary signs do not require a zoning permit; however, these signs shall conform to the standards and provisions of this section and other applicable parts of this article. Unless otherwise stated herein, temporary signs shall not exceed 40 square feet in area per sign face, or have more than one sign face per direction of travel or exceed six feet in height.

- (1) Real estate signs.
  - (2) Construction site identification signs.
  - (3) Seasonal agricultural signs. Such signs may be erected for the purpose of advertising and directing potential patrons to the seasonal sale of agricultural products produced and offered for sale at bonifide farming operation. Seasonal agricultural signs may be erected not sooner than 30 days before the normal sales or harvest season and must be removed within 30 days after the normal sales or harvest season.
  - (4) Signs erected in connection with elections or political campaigns. Political signs shall not be erected before the established filing date for an election nor allowed to remain longer than ten days after the election.
  - (5) Signs indicating that a special event such as a grand opening, fair, carnival, circus festival, air show, fund raiser, or similar event is to take place. Such signs may be erected not sooner than 30 days before the event and must be removed not later than 30 days after the event.
  - (6) Yard sale sign. A sign not exceeding six square feet may be erected not sooner than two weeks before the event and must be removed not later than three days after the event.
  - (7) Signs affixed to windows of vehicles displaying information on the terms of sale for said vehicles.
- (Ord. No. 1-00, 2-1-00)

**Sec. 42-281. On premise signs.**

An on premise sign shall be an accessory use incidental to the principal land use; an on premise sign shall specifically comply with the following:

- (1) *Area.* The maximum area of all free standing on premise signs shall be 300 square feet. The area shall mean the surface area of a sign as computed in accordance with section 42-288 herein.
- (2) *Height.* The maximum height of a free standing on-premise sign shall be 30 feet. The height shall mean the height of a sign as determined in accordance with section 42-288 herein.
- (3) *Setback.* An on-premises sign shall meet the minimum setback requirements in the minimum yard requirements in section 42-236.
- (4) *Number permitted.* One free standing on-premise sign shall be permitted per street frontage of a zoning lot.
- (5) This section shall be deemed complied with if such on-premise signs are specifically included as part of sign plan approved as condition of, or pursuant to a special use permit.

(Ord. No. 1-00, 2-1-00)

**Sec. 42-282. Home occupations.**

A home occupation shall be permitted one sign professional or announcement sign per dwelling unit not exceeding six square feet in area.

(Ord. No. 1-00, 2-1-00)

**Sec. 42-283. Subdivision and multi-family development entrance signs.**

At any entrance to a residential subdivision or multi-family development, there may be not more than two ground signs to identify or identifying such subdivision or development. A single face of any such sign may not exceed 16 square feet, nor may the total surface area of all such signs located at a single entrance exceed 32 square feet.

(Ord. No. 1-00, 2-1-00)

**Sec. 42-284. Industrial park entrance signs.**

At any entrance to an industrial park, there may not be more than two ground signs identifying the park. A single face of any such sign may not exceed 100 square feet, nor may the total surface area of all such signs located at a single entrance exceed 150 square feet. (Ord. No. 1-00, 2-1-00)

**Sec. 42-285. Off-premise advertising signs.**

Off-premise advertising signs are permitted in accordance with the following provisions:

- (1) Area. The maximum area of an off-premise advertising sign shall be 378 square feet per sign face, one sign face per directional flow of traffic. Signs may be back to back or "V-type" construction.

The area of the sign shall be computed by means of the smallest square, circle, rectangle, triangle or combination thereof which will encompass the extreme limits of the writing, representation, emblem, or other display, together with any material or color forming an integral part of the background of the display or used to differentiate the sign from the backdrop or structure against which it is placed, but not including any supporting framework, bracing, ornamental base or trim.

- (2) Height. The maximum height of an off-premise advertising sign shall be 30 feet. Said 30 feet shall be measured from: (i) the higher of the unaltered grade of the terrain of the sign location or (ii) the elevation of the grade of the road shoulder perpendicular to the sign, which ever is higher, to the uppermost part of the sign or sign structure, whichever is higher.
- (3) Setback. An off-premise advertising sign shall comply with the following minimum setback requirements:
  - a. In office and institutional (OI), central business (B1), highway business (HB), an off-premise advertising sign shall be set back a minimum of 15 feet from the road right-of-way and 15 feet from the side property lines; and

- b. In industrial (M-1, M-2) zoning district, an off-premise advertising sign shall be set back a minimum of 15 feet from the road right-of-way, and 50 feet from the side property lines.
- (4) Spacing from other off-premise advertising signs. No off-premise advertising sign shall be located closer than 1,400 feet from any other off-premise advertising. A sign on the opposite side of the road or highway shall not be located closer than 400 feet to an off-premise sign already erected. These distances are to be measured along the edge of the pavement between the closest points of the sign from a line drawn perpendicular to the edge of the pavement to the edge of the sign.
- (5) Spacing from other structures of land uses. No off-premise advertising sign shall be placed within 300 feet of any zoning lot used for a school or public park.
- (6) Allowed use. Notwithstanding other provisions of this article, off-premise advertising signs shall be allowed as a principal or accessory use incidental to the principal land use when erected in a highway business (HB), business (B-1), industrial (M-1, M-2) zoning district.
- (7) Most restrictive provisions apply. When or if any portion of this article is in conflict with any applicable state or federal regulations or statutes, the more restrictive provisions shall apply.
- (8) A property owner may not create a lot after that does not meet minimum lot size requirements for the purpose of placing an off-premise advertising sign on it.
- (9) Zoning permit required: A zoning permit shall be obtained from the zoning administrator prior to the placement of an off-premise advertising sign. Each request for a zoning permit shall be accompanied by a:
- a. Recorded survey plat or a survey prepared by a registered land surveyor, if available, showing accurate dimensions of the lot to be built upon and the proposed sign location;
- In the absence of the above, the proposed sign location may be hand drawn on the applicable lot depicted on a copy of an official county tax map;
- b. Tax map reference number and parcel number of the lot to be built upon;
- c. To scale drawing of the proposed sign and sign structure; (Note: More detailed structural information may be required when applying for applicable permits (i.e., building, electrical) from the county inspection department. Pursuant to the state building code, the erector of the sign shall submit to the building official a design and stress diagram or plan, containing the necessary information to enable the building official to determine that such sign complies with all the regulations of the code.)
- d. Zoning permit fee.

(Ord. No. 1-00, 2-1-00)

**Sec. 42-286. Off-premise directional signs.**

Off-premise directional signs do not require a zoning permit; however, these signs shall conform to the standards of this article and other applicable parts of this article. An off-premise directional sign which does not meet such provisions of this article shall be considered in violation of the article.

An off-premise directional sign shall not exceed 32 square feet in area per sign face, or have more than one sign face per directional flow of traffic, or no more than two sign faces per sign structure, or exceed six feet in height.

Not more than three off-premise directional signs shall contain directions to the same business or activity.

(Ord. No. 1-00, 2-1-00)

**Sec. 42-287. Sign illumination.**

Signs must be effectively shielded to prevent beams or rays of light from being directed toward any portion of a traveled road, and must not be of such intensity or brilliance or glare or impair the vision of the driver of any motor vehicle or otherwise interferes with any driver's operation of a motor vehicle. No sign shall be so illuminated that it interferes with the effectiveness of or obscures an official traffic sign device or signal. All illuminated signs or structures shall be placed so as to prevent the light rays or illumination from being cast directly on any residence.

