



Code of Ordinances

Town of Pembroke

Prepared By:

Lumber River Council of
Government
30 C J Walker Road
COMtech Park
Pembroke, NC 28372-7340



TOWN OF PEMBROKE

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THIS CODE ADOPTED: June 25, 2018

CODE IS EFFECTIVE AS OF DATE OF ADOPTION

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CHAPTER 1: GENERAL PROVISIONS

ARTICLE I: IN GENERAL

Section 1-1 How code designated and cited.

The provisions of this and the following chapters and sections shall constitute and be designated the Code of the Town of Pembroke, North Carolina, and may be so cited. The Code may also be cited as the Pembroke Town Code.

(1992 Code, Section 10.01)

Statutory reference:

Code of ordinances, see G.S. Section 160A-77

General ordinance-making power, see G.S. Section 160A-174

Ordinance book, see G.S. Section 160A-78

Pleading and proving Town ordinances, see G.S. Section 160A-79

Section 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.

BOARD OF HEALTH. The Board of Health of Robeson County, North Carolina, or its authorized representative.

BOND. When a bond is required, an undertaking in writing shall be sufficient.

TOWN. The Town of Pembroke, in the County of Robeson and State of North Carolina, except as otherwise provided.

COMPUTATION OF TIME. In computing any period of time, the day of the act, event, default or publication after which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, Sunday or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday or a legal holiday. When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays and holidays shall be excluded in the computation. A half-holiday shall be considered as other days and not as a holiday.

COUNCIL or THE COUNCIL. The Council of the Town of Pembroke.

ROBESON. The County of Robeson, except as otherwise provided.

GENDER. Words importing the masculine gender shall include the feminine and neuter.

G.S. The General Statutes of North Carolina, as amended.

HIGHWAY. See STREET.

IN THE TOWN. Any territory, jurisdiction of which for the exercise of its regulatory power has been conferred on the Town by public or private law.

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

MONTH. A calendar month.

NUMBER. Words used in the singular include the plural and the plural includes the singular number.

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 those cases the words SWEAR and SWORN shall be equivalent to the words AFFIRM and AFFIRMED.

OFFICIAL TIME STANDARD. Whenever certain hours are named in this Code, they shall mean standard time or daylight saving time, whichever may be in current use in the Town.

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

PERSON. Shall include a corporation, firm, company, partnership, association, organization and any other group acting as a unit, as well as an individual.

PERSONAL PROPERTY. Includes every species of property except real property, as herein defined.

PRECEDING; FOLLOWING. The next before and next after, respectively.

PROPERTY. Includes real and personal property.

REAL PROPERTY. Includes lands, tenements and hereditaments.

SHALL; MAY. The word SHALL is mandatory; the word MAY is permissive.

SIDEWALK. The portion of a street between the curb line, or the lateral lines of a roadway where there is no curb, and the adjacent property line, intended for the use of pedestrians.

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

STREET. The entire width between property or right-of-way lines of every way or place of whatever nature, when any part thereof is open to the use of the public as a matter of right for the purposes of vehicular traffic. The terms HIGHWAY and STREET and their cognates are synonymous.

TENANT; OCCUPANT. Applied to a building or land, shall include any person who occupies the whole or a part of that 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.

WRITING and WRITTEN. Shall include printing and any other mode of representing words and letters.

YEAR. A calendar year, unless otherwise expressed.

(1992 Code, Sections 10.05 and 10.06)

Statutory reference:

“Town” defined, see G.S. Section 160A-1

Computation of time, see G.S. Section 1-593, 1A-1, Rule 6(a) and 159-2

“County” defined, see G.S. Section 153A-1

Rules of construction, see G.S. Section 12-3

Section 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 the 1992 Code and all ordinances adopted subsequent to the 1992 Code and included herein, shall be considered as continuations thereof and not as new enactments.

(1992 Code, Section 10.13 and 10.14)

Statutory reference:

Construction of amended statute, see G.S. Section 12-4

Section 1-4 Catchlines of sections.

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 those sections, nor as any part of the section, nor, unless expressly so provided, shall they be so deemed when any of the sections, including the catchlines, are amended or reenacted.

(1992 Code, Section 10.04)

Statutory reference:

Construction of amended statute, see G.S. Section 12-4

Section 1-5 Severability of parts of the code.

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

(1992 Code, Section 10.07)

Section 1-6 General penalty; civil remedies; enforcement of ordinances; continuing violations.

- (A) Unless otherwise specifically provided, violation of any provision of this Code or any other Town ordinance shall subject the offender to the remedies provided in this section, except that where the General Statutes of North Carolina provide specific civil remedies for violations of provisions of this Code adopted pursuant to such statutes, such remedies available to the Town for enforcement of this Code shall be in addition to the remedies stated in this section.