(Ord. No. 1-00, 2-1-00)

**Sec. 42-288. Computations.**

The area and height of a sign shall be computed as follows:

- (1) *Area of individual signs.* The area of a sign shall be computed by means of the smallest square, circle, rectangle, triangle or combination thereof which will encompass the extreme limits of the writing, representation, emblem, or other display, together with any material or color forming an integral part of the background of the display or used to differentiate the sign from the backdrop or structure against which it is placed, but not including any supporting framework, bracing, ornamental base or trim.

If the sign consists of more than one section or module, all of the area, including that between sections or modules, shall be included in the computation of the sign area.

- (2) *Multi-faced signs—Computation of area.* For multi-faced signs, the sign area shall include all sign faces visible from any one point. When two identical sign faces are placed back to back so that both faces cannot be viewed from any point at the same time, and when the backs for such sign faces are part of the same sign structure and are not than 42 inches apart, the sign area shall be computed by the measurement of one of the larger faces.

- (3) *Height.* Height shall be measured from: (i) the higher of the unaltered grade of the terrain of the sign location or (ii) the elevation of the grade of the road shoulder perpendicular to the sign, whichever ever is higher, to the uppermost part of the sign or sign structure, whichever ever is higher.

(Ord. No. 1-00, 2-1-00)

**Sec. 42-289. Prohibited signs.**

The following signs are prohibited:

- (1) Any non-governmental sign which resembles a public safety warning or traffic sign;
- (2) Signs with animated, blinking, chasing, flashing or moving effects other than a display of time or temperature or to an alternate between time and temperature display;
- (3) Rotating or revolving signs;
  - (4) Mobile signs (i.e. on wheels). (Ord. No. 1-00, 2-1-00)

**Sec. 42-290. Sign maintenance.**

All signs supports, braces, poles, wires and other appurtenances of the sign or sign structure shall be kept in good repair, maintained in a safe condition, and shall conform to the standards in this section and the state building codes.

Maintenance of sign supports, braces, poles, wires and other appurtenances of the sign or sign structure and not the result of damage or destruction shall not require a zoning permit, provided the sign is not enlarged, moved, or altered in any manner which would create or increase a nonconforming condition.

A sign face shall be in a state of disrepair when more than 20 percent of its total surface is disfigured, cracked, ripped or peeling paint or poster paper, or any combination of these conditions.

No sign shall be allowed to stand with bent or broken sign facing, broken supports, loose appendages or struts.

No sign or sign structure shall be allowed to have weeds, vines or other vegetation growing on it and obscuring it from the road or highway from which it is intended to be viewed.

No illuminated sign shall be allowed to operate with partial illumination.  
(Ord. No. 1-00, 2-1-00)

**Sec. 42-291. Nonconforming signs.**

All signs made nonconforming by this article, but which were lawfully established may continue provided that no such sign shall be: changed or replaced with another nonconforming sign except that copy may be changed on an existing sign; expanded; relocated except in



conformance with the requirements of this article; reestablished after damage or destruction

in excess of 60 percent of the fair market value immediately prior to the time of the damage or destruction; modified in any way which increase the sign's degree of nonconformity; or reestablished after the sign structure has been removed.

As soon as reasonably possible after the effective date of this amendment, the zoning administrator shall make every reasonable effort to identify all the nonconforming signs with the county's planning jurisdiction.

(Ord. No. 1-00, 2-1-00)

**Secs. 42-292-42-325. Reserved.**

#### **ARTICLE V. OFF-STREET PARKING AND LOADING\***

##### **Sec. 42-326. Scope.**

(a) The requirements set forth in this article shall apply to all districts except the B-1 district.

(b) For land, structures or uses developed, enlarged, expanded or changed, after the effective date of the ordinance from which this chapter derives, off-street parking shall be provided in accordance with the ratios contained in this article. If existing land uses are converted to another type of land use or classification by this chapter, compliance with the off-street ratios as contained in this article is required.

(c) Off-street parking space (either garage or properly graded open space with a stable surface) and off-street loading space shall be provided in accordance with the following requirements in all classes of districts:

- (1) Each applicant for a building permit or certificate of zoning compliance submitted to the building inspector shall include information as to the location and dimensions of off-street parking and loading space and the means of ingress and egress between such space and a street or alley. This information shall be in sufficient detail to enable the building inspector to determine whether or not the requirements of this chapter are met.
- (2) The certificate of occupancy for the use of any building, structure or land where off-street parking or loading space is required shall be withheld by the building inspector until requirements of this section are fully met. If at any time such compliance ceases, any certificate of occupancy which shall have been issued for the use of the property shall immediately become void and of no effect.
- (3) When parking or loading areas are provided adjacent to a public street, ingress or egress thereto shall be made only through driveways or openings not exceeding 25 feet in width at the curblineline of the street, except where the town finds that a greater width

**\*Cross reference—Parking, stopping and standing, § 34-31 et seq.**

is necessary to accommodate the vehicles customarily using the driveway. Detailed plans of all curb cuts and driveway openings shall be submitted to the town for staff approval.

(Ord. of 8-27-87, art. VII, § 1)

**Sec. 42-327. Off-street parking.**

(a) No part of an off-street parking area required for any building or use for the purpose of complying with the off-street parking requirements in this chapter shall be included as part of any off-street parking area similarly required for another building or use, unless the times of usage of such buildings or uses will not be simultaneous.

(b) Off-street parking space shall be located on the same lot as the use for which provided or on a separate lot within 200 feet of any entrance to the building, provided that such parking space land is owned by the owner of the building or leased for the same period of time as the building.

(c) The off-street parking requirements for two or more uses on the same lot may be combined and used jointly, provided that the parking space shall be adequate in area to provide the same total off-street parking requirements with all such uses.

(d) No parking shall be provided that would necessitate the automobile backing onto any street right-of-way. Sufficient maneuvering space shall be provided on the lot to enable the motorist to enter all street rights-of-way in a forward direction.

(e) All off-street parking spaces shall be provided with shield or bumper guards so located that no part of a parked vehicle will extend beyond the parking space onto any public right-of-way.

(f) An off-street parking space shall not be less than the size required as follows for the angle parking shown:

<i>Angle (degrees)</i>	<i>Stall Width (feet)</i>	<i>Curb Length Per Car (feet)</i>	<i>Stall Depth (feet)</i>
0	8	23.0	8.0
20	8	23.5	14.0
30	8	16.0	16.5
45	8	11.3	19.1
60	8	9.3	20.5
70	8	8.5	20.8
90	8	8.0	19.0

(g) All multifamily dwellings with more than four units shall have parking areas graded and paved to town specifications;

(h) Parking space required. The following parking ratios shall control, as applicable, in the zoning districts:

Auditoriums, stadiums and theaters	1 space for every 5 seats
Banks and financial services	<i>1 space for every 200 square feet of gross floor area</i>
<i>Churches</i>	<i>1 space for every 4 seats in principal auditorium</i>
Community or private swimming clubs	
<i>Drive-through service such as banks, dry cleaners, Dwelling unit having home beauty shop or 2 spaces other than for residential occupants barbershop</i>	1 space for every 5 members (or families) <i>Stacking for 4 vehicles at</i>
Hospitals	1 space for each bed space
Hotels and motels	1 space for every guestroom, plus 2 spaces per 3 employees on largest shift
<i>Indoor commercial recreation (physical fitness centers, game rooms, etc.)</i>	<i>1 space for each 130 square feet of gross floor area devoted to</i>
<i>Industries</i>	1 space for every 2 employees during maximum employment and 1 space for every truck to be stored or stopped simultaneously
<i>Institutions and clubs</i>	1 space for every 5 seats in principal assembly room
<i>Medical clinics</i>	4 spaces for each doctor plus 1 space for each employee
Nursing homes, rest homes	1 space for each 4 persons to be accommodated, plus 1 space for each regular employee
<i>Offices</i>	1 space for every 250 square feet of gross floor area
<i>Personal services (barbershops, hair salons, business schools, dance studios, gyms)</i>	2.5 spaces per operator or employee
<i>Preschool</i>	1 space for each regular employee and 1 additional space for every 6 children or fraction thereof
	2 spaces for each dwelling unit 0.75 spaces for each dwelling unit
Residence, multifamily	

Residence, single-family, two-family	2 spaces (may be in a single drive with 1 car behind the other)
Restaurants or other eating places	1 space for each 4 seats
Retail businesses	<i>1 space for every 200 square feet of gross floor area; 1 space minimum</i>
<i>Roadside stands; new and used car sales; house and truck, trailer sales; outdoor machinery sales</i>	<i>4 spaces for each salesperson on duty during period of average greatest employment, plus 1 space per each 2 other employees during period of average greatest employment</i>
Roominghouses and boardinghouses	<i>1 space for each roomer, in addition to normal dwelling unit requirements</i>
School, elementary or junior high	<i>3 spaces for each room used for administration offices, class instruction, or 1 space for each 6 seats in auditoriums and other places of assembly or facilities available for the public, whichever is greater</i>
School, senior high	7 spaces per classroom
Shopping center	<i>5 spaces per 1,000 square feet of gross floor area (optional to computing parking on a store-by-store basis)</i>
<i>Wholesale establishments, warehouses, and other businesses not catering to retail or package trade</i>	

Special situations which are not covered by the ratios in this subsection shall be handled by the board of adjustment, which shall make the final determination as to the number of spaces to be required. In all cases the board shall give due consideration to the needs and space available and shall classify the proposed use in one of the categories listed in this subsection.

(Ord. of 8-27-87, art. VII, § 2)

**Sec. 42-328. Off-street loading.**

(a) The duty to provide the off-street loading space required in this chapter shall be the joint responsibility of the owner and operator of the structure for which off-street loading space is required. The space shall be provided in accordance with the table in subsection (b) of this section, and all off-street loading spaces shall be designed so that the vehicles loading and unloading shall not rest upon or cross any public street or alley right-of-way. All off-street loading spaces shall be at least 12 feet wide, 40 feet long, and shall have an overhead clearance of 14 feet.

(b) Table of off-street loading space requirements.

*Use Classification*

*Space Requirements*

Retail operations with a total usable floor area of 20,000 square feet or more devoted to such purposes; large shopping centers can use common loading zones for small shops if plan approved by town council

1 for each 20,000 square feet of floor area. In stores having over square feet of floor area, maximum requirements shall be  
2 spaces per store area of 20,000 square feet

Retail operations and all first floor nonresidential uses with a gross floor area of less than 20,000 square feet and all wholesale and light industrial operations with a gross floor area of less than 10,000 square feet

1 space

Office buildings and hotels with a total usable floor area of 100,000 square feet or more devoted to such purposes

1 space for each 100,000 square feet of floor area

Industrial and wholesale operations with a gross floor area of 10,000 square feet or over and as follows:

Minimum number of loading berths required:

- 10,000-40,000 square feet 40,000-100,000
- 100,000-160,000 160,000-240,000
- 240,000-320,000
- 320,000-400,000
- Each 90,000 above 400,000

- 1
- 2
- 3
- 4
- 5
- 6
- 1

(Ord. of 8-27-87, art. VII, § 3)

**Secs. 42-329-42-365. Reserved.**

**ARTICLE VI. NONCONFORMING USES**

**Sec. 42-366. Continuation of nonconforming situations and completion of nonconforming projects.**

(a) Nonconforming situations that were otherwise lawful on the effective date of the ordinance from which this chapter derives may be continued, subject to the restrictions and qualifications set forth in sections 42-367 through 42-370.

(b) Nonconforming projects may be completed only in accordance with section 42-371. (Ord. of 8-27-87, art. VIII, § 1)

**Sec. 42-367. Lots.**

(a) When a nonconforming lot can be used in conformity with all of the regulations, other than the area or width requirements, applicable to the zoning district in which the lot is located, such a use may be made as of right. Otherwise, the nonconforming lot may be used

only after a variance is applied for and granted by the board of adjustment. The board shall authorize such use if it finds that: (i) the proposed use is one permitted by the regulations applicable to the district in which the property is located, and (ii) the property can be developed as proposed without any significant negative impact on the surrounding property or the public health, safety or welfare. In issuing the permit authorized by this subsection, the board may allow deviations from applicable dimensional requirements, such as setback lines and yard size minimums, if it finds that no reasonable use of the property can be made without such deviations.

(b) Whenever this chapter creates a nonconforming lot and the owner of the nonconforming lot also owns land adjacent to it and a portion of this other land can be combined with the nonconforming lot to create a conforming lot, without thereby creating other nonconformities, the owner of the nonconforming lot or his successor in interest may not take advantage of subsection (a) of this section.

(Ord. of 8-27-87, art. VIII, § 2)

**Sec. 42-368. Extension or enlargement.**

(a) Except as specified in this section, nonconforming uses shall not be enlarged or extended in any way.

(b) A nonconforming use may be extended throughout any portion of a completed building that, when the use was made nonconforming by this chapter, was clearly designed or arranged to accommodate such use. A nonconforming use may be extended to additional buildings or to land outside the original building.

(c) Any structure used for single-family residential purposes and maintained as a nonconforming use may be replaced with a similar structure of a larger size, so long as the replacement does not create new nonconformities or increase the extent of existing nonconformities with respect to yard size and setback requirements.

(Ord. of 8-27-87, art. VIII, § 3)

**Sec. 42-369. Change in kind.**

(a) Under this chapter, a nonconforming use may be changed to a conforming use. Thereafter, the property may not revert to a nonconforming use.

(b) A nonconforming use may be changed to another nonconforming use only upon issuance of a special use permit by the board of adjustment. The board shall grant such authorization if it finds that the proposed use will be more compatible with the surrounding neighborhood than the use in operation at the time the permit is applied for. If a nonconforming use is changed to any use other than a conforming use without obtaining a special use permit pursuant to this subsection, that change shall constitute a discontinuance of the nonconforming use, and the property involved may thereafter be used only for conforming purposes. (Ord. of 8-27-87, art. VIII, § 4)

**Sec. 42-370. Cessation.**

Under this chapter, if active operations of a nonconforming use are discontinued for a continuous period of six months, the property involved shall thereafter be used only for a conforming use.

(Ord. of 8-27-87, art. VIII, § 5)

**Sec. 42-371. Repair and alteration.**

Under this chapter, normal maintenance and repair in a building occupied by a nonconforming use is permitted, provided it does not extend the nonconforming use, except as provided in section 42-368.