- (B) Violations of all provisions of this Code, unless otherwise specifically provided in this Code and/or specifically enumerated in appendix B of this volume, shall be a misdemeanor and punishable as provided by N. C. Gen. Stat. sec. 14-4.
- (C) Violations of the provisions enumerated in this ordinance shall subject the offender to a civil penalty upon the issuance of a citation for such violation as provided in this section. The civil penalty, if not paid to the Town finance director within 15 days of the issuance of a citation, may be recovered by the Town in a civil action in the nature of debt. Unless otherwise provided by a specific provision of this Code, such civil penalties shall be in the amount of \$50.00 for each violation, and each day any single violation continues shall be a separate violation.
- (D) In addition to any civil or criminal penalties set out in this section, any provision of this Code or any other Town ordinance may be enforced by an appropriate equitable remedy issuing from a court of competent jurisdiction. In such case, the general court of justice shall have jurisdiction to issue such orders as may be appropriate, and it shall not be a defense to the application of the Town for equitable relief that there is an adequate remedy at law.
- (E) In addition to any civil or criminal penalties set out in this section, any provision of this Code or any other Town ordinance that makes unlawful a condition existing upon or use made of real property may be enforced by injunction and order of abatement, and the general court of justice shall have jurisdiction to issue such orders. When a violation of such a provision occurs, the Town may apply to the appropriate division of the general court of justice for a mandatory or prohibitory injunction and order of abatement commanding the defendant to correct the unlawful condition upon or cease the unlawful use of the property. The action shall be governed in all respects by the laws and rules governing civil proceedings, including the Rules of Civil Procedure in general and rule 65 in particular.
- (F) In addition to an injunction, the court may enter an order of abatement as a part of the judgment in the cause. An order of abatement may direct that:
- a. Buildings or other structures on the property be closed, demolished or removed;
 - b. Fixtures, furniture or other movable property be removed from buildings on the property;
 - c. Grass and weeds be cut;
 - d. Improvements or repairs be made; or
 - e. Any other action be taken that is necessary to bring the property into compliance with this Code or such ordinance.

If the defendant fails or refuses to comply with an injunction or with an order of abatement within the time allowed by the court, he may be cited for contempt, and the Town may execute the order of abatement. The Town shall have a lien on the property for the cost of executing an order of abatement in the nature of a mechanic's and materialman's lien. The defendant may secure cancellation of an order of abatement by paying all costs of the proceedings and posting a bond for compliance with the order. The bond shall be given with sureties approved by the clerk of superior court in an amount approved by the judge before whom the matter is heard and shall be conditioned on the defendant's full compliance with the terms of the order of abatement within a time fixed by the judge. Cancellation of an order of abatement shall not suspend or cancel an injunction issued in conjunction therewith.

- (G) The provisions of this Code and any other Town ordinances may be enforced by one, all or a combination of the remedies authorized and prescribed by this section, except that any provision, the violation of which incurs a civil penalty, shall not be enforced by criminal penalties.
- (H) Except as otherwise specifically provided, each day's continuing violation of any provision of this Code or any other Town ordinance shall be a separate and distinct offense.
- (I) Any ordinances adopted by the mayor and Town council, the violation of which shall incur a penalty, shall specify whether the enforcement shall be pursuant to the civil penalty or criminal penal provisions of this section.
- (J) Unless provided otherwise in this Code, upon determination of a violation of any section of this Code, the penalty for which is a civil penalty, the Town shall cause a civil citation to be issued to the violator. A civil citation shall be issued by the appropriate official of the Town and either served directly on the violator or his duly designated agent or registered agent, if a corporation, in person or posted in the United States mail service by first class mail addressed to the last known address of the violator as contained in the records of the Town or obtained from the violator at the time of issuance of the warning citation. The violator shall be deemed to have been served upon the mailing of such citation. Unless provided otherwise in this Code, the citation shall direct the violator to appear before the Town clerk, located in the Town hall, within 15 days of the date of the citation or alternatively to pay the citation by mail. The violation for which the citation is issued must have been corrected by the time the citation is paid; otherwise, further citations shall be issued. Citations may be issued for each day the offense continues until the prohibited activity is ceased or abated.
- (K) Unless provided otherwise in this Code, if the violator fails to respond to a citation within 15 days of its issuance and pay the penalty prescribed therein, the Town may institute a civil action in the nature of debt in the appropriate division of the state general court of justice for the collection of the penalty.

(1992 Code, Section 10.99)

Statutory reference:

Enforcement of ordinances, see G.S. Section 160A-175

Section 1-7 Effective date of ordinances.

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

(1992 Code, Section 10.15)

Section 1-8 Ordinances and the like, not affected by code.