(Ord. of 8-27-87, art. VIII, § 6)

**Sec. 42-372. Damage or destruction.**

Any nonconforming building or any building containing a nonconforming use, which has been damaged by fire or other causes, may be reconstructed and used as before if it is done within two years of such damage, unless such building or structure has been declared by the building inspector to have been damaged to an extent exceeding 60 percent of its assessed value at the time of destruction. If the building is damaged to a degree greater than 60 percent, future use of the building or site must be in conformance with the zoning district regulations for the area.

(Ord. of 8-27-87, art. VIII, § 7)

**Secs. 42-373-42-410. Reserved.****ARTICLE VII. AMENDMENTS****Sec. 42-411. Authority.**

The town council may amend, supplement or change this chapter and zoning district lines according to the procedures in this article.

(Ord. of 8-27-87, art. X)

**Sec. 42-412. Action by applicant.**

The following actions shall be taken by the applicant for amendment of this chapter:

- (1) *Initiation of amendments.* Proposed changes may be initiated by the town council, planning board, board of adjustment, by one or more owners or lessees of property within the area proposed to be changed or affected or by any resident of the city.
- (2) *Application.* The application for any change shall clearly and fully describe the change requested and the names and addresses of the owners of the property. Such application shall be filed not later than two weeks prior to the meeting of the planning board at which the application is to be considered.



- (3) *Fee.* A fee established by the town council shall be paid to the town from each application for a change to cover the costs of advertising and other administrative expense.

(Ord. of 8-27-87, art. X, § 1)

**Sec. 42-413. Action by planning board.**

The following action shall be taken by the planning board for amendment of this chapter:

- (1) *Planning board consideration.* The planning board shall make recommendations to the town council at its next regular meeting concerning each proposed zoning change. The board shall have 45 days within which to submit its report. If the planning and zoning board fails to submit a report within the 45-day period, it shall be deemed to have approved the amendment. The planning board may hold separate public hearings or may sit concurrently with the public hearing held by the town council.
- (2) *Time limits of reconsideration.* No new petition for the same change in zoning of the same property or any part thereof shall be accepted within one year from the date of the filing of the last petition.. However, the planning board shall reserve the right to waive the requirement, provided that the planning board determines that unusual circumstances or unnecessary hardships warrant a waiver.

(Ord. of 8-27-87, art. X, § 2)

**Sec. 42-414. Action by town council.**

The following actions shall be taken by the town council for amendment of this chapter:

- (1) *Town council consideration.* The town council shall consider changes to this chapter at the next regularly scheduled meeting of the town council following public notice.
- (2) *Notice of public hearing.* No amendment shall be adopted by the town council until after public notice and hearing. Notice of public hearing shall be published in a newspaper of general circulation in the town at least once each week for two successive weeks prior to hearing. Notice shall also be made by posting the property concerned and by mailing notices to the owners of surrounding property.
- (3) *Action.* Before taking such lawful action as it may deem advisable, the town council shall consider the planning board's recommendations on each proposed zoning amendment. This recommendation will contain all reasons considered in the deliberations of the planning board. Upon consideration by the town council, if the council rejects the recommendation of the planning board, it shall enter into the minutes the reasons for such rejection.
- (4) *Protests.* In case, however, of a protest against such changes signed by the owners of 20 percent or more, either of the area of the lots included in such proposed change or of those immediately adjacent in the rear thereof extending 100 feet therefrom or of those

directly opposite thereto extending 100 feet from the street frontage of such opposite lots, such change shall not become effective except by favorable vote of three-fourths of all the members of the town council.

(Ord. of 8-27-87, art. X, § 3)

**Secs. 42-415-42-450. Reserved.**

**ARTICLE VIII. BOARD OF ADJUSTMENT\***

**Sec. 42-451. Creation and jurisdiction.**

The town council shall serve as the board of adjustment for the town.

(Ord. of 8-27-87, art. XI, § 1)

**Sec. 42-452. Rules for proceedings.**

(a) The mayor shall serve as chairman of the board of adjustment. A vice-chairman shall be elected from its members and shall serve for the same term of years as the chairman or until a successor is elected. The board shall appoint a secretary who may be a municipal officer, an employee of the town or a member of the board. The board shall adopt rules and bylaws in accordance with this chapter and G.S. 160A-360 et seq. Meetings of the board *shall* be held at the call of the chairman and at such other times as the board may determine. The chairman or in his absence the vice-chairman may administer oaths and compel the attendance of witnesses by subpoena. All meetings of the board shall be open to the public.

(b) The concurring vote of four-fifths of the membership of the board of adjustment shall be required to overrule any decision of the zoning enforcement officer, building inspector or other town official empowered under this chapter, to decide in favor of the applicant on any matter upon which it is required to pass under this chapter, or to effect any variation of this chapter.

(c) On all appeals, applications and other matters brought before the board of adjustment, the board shall inform in writing all the parties involved of its decisions and the reasons therefor.

(Ord. of 8-27-87, art. XI, § 2)

**Sec. 42-453. Appeals to board.**

(a) Appeals to the board of adjustment may be taken by any person aggrieved or by an officer, department, board, or bureau of the town affected by any decisions of the county building inspector, zoning enforcement officer, or other town official based on this chapter. Such appeal shall be taken within 30 days of the filing of the decision being appealed or the delivery of any required written notice of the decision, whichever is later, by filing with the

**\*Cross reference**—Zoning board of adjustment to hear appeals regarding minimum housing standards, § 18-50.

town clerk and with the board of adjustment a written notice of appeal specifying the grounds thereof. All papers constituting the records upon which the action appealed from was taken shall forthwith be transmitted to the board of adjustment.

(b) The board of adjustment shall fix a reasonable time for the hearing of appeals or other matters referred to it, and shall give due notice thereof to the parties in interest, and shall decide the matter within a reasonable time. Upon a hearing, any party may appeal in person or by agent or by attorney.

(Ord. of 8-27-87, art. XI, § 4)

**Sec. 42-454. Stay of proceedings.**

Under this chapter, an appeal stays all legal proceedings in furtherance of the action appealed from, unless the building inspector certifies to the board of adjustment after the notice of appeal shall have been filed with him that, because of facts stated in the certificate, a stay would, in his opinion, cause imminent peril to life and property. In such case, proceedings shall not be stayed otherwise than by a restraining order which may be granted by the board of adjustment or by a court of record on application, on notice to the building inspector, and on due cause shown.

(Ord. of 8-27-87, art. XI, § 4)

**Sec. 42-455. Powers.**

The board of adjustment shall have the following powers:

- (1) *Administrative review.* The board shall hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by the zoning enforcement officer, building inspector or town official so empowered and in the enforcement of this chapter.
- (2) *Special exceptions.* The board shall hear and decide only such exceptions as the board of adjustment is specifically authorized to pass on by this chapter.
- (3) *Variances.*

a. The board shall authorize upon appeal in specific cases such variance from the terms of this chapter as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship. In granting any variance, the board of adjustment may prescribe appropriate conditions and safeguards in conformity with this chapter.. A variance from the terms of this chapter shall not be granted by the board of adjustment unless and until it shall make a finding that:

1. Special conditions and circumstances exist which are peculiar to the land, structure or building involved and which are not applicable to other lands, structures, or buildings in the same district;

2. The requested variance will be in harmony with the purpose and intent of this chapter and will not be injurious to the neighborhood or to the general welfare;
  3. Literal interpretation of the provisions of this chapter would deprive the applicant of a right commonly enjoyed by other properties in the same district under the terms of this chapter;
  4. The special conditions and circumstances do not result from the actions of the applicant; and
  5. Granting the variance requested will not confer on the applicant any special privilege that is denied by this chapter to other lands, structures or buildings in the same district.
- b. The board of adjustment may authorize variances from the specific requirements of the watershed overlay districts in the same manner and subject to the same procedures and requirements of this section for authorizing other variances, provided that:
1. A notice of meeting involving the watershed overlay districts shall be mailed by first class mail to all other local governments having watershed regulation jurisdiction within the particular watershed where the variance is requested and to each entity using that water supply for consumption; and
  2. Favorable action by the board of adjustment on any major variance, as defined in this chapter, shall constitute a favorable recommendation, but such major variance shall not become effective unless authorized by the environmental management commission in accordance with their rules of procedure. Unfavorable action by the board of adjustment on a major variance shall constitute denial.

(4) *Construction.* Upon granting of any favorable decision, special exception or variance resulting in the issuance of a building permit, the permit must be obtained and construction begun within 180 days of the date of the board of adjustment hearing, after which the decision of the board shall be null and void.

(Ord. of 8-27-87, art. XI, § 5; Ord. of 9-30-93, art. XI, § 5.36)

**Sec. 42-456. Appeals from decisions of board.**

Appeal from the decisions of the board of adjustment shall be to the county superior court. Such appeal must be made within 30 days after the filing of the board's decision in the town offices.

(Ord. of 8-27-87, art. XI, § 6)

## APPENDIX A

### GAS FRANCHISES\*

Sec. 1.	Definitions.
Sec. 2.	Grant of authority.
Sec. 3.	Nonexclusive grant.
Sec. 4.	Franchise not waiver of law.
Sec. 5.	Conflict with other regulations.
Sec. 6.	Service standards.
Sec. 7.	Conditions on use of public ways.
Sec. 8.	Excavation in public ways; restoration; damage.
Sec. 9.	Inspection.
Sec. 10.	Indemnification of town.
Sec. 11.	Rules and regulations.
Sec. 12.	Rates.
Sec. 13.	Plat of gas system.
Sec. 14.	Bankruptcy.
Sec. 15.	Taking part in litigation.
Sec. 16.	Sale, assignment or lease of gas system or franchise.
Sec. 17.	Forfeiture.
Sec. 18.	Franchise tax.
Sec. 19.	Separability.
Sec. 20.	Certified copy to company.
Sec. 21.	Effective date; acceptance by company; term.

**\*Editor's note**—Printed herein is the gas franchise granted to Public Service Company of North Carolina, as adopted by the council on November 4, 1986, and effective on the same date. Amendments to the original franchise are indicated by parenthetical history notes following amended provisions. The absence of a history note indicates that the provision remains unchanged from the original franchise. Obvious misspellings and punctuation errors have been corrected without notation. For stylistic purposes, headings and catchlines have been made uniform and the same system of capitalization, citation to state statutes, and expression of numbers in text as appears in the Code of Ordinances has been used. Additions made for clarity are indicated by brackets.

Cross references—Ordinances granting franchises saved from repeal, § 1-9(5); housing, ch. 18; streets and sidewalks, ch. 30; utilities, ch. 38.

State law references—Annual franchise tax authorized for natural gas companies, G.S. 105-116(a)(2); granting franchises by ordinance required, G.S. 160A-76.

APPENDIX A—GAS FRANCHISES

ORDINANCE NO. 2.

ORDINANCE GRANTING A GAS FRANCHISE TO PUBLIC SERVICE COMPANY OF NORTH CAROLINA, INCORPORATED, ITS SUCCESSORS AND ASSIGNS, FOR THE TOWN OF YANCEYVILLE, NORTH CAROLINA FOR A PERIOD OF 30 YEARS

BE IT ORDAINED by the Council of the Town of Yanceyville, North Carolina: .

**Sec. 1. Definitions.**

That whenever and wherever used in this Ordinance the following words and names shall have the following respective meanings:

- (a) *Council* shall mean the council of the Town of Yanceyville, North Carolina, as now or hereafter constituted.
- (b) *Company* shall mean Public Service Company of North Carolina, Incorporated, its successors and assigns.
- (c) *Town* shall mean the Town of Yanceyville, North Carolina, including its future as well as its present town limits.
- (d) *Gas* shall mean natural gas, mixed gas, and substitute fuels as approved by the North Carolina Utilities Commission for distribution to customers of the company.
- (e) *Gas system* shall mean all facilities of the company in the town used for the transmission and distribution of gas within the town.
- (f) *Commission* shall mean North Carolina Utilities Commission or its successor.
- (g) *F.E.R.C.* shall mean Federal Energy Regulatory Commission or its successor.
- (h) *Public way or ways* shall mean any public street, avenue, road, alley, lane, bridge or other public rights-of-way within the town over which the town as of the applicable time has control or jurisdiction.

(Ord. No. 2, § 1, 11-4-86)

**Sec. 2. Grant of authority.**

There is hereby granted by the town to the company, its successors and assigns, the right and privilege to construct, operate and maintain a gas utility system within the town for the transmission, distribution and sale of gas to customers, or users within the town. The company shall have the right, authority and privilege to construct, install, operate, maintain, lay or re-lay, renew, replace, and repair gas pipes, mains, pipelines and necessary appurtenances thereto in, through, across, along and under the public ways within the town for the pumping, handling, transmission, distribution and sale of gas for any and all purposes; and for such objects and purposes to take up the payment in public ways, and to make such excavation and changes therein as may be necessary therefor.

(Ord. No. 2, § 2, 11-4-86)

## YANCEYVILLE TOWN CODE

### **Sec. 3. Nonexclusive grant.**

This franchise is not exclusive. The town may grant the same or similar rights and privileges to other persons at any time.

(Ord. No. 2, § 3, 11-4-86)

### **Sec. 4. Franchise not waiver of law.**

This franchise is not a waiver of any present or future law or regulation. This franchise is not a limitation upon the authority of the town to adopt any law or regulation. (Ord. No. 2, § 4, 11-4-86)

### **Sec. 5. Conflict with other regulations.**

Where any provisions of this franchise is in conflict with any rule of the commission or F.E.R.C., so that the company can not reasonably comply with both the provisions of this franchise and any rule of the commission or F.E.R.C., then the company shall comply with any such rule instead of the conflicting provision of this franchise; but the company shall comply with all of the provisions of this franchise where such can be done without violating any rules of the commission or F.E.R.C.

(Ord. No. 2, § 5, 11-4-86)

### **Sec. 6. Service standards.**

(1) The company shall maintain and operate its gas system in a reasonably efficient manner, in order to supply adequate gas service to its customers in the town.

(2) The company shall comply with all applicable ordinances and regulations of the town not in conflict with the rules of the commission or F.E.R.C.

(3) The company shall comply with all applicable rules of the commission and F.E.R.C.

(4) The company shall, at its own expense, unless relieved by the council, extend its gas mains and pipes for furnishing gas to and upon any present or future dedicated public way, or any part thereof, in said town, whenever at least one customer on the average of each 100 feet of such main or pipe on the public way in which the extension is to run, shall first agree in writing to take a supply of such gas at the then prevailing rates fixed and established by the commission for the sale and distribution of gas to any such customers.