- (A) 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 municipal officer or employee or other personnel matters;
 - (5) Any right or franchise granted by the Town;
 - (6) Any ordinance dedicating, naming, establishing, locating, relocating, opening, widening, paving and the like, any street or public way;
 - (7) Any appropriation ordinance or taxing 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 establishing subdivision regulations or dedicating or accepting any subdivision plat;
 - (12) Any ordinance describing or extending the boundaries of the Town;
 - (13) Any ordinance consistent with this Code fixing the amount of license or privilege taxes, permit fees or other rates or charges; and/or
 - (14) Any ordinance prescribing the charge to be paid for water and sewer taps and connections or the rates to be paid for utility, water or sewer service rendered by the Town, and the amount of the deposit required to ensure the payment thereof.
- (B) All ordinances are hereby recognized as continuing in full force and effect to the same extent as if set out at length in this Code.

Statutory reference:

Designated classes of ordinances may be omitted from Code, see G.S. Section 160A-77

Statutes not repealed by General Statutes, see G.S. Section 164-7

Section 1-9 Supplementation of code.

By contract or by Town personnel, supplements to this Code shall be prepared and printed whenever authorized or directed by the Council.

- (A) A supplement to the Code shall include all substantive permanent and general parts of ordinances passed by the Council or adopted by initiative and referendum during the period covered by the supplement and all changes made thereby in the Code, and shall also include all amendments to the Town Charter during the period. The pages of a supplement shall be so numbered that they will fit properly into the Code and will, where necessary, replace pages that have become obsolete or partially obsolete. 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 the preparation of a supplement to this Code, all portions of the Code that 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 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 the 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" and the like, as the case may be, or to "Section to " (inserting section numbers to indicate the sections of the Code that embody the substantive sections of the ordinance incorporated into the Code); and
 - (5) Make other nonsubstantive changes necessary to preserve the original meaning 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.

(1992 Code, Section 10.17)

Statutory reference:

Loose-leaf supplementation of Code, see G.S. Section 160A-77

Section 1-10 Severability.

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

(1992 Code, Section 10.07)

Section 1-11 Ordinance book.

The Clerk shall maintain a file or book entitled "ordinance book," separate and apart from the minute book, in which ordinances shall be kept until that time as they are printed and inserted in this code. Said ordinances shall have been duly enacted by the Town council, signed by the Mayor and attested by the Town Clerk. All ordinances or a true copy thereof shall be inserted in this code in the proper chapter.

(1992 Code, Section 30.38)

Sections 1-12 Electronic publication of public notice.

- (A) Legal notice of public hearings for the Town of Pembroke may be published through electronic means on the Town's internet website.
- (B) The notices published by electronic means shall state the subject, date, time and location of the public hearing, as well as any other information required for the particular public hearing, and shall be posted in accordance with the publication schedule required by state or local law, and shall remain posted until the day after the close of the public hearing.
- (C) A printed copy of any notice published by electronic means, along with the method of publication and certification of the dates of publication, shall be included with the official record of the public hearing.
- (D) The use of electronic means to publish legal notices of public hearings shall not supersede any state law that requires notice by mail to certain classes of persons or the posting of signs on certain property.
- (E) This section does not apply to public hearings covered by the Unified Development Ordinance (UDO).

Sections 1-13 through 1-20: Reserved.

CHAPTER 2: ADMINISTRATION

ARTICLE I: IN GENERAL

Section 2-1 Conflict of Interest.

It shall be unlawful for any officer or employee of the Town, directly or indirectly, to become a contractor for work done for the Town or to become directly and personally interested in or receive profits from any purchase of supplies for any department of the Town. In addition to any other penalty which may be imposed for the violation of this section, any such person so offending shall be removed from office.

Statutory Reference— Conflicts of interest, G.S. § 160A-415.

Section 2-2 Bonding.

It shall be the duty of each officer or employee of the Town, when so required by the Town Council before entering upon the discharge of his duties, to enter into a bond with sureties in such sum as the Board shall require, such bond to be payable to the Town and conditioned upon the faithful performance of such officer's or employee's duties; provided, however, the Town shall pay all premiums which become due upon such bond.

Section 2-3 Elections generally.

The Town shall conduct its municipal elections as regulated by the election laws contained in G.S. Chapter 163.

Sections 2-4 through 2-10: Reserved.

ARTICLE II: MAYOR AND TOWN COUNCIL

DIVISION 1: GENERALLY

Section 2-11 Composition of governing body.

The governing body of the Town shall consist of a Mayor and Council of five members, who shall be elected in accordance with the provisions of Statutory.

Section 2-12 Selection and duties of mayor pro tem.

At the first meeting after their election, the Town Council shall select one (1) of their number to act as mayor pro tem. The mayor pro tem shall have no fixed term of office, but as such, shall perform all the duties of the mayor in the mayor's absence or disability.

Section 2-13 Duties of the Town council.