(5) In the event of any interruption or impairment of service or failure of supply of gas by reasons of force majeure, act of God, strike, breakdown, accident, or other happening beyond the reasonable control of the company, the company shall use due diligence to restore such service within a reasonable time. Such interruption or failure shall not constitute a breach of this ordinance.

(Ord. No. 2, § 6, 11-4-86)

## APPENDIX A—GAS FRANCHISES

### **Sec. 7. Conditions on use of public ways.**

(1) The company shall construct, operate and maintain its gas system so as to cause minimum interference with the public use of public *ways*.

(2) The company shall locate the gas mains and pipes of its gas system in the public ways at such locations as the town may prescribe. The company shall not lay its gas mains or pipes in the same trench in which water mains or sewer lines are laid. The company shall construct and locate its gas mains and pipes so as not to interfere with the construction, location and maintenance of sewer or water connections or sewer lines or water mains.

(Ord. No. 2, § 7, 11-4-86)

### **Sec. 8. Excavation in public ways; restoration; damage.**

(1) Whenever the company excavates in any of the public ways pursuant to this franchise, such excavation shall be made by the company in compliance with the laws and regulations of the town in effect at the time of such excavation.

(2) The company shall not excavate in any public way unless the company shall first have applied for and received a written permit from the city for such excavation. The permit shall prescribe the area where the excavation is to be made, the estimated length of time within which the excavation and work is expected to be completed and any other conditions. In emergencies involving public safety, the company shall proceed with *all* necessary operations without the necessity of having first obtained the permit prescribed by this subsection. In such emergencies, however, the company shall obtain the required permit at the earliest practical opportunity; provided, however, the company shall have the right to seek relief from the council from any unreasonable conditions of any such permit or from the withholding of any such permit.

(3) Immediately after the company installs or repairs gas mains or pipes, the company shall refill the trenches in which the mains and pipes are located according to the standard practices of the town in the installation of town water mains or sewer lines. The company shall promptly restore and replace the pavement in any public way destroyed, disturbed, or damaged by such work with like materials to their former condition at the town's expense, and shall thereafter, from time to time as required by the town, readjust, fill and finish the same as may be necessary on account of settling of the earth or pavement caused by such opening.

(4) When the company cuts or disturbs a section of sidewalk paving, the company shall restore the whole section rather than replace only the sidewalk paving lying within the area actually cut. The restoring or replacement of any such pavement, sidewalk, curbs, gutters or other damage shall be done by the company in accordance with specifications of the town, and shall be subject to inspection by the town.

(5) Immediately after the aforesaid work has been completed, the company shall notify the town in writing that the restoration or replacement work has been done. If the company fails, neglects or refuses to restore any such pavement, sidewalk, curbs, gutters or other damage to their former condition, as herein provided, within ten days after such gas mains and pipes have



been laid therein or repaired, as herein further provided, then the town may do all or such part of said work as may remain undone, at the cost and expense of the company, for which the company shall reimburse the town upon the presentation of a bill therefor by the town.

(6) The company shall within 15 days of the receipt of the bill referred to in subsection (5) of this section, reimburse the town for any expense the town may incur in repairing, refilling, paving or resurfacing any cut or excavation or other such damage that may be made in any public way.

(7) The company shall not open, disturb or encumber at any one time any more of any public way than may be necessary to enable it to proceed with advantage in laying, replacing or repairing the company's gas mains and pipes; nor shall the company permit any public way so opened, disturbed or encumbered by it in the installation, construction, or repair of its gas mains or pipes to remain open, or the public way disturbed or encumbered, for a longer period of time than shall be reasonably necessary. In all cases where the company has excavated, disturbed or encumbered any public way, the company shall take all precautions necessary or proper for the protection of the public and shall maintain adequate warning signs, barricades, signals and other devices necessary or proper to adequately give notice and warning to the public of the existence of any such conditions.

(8) Whenever the town or the North Carolina Department of Transportation or its successor shall grade or regrade any public way in, along, under or across which the company shall have installed any of its gas mains or pipes, it shall be the duty of the company at the company's own cost and expense to promptly change said gas mains or pipes so as to conform to the new grade which is then being or has been established by the town.

(Ord. No. 2, §. 8, 11-4-86)

#### **Sec. 9. Inspection.**

The town shall have the right to inspect all construction and installation work performed by the company pursuant to this franchise and to make such other inspections as it shall deem necessary to ensure compliance with this franchise by the company.

(Ord. No. 2, § 9, 11-4-86)

#### **Sec. 10. Indemnification of town.**

The company shall indemnify and hold harmless the town, its officers and employees from any losses, costs, expenses, claims, judgments, suits or demands resulting or in any manner arising from the action or inaction of the company in constructing, operating or maintaining a gas system, in carrying on the business of selling, transmitting or distributing gas, or in exercising or failure to exercise any right or privilege granted by the franchise and save and except for any such losses, costs, expenses, claims, judgments, suits or demands resulting or in any manner arising from, or contributed to, by the negligent action or inaction of the town or any of its officers, agents or employees; provided, however, [that] the company's indemnification at any time is conditioned on the town having notified the company in writing of any such claim, demand or suit within such time, as to give the company reasonable opportunity to

resolve or defend the same in behalf of the town. In the event of such notification, the company shall have the sole and full responsibility for the resolution and defense of any such claim, demand or suit in behalf of the town, and the town shall cooperate fully with the company in any such undertaking. If after proper notification, the company fails to undertake any such responsibility, the town shall have the right to resolve or defend any such claim, demand or suit at the expense of the company.

(Ord. No. 2, § 10, 11-4-86)

**Sec. 11. Rules and regulations.**

The company may from time to time declare, make and enforce such rules and regulations as shall have been fixed or approved by the commission as to the sale or distribution by it of gas to any of its customers in the town.

(Ord. No. 2, § 11, 11-4-86)

**Sec. 12. Rates.**

The rates to be charged for gas at all times shall be such as are fixed and approved by the commission or by such successor public authority as from time to time may be lawfully constituted for such purpose.

(Ord. No. 2, § 12, 11-4-86)

**Sec. 13. Plat of gas system.**

The company shall maintain maps or plats of its gas system covered by this franchise. Such maps or plats shall be maintained in the company's office in Roxboro and Durham, North Carolina.

(Ord. No. 2, § 13, 11-4-86)

**Sec. 14. Bankruptcy.**

Should the company go into bankruptcy or into the hands of a receiver or other court officer, either voluntarily or involuntarily, or reorganize or merge or consolidate with any other company, or should the properties and business of the company be foreclosed or sold to satisfy any lien or indebtedness or obligation of the company, the interest, rights and remedies of the town in respect to said properties and operations shall not be affected or prejudiced, and any receiver, assignee, trustee, purchaser or successor, whether by operation of law or otherwise, so succeeding to or representing the interest or position of the company in respect to the property shall be bound by this ordinance and the terms and provisions hereof, and shall be bound to carry out and perform the obligations and duties imposed upon the company by this ordinance.