The Town Council, collectively and by majority vote as prescribed by the North Carolina General Statutes, except as a higher percentage or vote may be required by law, holds the ultimate authority to act on behalf of the Town, and has the following powers and duties:

- (1) Determine the services provided by the Town, and at which level;
- (2) Enact the annual budget ordinance and establish tax rates and fees for services;
- (3) Establish the Town's official policy or position on issues;
- (4) Establish and amend the Town's ordinances regulating activities within the Town limits;
- (5) Authorize the execution of contracts;
- (6) Acquire and dispose of real property and other property;
- (7) Select the Town Manager and Town attorney;
- (8) Perform other duties as authorized by the General Statutes, the Charter, and this Code.

Section 2-14 Compensation and reimbursement for expenses.

- (A) The compensation for the Mayor and members of the Council shall be determined by Council from time to time.
- (B) The Mayor and each member of the Council is entitled to reimbursement for actual expenses incurred in the course of performing his or her official duties at rates not in excess of those allowed to other Town officials and employees.

Charter reference:

Section 4. Mayor and Council, Section 7. Mayor's Salary

Section 2-15 Code of Ethics.

The purpose of this Code of Ethics is to establish, in keeping with the General Statutes of the State of North Carolina, guidelines for an ethical standard of conduct for the Town Council (the "Council") and to help determine what conduct is appropriate in particular cases. It should not be considered a substitute for the law or for a Board member's best judgment.

Statutory Reference— Ethics Codes and Education Program, G.S. § 160A-86.

- (A) Principles underlying the Code of Ethics.
 1. The stability and proper operation of democratic representative government depend upon public confidence in the integrity of the government and upon responsible exercise of the trust conferred by the people upon their elected officials.

2. Governmental decisions and policy must be made and implemented through proper channels and processes of the governmental structure.
3. Council members must be able to act in a manner that maintains their integrity and independence, yet is responsive to the interests and needs of those they represent.
4. Council members must always remain aware that at various times they play different roles:
 - i. As advocates, who strive to advance the legitimate needs of their citizens;
 - ii. As legislators, who balance the public interest and private rights in considering and enacting decisions, ordinances, and resolutions; and
 - iii. As decision-makers, who arrive at fair and impartial quasi-judicial and administrative determinations.
5. Council members must know how to distinguish among these roles, to determine when each role is appropriate, and to act accordingly.
6. Council members must be aware of their obligation to conform their behavior to standards of ethical conduct that warrant the trust of their constituents. Each official must find within his or her own conscience the touchstone by which to determine what conduct is appropriate.

(B) Requirements.

1. Obey the law. Council members should obey all laws applicable to their official actions as members of the Council. Council members should be guided by the spirit as well as the letter of the law in whatever they do.
2. Act with civility. Council members should feel free to assert policy positions and opinions without fear of reprisal from fellow Board members or citizens. To declare that a Council member is behaving unethically because one disagrees with that Council member on a question of policy (and not because of the Board member's behavior) is unfair, dishonest, irresponsible, and itself unethical.
3. Maintain integrity and independence. Council members should act with integrity and independence from improper influence as they exercise the duties of their office. Characteristics and behaviors consistent with this standard include the following:
 - a) Adhering firmly to a code of sound values;
 - b) Behaving consistently and with respect toward everyone with whom they interact;
 - c) Exhibiting trustworthiness;
 - d) Living as if they are on duty as elected officials regardless of where they are or what they [are] doing;
 - e) Using their best independent judgment to pursue the common good as they see it, presenting their opinions to all in a reasonable, forthright, consistent manner;

- f) Remaining incorruptible, self-governing, and unaffected by improper influence while at the same time being able to consider the opinions and ideas of others;
 - g) In a quasi-judicial matter, disclosing contacts and information about issues that they receive outside of public meetings to the extent required by law;
 - h) In a quasi-judicial matter, refraining from seeking or receiving information about the matter outside of the quasi-judicial proceeding itself to the extent required by law;
 - i) Treating other Council members and the public with respect and honoring the opinions of others even when the Council members disagree with those opinions;
 - j) Not reaching conclusions on issues until all sides have been heard;
 - k) Showing respect for their office and not behaving in ways that reflect badly on those in office;
 - l) Recognizing that they are part of a larger group and acting accordingly; and
 - m) Recognizing that individual Council members are not generally allowed to act on behalf of the Council but may only do so if the Council specifically authorizes it, and that the Council must take official action as a body.
4. Avoid improper acts.
- a) Council members should avoid impropriety in the exercise of their official duties. Their official actions should be above reproach. Although opinions may vary about what behavior is inappropriate, this Council will consider impropriety in terms of whether a reasonable person who is aware of all of the relevant facts and circumstances surrounding the Council member's action would conclude that the action was inappropriate.
 - b) If a Council member believes that his or her actions, while legal and ethical, may be misunderstood, the member should seek the advice of the Town's attorney and should consider publicly disclosing the facts of the situation and the steps taken to resolve it (such as consulting with the attorney).
5. Faithfully perform the duties of office. Council members should faithfully perform the duties of their office. They should act as especially responsible citizens whom others can trust and respect. They should set a good example for others in the community, keeping in mind that trust and respect must continually be earned. Board members should faithfully attend and prepare for meetings. They should carefully analyze all credible information properly submitted to them, and in quasi-judicial matters they should be mindful of the need not to engage in communications outside of meetings. They should demand full accountability from those over whom the Board has authority. Council members should be willing to bear their fair share of the Board's workload. To the extent appropriate, they should be willing to put the Board's interests ahead of their own.
6. Conduct the business of government in an open and public manner. Board members should conduct the affairs of the Council in an open and public manner. They should comply with all applicable laws governing open meetings and public records, recognizing that doing so is an