(Ord. No. 2, § 14, 11-4-86)

**Sec. 15. Taking part in litigation.**

The company shall not object to the town taking part at its option, by intervention or otherwise, in any suit, action or proceedings instituted by or against the company in which any judgment or decree or act can be rendered foreclosing any lien on any of the company's property, or affecting the rights, powers, or duties of the company to do or not to do anything which by this ordinance it is obligated or may be required to do or not to do, or to taking such steps in any such proceedings as the town may deem essential to protect the interest of the public or the town.

(Ord. No. 2, § 15, 11-4-86)

**Sec. 16. Sale, assignment or lease of gas system or franchise.**

No sale, transfer, assignment or lease of the company's gas system, or any part thereof, nor any transfer of any rights under this franchise, shall be effective until the purchaser, assignee, or lessee has filed in the office of the town clerk an instrument, duly executed by the company and by any such purchaser, assignee or lessee, reciting the fact of such sale, transfer, assignment or lease, and the acceptance and agreement by such purchaser, assignee or lessee to perform the terms of this franchise. This section shall not apply to the conveyance or assignment by the company of a security interest in any of the company's gas system for the purpose of securing payment of any of the company's present or future obligations, nor to any sale in default of the terms of any such security interest.

(Ord. No. 2, § 16, 11-4-86)

**Sec. 17. Forfeiture.**

In the event the company violates or fails to perform any of the provisions of this franchise and within 60 days after receipt of written notice of the same from the town has failed to cure or remedy, or to have began reasonable steps to cure or remedy, any such violation, failure **or** default, then the council may give at least ten days' written notice to the company to appear at a hearing before the council to show cause why this franchise should not be revoked. If at such hearing the council should determine that the company's violation, failure or default has been so substantial, repetitive or flagrant that this franchise should be revoked, then upon such determination the council may revoke and terminate this franchise; provided, however, [that] the company may file with the town within ten days after any such determination the company's election to appeal such determination to the proper North Carolina Court, whereupon the town and the company agree that such court shall hear and determine such matter de novo. A noncurable violation or default shall not be grounds for revocation and termination, unless such noncurable violation or default shall be determined to be one of a substantial and material series of violations and defaults over the preceding *six* months.

(Ord. No. 2, § 17, 11-4-86)

**Sec. 18. Franchise tax.**

In the event present G.S. 105-116 is so amended or repealed, or any other North Carolina statute is enacted, by virtue of which the town shall otherwise have the legal authority to fix

a reasonable franchise, license or privilege tax for the franchise granted by this ordinance, the town shall have the right to the extent it has the legal authority to do so to amend this franchise ordinance fixing such equitable franchise tax to be paid thereafter by the company to the town as shall be mutually agreed upon by the town and the company.

(Ord. No. 2, § 18, 11-4-86)

**Sec. 19. Separability.**

Should any court of competent jurisdiction declare any part, term or provision of this franchise illegal, unauthorized or in conflict with any law of the United States or the State of North Carolina, or to be in conflict with any valid rule or regulation duly promulgated by any agency or regulatory body of the United States or the State of North Carolina, the remaining portions or provisions of this franchise shall not be affected thereby.

(Ord. No. 2, § 19, 11-4-86)

**Sec. 20. Certified copy to company.**

The town clerk shall deliver to the company an executed or conformed copy of this franchise ordinance and of the company's written acceptance thereof, certified as follows:

"Certified to be a true and exact copy of ordinance as duly adopted by the Town Council of the Town of Yanceyville, North Carolina, on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, and of the acceptance thereof by Public Service Company of North Carolina, Incorporated.

This the \_\_\_ day of \_\_\_\_\_, 19\_\_\_\_

(TOWN SEAL)

\_\_\_\_\_  
Town Clerk  
Town of Yanceyville, North Carolina

(Ord. No. 2, § 20, 11-4-86)

**Sec. 21. Effective date; acceptance by company; term.**

This franchise ordinance shall be effective from and after the 4th day of November, 1986, provided the company shall have executed the written acceptance hereof at the end of this ordinance and shall exist and continue for a period of 30 years thereafter.

Adopted by the Council this the 4th day of November, 1986, after passage at two regular meetings of the council.

(Ord. No. 2, § 21, 11-4-86)

## APPENDIX B

### ELECTRICAL SERVICE FRANCHISES\*

- Sec. 1. Construction and operation rights granted.
- Sec. 2. Repair and replacement of disturbed or damaged public property; penalty.
- Sec. 3. Liability.
- Sec. 4. Term of franchise.

**\*Editor's note**—Printed herein is electrical service franchise granted to Carolina Power and Light Company, as adopted by the council on November 4, 1986, and effective on the same date. Amendments to the original franchise are indicated by parenthetical history notes following amended provisions. The absence of a history note indicates that the provision remains unchanged from the original franchise. Obvious misspellings and punctuation errors have been corrected without notation. For stylistic purposes, headings and catchlines have been made uniform and the same system of capitalization, citation to state statutes, and expression of numbers in text as appears in the Code of Ordinances has been used. Additions made for clarity are indicated by brackets. Catchlines have been added where none existed.

Cross references—Ordinances granting franchises saved from repeal, § 1-9(5); housing, ch. 18; streets and sidewalks, ch. 30; utilities, ch. 38.

**State law references**—**Annual** franchise tax authorized for electric power companies, G.S. 160A-116(a)(1); granting franchises by ordinance required, G.S. 160A-76.

## ORDINANCE NO. 3.

ORDINANCE GRANTING AN ELECTRICAL SERVICE FRANCHISE TO CAROLINA POWER  
AND LIGHT COMPANY, ITS SUCCESSORS AND ASSIGNS, FOR THE TOWN OF  
YANCEYVILLE, NORTH CAROLINA FOR A PERIOD OF 60 YEARS

An ordinance granting permission unto the Carolina Power & Light Company, its successors, lessees and assigns, to construct and maintain its lines for the transmission and distribution of electricity along, over, and under the highways of the Town of Yanceyville, County of Caswell, State of North Carolina, and to conduct and carry on within the said Town of Yanceyville the business authorized under the terms of the charter of the said Carolina Power & Light Company.

**Sec. 1. Construction and operation rights granted.**

Be it ordained by the town council of the Town of Yanceyville, that the right and privilege be and the same hereby is given and granted unto Carolina Power & Light Company, its successors, lessees, and assigns, to lay, plant, extend, construct, build, erect, maintain, repair, replace and remove its lines, poles, wires, appliances, conductors, fixtures, and other appurtenances for the conducting, conveying, distribution and the transmission of power by electricity upon, along, over, through and under any and all the highways, roads, streets, avenues, sidewalks, alleys, lanes, bridges, and other public places, including all areas dedicated for public use within and near the said Town of Yanceyville, and to do all necessary acts for that purpose; and assent and permission is hereby given and granted unto the said Carolina Power & Light Company, its successors, lessees and assigns, to conduct, carry on, transact, and do within and near the said Town of Yanceyville any and all business, and exercise all rights and privileges which the said Carolina Power & Light Company, its successors, lessees and assigns, under and by the terms of its charter, or otherwise, is authorized, empowered, or permitted to conduct, carry on, exercise, do, or transact, including among other powers, privileges, and rights, the right, power, and privilege to use, lease, sell, convey, distribute and transmit power by electricity for manufacturing, lighting, heating, motive power, or other purpose or purposes.