important way to be worthy of the public's trust. They should remember when they meet that they are conducting the public's business. They should also remember that local government records belong to the public and not to Board members or their employees. In order to ensure strict compliance with the laws concerning openness, Board members should make clear that an environment of transparency and candor is to be maintained at all times in the governmental unit. They should prohibit unjustified delay in fulfilling public records requests. They should take deliberate steps to make certain that any closed sessions held by the Board are lawfully conducted and that such sessions do not stray from the purposes for which they are called.

Section 2-16 through 2-20 – Reserved.

DIVISION 2: TOWN COUNCIL

Section 2-21 Powers; enacting ordinances, resolutions and the like.

The Council shall have power to enact amendments to this Code, the Charter, ordinances, resolutions or bylaws, for the better government of the Town, not inconsistent with the Charter or laws of the land.

Statutory reference:

General ordinance-making power, see G.S. Section 160A-174

Section 2-22 Powers; consolidation of offices.

The Council may in its discretion consolidate any two or more offices of the Town and assign the duties of both offices to one or more persons.

Section 2-23 Meetings; regular.

There shall be regular meetings of the Council held at Town Hall or at another place as may be designated on the first Monday of each month at 7:00 p.m. at the Town Hall unless otherwise specified, in which case proper notice shall be given and each member of the Council shall be notified pursuant to state statute. Provided that, if such Monday falls on a federal or state holiday the Town Council shall meet on the next day at the same place and time.

(1992 Code, Section 30.15(A))

Charter reference: *Meetings of Town Council, see Section 6.*

Statutory reference: *Council meetings, see G.S. Section 160A-68, 160A-71*

Section 2-24 Meetings; special.

(A) The Mayor, the Mayor Pro Tempore or any two members of the Council may at any time call a special Council meeting by signing a written notice stating the time and place of the meeting and the subjects to be considered.

(B) The notice shall be delivered to the Mayor and each Council member or left at his or her usual dwelling place at least six hours before the meeting.

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

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

(E) During any regular meeting, or any duly called special meeting, the Council may call or schedule a special meeting, provided that the motion or resolution calling such special meeting shall specify the time, place and purposes of such meeting and shall be adopted in open session.

(1992 Code, Section 30.15(B))

Statutory reference: Council meetings, see G.S. Section 160A-71; Public notice of official meetings, see G.S. Section 143-318.12

Section 2-25 Meetings; adjourned.

If a quorum fails to attend any regular or special meeting of the Council or if for any reason the meeting fails to complete the transaction of the business before the meeting, the meeting may be adjourned to any date prior to the next regular meeting agreed upon by a majority of the members present.

(1992 Code, Section 30.16)

Section 2-26 Meetings; mayor presides over meetings.

The Mayor, when present, shall preside at all meetings of the Council. In case of the absence of the Mayor, the Mayor Pro Tempore shall preside.

Section 2-27 Meetings: rules of procedure; quorum.

(A) Except as otherwise provided, the procedure of the Council shall be governed by Robert's Rules of Order.

(B) A majority of the total members of the Council shall constitute a quorum.

(1992 Code, Sections 30.19, 30.20, 30.21, 30.22, 30.23, 30.24 and 30.25)

Section 2-28 Meetings: order of business.

(A) The order of business at all regular Council meetings shall be as set forth in the published agenda.

(B) If the Council directs any matter to be the special business of a future meeting, the same shall have precedence over all other business at the meeting.

(C) No proposition shall be entertained by the Mayor until it has been seconded, and every proposition, when required by the Mayor or any member of the Council, shall be reduced to writing.

(1992 Code, Sections 30.17 and 30.18)

Section 2-29 Meetings: public comment period

The Town of Pembroke will have a Public Comment Period at regularly scheduled meetings. The procedure for this comment period shall be determined by the Council and may be amended from time to time.

- (A) The public comment period will last until the last person speaks, and will be the last item on the agenda other than the adjournment. This comment period will not involve questions and answers.
- (B) Before the meeting begins, patrons shall indicate that they wish to address the Town Council on a sign-in sheet provided. Patrons shall complete all applicable information on the sign-in sheet. The Mayor will recognize patrons in the order in which forms are submitted.
- (C) In accordance with the general statutes of the State of North Carolina personnel issues shall not be discussed.
- (D) Complaints and comments are best handled and resolved as close to their origin as possible. Therefore, the proper channeling of complaints and comments involving streets, water and sewer, taxes, minutes, general records, personnel and policy and general will be as follows:
- Public Works Director
 - Tax Collector
 - Clerk
 - Manager
 - Town Council
- (E) Four individuals may speak in succession per issue during the public comment period.
- (F) Each individual shall limit remarks to no more than three minutes as set by the Town Council at the beginning of the public comment period of the meeting.
- (G) The Mayor shall not permit any individual to use abusive language or to make personal attacks. Each speaker shall present comments in a respectful manner.
- (H) No substitute speaker shall be allowed for an individual who requests time to address the Town Council during the public comment period.
- (I) When called upon by the Mayor, each speaker should state his/her name and address.
- (J) Remarks made by each speaker must be addressed to the Mayor. Town Council members will not respond to individuals who address the Town Council except to request clarification of points made by the speaker.
- (K) The Town Council vests the Mayor or other presiding officer with the authority to terminate the remarks of any individual who does not adhere to established guidelines. At any time the Town Council may establish other guidelines necessary for the efficient and orderly operation of the public comment period.
- (L) The proceedings of the public comment period will be recorded.
- (M) No action will be taken during the public comment period.

(Adopted the 4th day of February, 2008) (Amended the 4th day of May, 2009)

Section 2-30 Resignation of member.

Resignation of any Council member shall be in writing, and the resignation shall lie on the table until the next regular meeting unless considered by unanimous consent.

Section 2-31 Disqualification of member.

If any member of the Council or the Mayor moves his or her residence from the Town, his or her office shall be declared vacant at once.

Section 2-32 Committees

The Town Council may create committees of the Council for special purposes.

(1992 Code, Section 30.01)

Sections 2-33 – 2-60 - Reserved.

DIVISION 3: MAYOR

Section 2-61 Duties.

It shall be the duty of the Mayor to:

- (A) Preside at council meetings (§ 160A-69);
- (B) Call special meetings of the council (§ 160A-71).;
- (C) Vote to break a tie or may vote on all matters (§ 160A-69);
- (D) Assume all powers and duties enumerated in the General Statutes as well as any others conferred on him or her by the council. The Mayor is the official head of the Town for purposes of serving civil process, official correspondence or actions such as grant awards or enforcement of federal laws and regulations (§ 160A-67). The Mayor shall sign all contracts, ordinances, resolutions, papers or writings authorized by the Town; and
- (E) Appoint special committees and outline their powers and duties as he or she deems necessary to properly care for the affairs of the Town.

Statutory references as noted.

Section 2-62 Term of office.

The Term of Office for the Mayor shall be set for a period of four years.

(1992 Code, Section 31.15)

Sections 2-63 through 2-70: Reserved.

ARTICLE III: TOWN OFFICERS

Section 2-71 Appointed Positions.

The Town Manager and the Town attorney shall be appointed by the Town Council, shall hold their office at the pleasure of the board, and may be removed at any time by the board. The Town Manager shall appoint and

suspend or remove all other employees in accordance with North Carolina General Statutes and such general personnel rules, regulations, policies, or ordinances as the Town Council may adopt.

Statutory reference:

General Powers of Mayor, see G.S. Section 160A-67, 160A-69

Municipal officers, see G.S. Section 160A-59 et seq.

Section 2-72 Council-manager form of government.

- (A) The Town shall operate under the council-manager form of government in accordance with G.S. Chapter 160A and any charter provisions not in conflict therewith.
- (B) Duties of manager. The Town Manager shall be the chief administrator of the Town and shall be responsible to the Town Council for administering all municipal affairs placed in his charge by the mayor and commissioners, and shall have the following powers and duties as set forth in G.S. 160A-148:
 - (1) He/she shall appoint and suspend or remove all Town officers and employees not elected by the people, and whose appointment or removal is not otherwise provided for by law, except the Town Attorney, in accordance with general personnel rules, regulations, policies or ordinances as the Council may adopt.
 - (2) He/she shall direct and supervise the administration of all departments, offices and agencies of the Town, subject to the general direction and control of the Council, except as otherwise provided by law.
 - (3) He/she shall attend all meetings of the Council and recommend any measures that he or she deems expedient.
 - (4) He/she shall see that all laws of the state, the Town Charter and the ordinances, resolutions and regulations of the Council are faithfully executed within the Town.
 - (5) He/she shall prepare and submit the annual budget and capital program to the Council.
 - (6) He/she shall annually submit to the Council and make available to the public a complete report on the finances and administrative activities of the Town as of the end of the fiscal year.
 - (7) He/she shall make any other reports that the Council may require concerning the operations of Town departments, offices and agencies subject to his or her direction and control.
 - (8) He/she shall perform any other duties that may be required or authorized by the Council.