(Ord. No. 3, § 1, 11-4-86)

**Sec. 2. Repair and replacement of disturbed or damaged public property; penalty.**

All highways, roads, streets, sidewalks, avenues, lanes, alleys, bridges, and other public places that may be disturbed or damaged in the construction or maintenance of said lines, poles, wires, and other appliances shall be promptly replaced or repaired by said Carolina Power & Light Company, its successors, lessees or assigns, at its or their own expense, and to the satisfaction of said town, and all poles shall be substantial and symmetrical, and so located as not to interfere with the public use of said highways, roads, streets, sidewalks, avenues, lanes, alleys, bridges, or other public places, or unnecessarily and unreasonably endanger the property or person of the citizens of said town. And in case said Carolina Power & Light Company, its successors, lessees or assigns shall fail to so replace or repair said highways,

## YANCEYVILLE TOWN CODE

roads, streets, sidewalks, avenues, lanes, alleys, bridges, or other public places within ten days after written notice so to do from the mayor of the said town, the same may be replaced or repaired by the proper authorities of said town; and the said Carolina Power & Light Company, its successors, lessees or assigns, in the event thereof shall faithfully pay to said town the cost of replacing and repairing, and pay, in addition thereto, the sum of \$5.00 for each and every place so replaced or repaired, by way of a penalty for such failure.

(Ord.. No. 3, § 2, 11-4-86)

### **Sec. 3. Liability.**

Said Carolina Power & Light Company, its successors, lessees or assigns, shall hold said town free and harmless from all damages or claims for damages arising by reason of the negligent construction or maintenance of said lines, wires, poles, appliances, fixtures. and appurtenances.

(Ord. No. 3, § 3, 11-4-86)

### **Sec. 4. Term of franchise.**

The rights and privileges above set forth are granted for the term of 60 years from the date of this ordinance.

(Ord. No. 3, § 4, 11-4-86)

Done, resolved, and ratified in board and council under the corporate seal of said Town of Yanceyville this 4th day of November, 1986.

## A P P E N D I X C

### CABLE COMMUNICATIONS FRANCHISES\*

- Sec. 1. Grant of franchise.
- Sec. 2. Effective date of ordinance.

**\*Editor's note**--Printed herein is cable communications franchise granted to Cablevision Industries, as adopted by the council on April 4, 1995, and effective on the same date. Amendments to the original franchise are indicated by parenthetical history notes following amended provisions. The absence of a history note indicates that the provision remains unchanged from the original franchise. Obvious misspellings and punctuation errors have been corrected without notation. For stylistic purposes, headings and catchlines have been made uniform and the same system of capitalization, citation to state statutes, and expression of numbers in text as appears in the Code of Ordinances has been used. Additions made for clarity are indicated by brackets. Catchlines have been added to sections 1 and 2 of this ordinance.

**Cross references—Ordinances** granting franchises saved from repeal, § 1-9(5); housing, ch. 18; streets and sidewalks, ch. 30; utilities, ch. 38.

**State law references—Authority** to grant franchises by ordinance, G.S. 160A-76; authority to franchise cable television systems, G.S. 160A-319.



APPENDIX C—CABLE COMMUNICATIONS FRANCHISES

A N O R D I N A N C E  
GRANTING A CABLE COMMUNICATIONS FRANCHISE

AN ORDINANCE granting a cable communications system franchise to Cablevision Industries, L.P., d/b/a CVI (hereinafter referred to as "grantee"), to operate and maintain a cable communications system within the Town of Yanceyville pursuant to and subject to the provisions of the Cable Communications Ordinance of the Town of Yanceyville, enacted by the Town Council of the Town of Yanceyville on August 2, 1994, and codified in the Town of Yanceyville Code of Ordinances.

WHEREAS:

In the franchising process conducted by the Town of Yanceyville pursuant to the Cable Communications Ordinance of the Town of Yanceyville:

- (1) [The] grantee's technical ability, financial condition and corporate character were considered and approved by the town council in a fall proceeding affording due process.
- (2) [The] grantee's plans for constructing and operating the cable television system were considered and found adequate and feasible in a full public proceeding affording due process.

The franchise is nonexclusive.

- (4) The franchise will be effective [from] the date of this agreement for a term to run concurrently for ten years from the effective date of this agreement. Article VI, term of franchise, Yanceyville Cable Communications Regulatory Ordinance.
- (5) [The] grantee will provide to the subscribers, in the Town of Yanceyville, any new services or technologies which are provided to all subscribers in Caswell County.
- (6) [The] grantee is required to provide only a certificate of insurance. Town of Yanceyville Code of Ordinances, paragraph B., article XV, indemnification, insurance, and bonds, Yanceyville Cable Communications Regulatory Ordinance.
- (7) [The] grantee is not obligated to provide a bond. Town of Yanceyville Code of Ordinances, paragraph D., article XV, indemnification, insurance, and bonds, Yanceyville Cable Communications Regulatory Ordinance.
- (8) [The] grantor and [the] grantee agree to review this franchise agreement no sooner than the fifth year of the original term and at any time thereafter upon mutual agreement. During the review the city and CVI shall mutually determine the need to renegotiate this agreement by assessing new technology, changes to rules and orders by the Federal Communications Commission or any other federal or state regulatory authority which may reduce, enlarge or alter the authority of the town and the fulfillment of consumer service goals.
- (9) [The] grantee has applied to the Town of Yanceyville for a franchise agreement through an application process described in article IV, requirement and application of the Cable Communications Ordinance of the Town of Yanceyville; said application appears as an attachment to this agreement.

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- (10) Within 30 days of receipt of an invoice from the town, the grantee shall issue payment as directed in an amount not to exceed \$500.00, to cover costs incurred by the town in awarding this franchise. Of the total amount paid by [the] grantee, one-half shall be considered a prepayment of franchise fees and shall be deducted from the first franchise fee payment made to the town by the grantee hereunder.

THEREFORE, BE IT ORDAINED by the Town Council of the Town of Yanceyville, North Carolina:

- (11) In fulfillment of the requirement of article XXIII, access of the Cable Communications Ordinance, [the] grantee shall make time available on its community channel for use by the town, upon request.

**Sec. 1. Grant of franchise.**

Pursuant to "The Town of Yanceyville CATV Franchise Ordinance" of the Town of Yanceyville and G.S. 160A-76, 160A-214 and 160A-319, a cable communications franchise is hereby granted to Cablevision Industries, L.P., d/b/a CVI for the construction, operation and maintenance of a cable communications system in the Town of Yanceyville.

(Ord. of 4-4-95, § 1)

**Sec. 2. Effective date of ordinance.**

This ordinance shall be effective upon its second passage at a regular meeting of the City Council of the Town of Yanceyville, pursuant to and as required by G.S. 160A-76(a). (Ord. of 4-4-95, § 2)

## CODE COMPARATIVE TABLE

### ORDINANCES

This is a chronological listing of the ordinances of the city used in this Code. Repealed or superseded laws at the time of the codification and any omitted materials are not reflected in this table.

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		art . III, § 11	
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		art. IV, § 7	
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	4- 4-89(Ord.)	0	38-26-38-35
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## STATE LAW REFERENCE TABLE

This table shows the location within this Charter and Code, either in the text or notes following the text, of references to the General Statutes of North Carolina.

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**\*Note**—The adoption, amendment, repeal, omissions, effective date, explanation of numbering system and other matters pertaining to the use, construction and interpretation of this Code are contained in the adopting ordinance and preface which are to be found in the preliminary pages of this volume.

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