Charter: Officers and Employees, Section 3.

Statutory reference: Similar provisions, see G.S. Section 160A-148

Section 2-73 Town attorney.

- (A) It shall be the duty of the Town Attorney to:
 - (1) Prosecute and defend suits for and against the Town;
 - (2) Advise the Mayor, Town Manager, Council or any other officer of the Town in regard to matters connected with the Town's business;
 - (3) Attend meetings of the Council when requested to do so by it;
 - (4) Draw those deeds, contracts, bonds, notes and other legal papers as may be required for the proper conduct of the Town's business; and
 - (5) Approve all ordinances as to form before their introduction.

Charter: Officers and Employees, Section 3.

Statutory reference: Town Attorney, see G.S. Section 160A-173

Section 2-74 Town clerk.

- (A) The manager shall appoint a Town clerk. It shall be the duty of the clerk to:
- (1) Act as secretary to the board;
 - (2) Keep a true record of all the proceedings of the board;
 - (3) Keep the original of all ordinances in a book especially provided for that purpose;
 - (4) Act as custodian for all the books, papers, records and journals of the board; and
 - (5) Perform other duties as may be required of him or her by law, by the manager, or by the board.

Statutory reference— Duties of Town clerk specified, G.S. 160A-171; minutes to be kept, G.S. 160A-172.

Sections 2-75 Finance officer.

- (A) The Town Manager shall appoint the finance director, whose duties shall be to:
- (1) Keep the books and accounts of the Town;
 - (2) Receive and disburse all monies of the Town as required under state law;
 - (3) Countersign and preaudit all checks, drafts, contracts, purchase orders, or other documents obligating Town funds;
 - (4) Report to the manager and Town Council concerning the finances of the Town, as it may require;
 - (5) Maintain all records of the bonded debt of the Town and maintain sinking funds;
 - (6) Supervise the investment of idle funds; and
 - (7) Perform other duties assigned by the General Statutes, the Town Charter, or the manager.

Statutory reference— Duties of finance officer, G.S. 159-25; fiscal control generally, G.S. 159-7 et seq.

Sections 2-76 Tax collector.

- (A) The manager shall appoint a tax collector, whose duties shall be to:
- (1) Collect all taxes and assessments due to the Town;
 - (2) Make an accounting to the finance director at the end of each month;
 - (3) Remit to the finance director all money collected by him/her for the account of each separate fund according to the tax levy;
 - (4) Deliver a list of all unpaid taxes with the reason therefor as ascertainable to the Town Council;
 - (5) Supply the Town Manager with any information as may be required of him relative to the performance of his/her duties;
 - (6) Make periodic reports to the board listing therein all funds collected by him/her; and
 - (7) Perform other duties required by law, or as the Town Manager may direct.

Statutory reference— Duties of tax collector, G.S. 105-349, 105-350.

Sections 2-77 through 2-80: Reserved.

DIVISION 1: PLANNING AND ZONING BOARD

Section 2-81 Planning and Zoning Board established.

There is hereby created a Planning Board for the Town of Pembroke. The provisions for terms of membership, responsibilities, etc. may be found in the Town's Unified Development Ordinance.

Cross Reference – Unified Development Ordinance, Article 3, Part 1.

Section 2-82 through 2-85: Reserved.

DIVISION 2: BOARD OF ADJUSTMENT

Section 2-86 Board of Adjustment established.

There is hereby created a Board of Adjustment for the Town of Pembroke. The provisions for terms of membership, responsibilities, etc. may be found in the Town's Unified Development Ordinance.

Cross Reference – Unified Development Ordinance, Article 3, Part 2.

Section 2-87 through 2-90: Reserved.

DIVISION 3: PARKS AND RECREATION ADVISORY BOARD

Section 2-91 Establishment.

There is hereby created a Town Parks and Recreation Commission.

(1992 Code, Section 33.20)

Section 2-92 Membership; Terms.

The Parks and Recreation Commission shall consist of up to eight (8) members who shall be appointed by the Town Council. Each member shall be appointed for a term of two years and shall serve until reappointed or his/her successor is appointed. Terms shall end on August 15th of the year in which the terms expires.

(1992 Code, Section 33.21)

Section 2-93 Vacancies.

Vacancies shall be filled as they occur for the period of the unexpired term.

(1992 Code, Section 33.22)

Section 2-94 Compensation.

The members of the Parks and Recreation Commission shall serve as such without compensation.

(1992 Code, Section 33.23)

Section 2-95 Meetings.

The Parks and Recreation Commission shall hold regular meetings at such times and places as it may designate.

(1992 Code, Section 33.24)

Section 2-96 Officers appointed.

The Parks and Recreation Commission shall appoint from its membership a Chairperson and such other officers as it may deem necessary for the orderly conduct of its business.

(1992 Code, Section 33.25)

Section 2-97 Director of recreation.

The Town Manager shall appoint and designate a Director of Recreation, subject to the approval of the Town Council.

(1992 Code, Section 33.24)

Section 2-98 Powers and duties.

Those powers that are provided by statute, the provisions of this subchapter, or any other ordinances of the Town relating to the development and operation of recreation systems, parks, and playgrounds are hereby vested in the Parks and Recreation Commission to be exercised by it subject to any restrictions therein contained.

The duties of the parks and recreation commission shall be as follows:

- (C) To assist in formulating a parks and recreation program for the Town.
- (D) To serve the Town in an advisory capacity in the formulation of park and recreation budget and policy.
- (E) To adopt rules and regulations for the operation of the Town's parks and recreation facilities, subject to the approval of the council.

(1992 Code, Section 33.27)

Section 2-99 Bylaws, Rules And Regulations.

The Parks and Recreation Commission may adopt bylaws, rules and regulations covering its procedure not inconsistent with the provisions of State law, subject to the approval of the Town Council.

(1992 Code, Section 33.28)

Section 2-100 Reports To Town Council.

The Parks and Recreation Commission shall make full and complete reports to the Town Council at such times as may be requested and at such times as the Town Council may deem proper.

(1992 Code, Section 33.33)

Sections 2-101 through 2-105: Reserved.

DIVISION 4: ALCOHOLIC BEVERAGE CONTROL BOARD

Section 2-106 Board established.

There shall continue to be a board known as the Alcoholic Beverage Control (ABC) Board of the Town of Pembroke, which shall have and may exercise all of the powers and duties enumerated herein.

Statutory reference— similar provisions, G.S. 18B-700 et seq.

Section 2-107 Composition of board.

The alcoholic beverage control board shall be composed of a chairman and four (4) board members who shall be appointed by the Town Council. The chairman and each member shall be well known for their character, ability and business acumen, and shall serve for staggered terms of three (3) years each. Their successors, or any vacancy, shall be filled by appointment of the Town Council.

Statutory reference— Similar provisions, G.S. 18B-700 et seq.

Section 2-108 Removal.

A member of a local board may be removed for cause at any time by the Town Council and members shall be subject to the removal provisions of G.S. 18B-202.

Statutory reference— Similar provisions, G.S. 18B-700 et seq.

Section 2-109 Compensation.

A local board member shall receive compensation in an amount not to exceed one hundred fifty dollars (\$150.00) per board meeting unless a different level of monetary compensation is approved by the Town Council. If a different level is approved by the Town Council, the Town Council shall notify the Commission of the approved level of compensation in writing. Any change in compensation approved by the Town Council shall be reported to the Commission in writing within 30 days of the effective date of the change. No local board member shall receive any nonmonetary compensation or benefits unless specifically authorized by this section.

Statutory reference— Similar provisions, G.S. 18B-700 et seq.

Section 2-110 Travel Allowance; Travel Policy

Approved travel on official business by the members and employees of local boards shall be reimbursed pursuant to G.S. 138-6 unless the ABC Board adopts a travel policy that conforms to the travel policy of the Town of Pembroke and such policy is approved by the Town Council. The ABC board shall annually provide written confirmation from the Town Council of such approval to the Commission and a copy of the travel policy authorized by the Town Council. Any excess expenses not covered by the ABC Board's travel policy shall only be paid with the written authorization of the finance officer of the Town of Pembroke. A copy of the written authorization for excess expenses shall be submitted to the Town Council by the ABC Board within 30 days of approval.

Statutory reference— Similar provisions, G.S. 18B-700 et seq.

Section 2-111 Conflict of Interest.

The provisions of G.S. 18B-201 and **Section 2-1** of this Code of Ordinances shall apply to all members of the ABC Board and its employees.

Statutory reference— Similar provisions, G.S. 18B-700 et seq.; G.S. 18B-201.

Section 2-112 Bond.

Each ABC Board member and the employees designated as the general manager and finance officer of the local board shall be bonded in an amount not less than fifty thousand dollars (\$50,000) secured by a corporate surety, for the faithful performance of his duties. A public employees' blanket position bond in the required amount satisfies the requirements of this subsection. The bond shall be payable to the local board and shall be approved by the appointing authority for the local board. The appointing authority may increase the amount of the bond required for any member or employee who handles board funds.

Statutory reference— Local ABC boards, G.S. 18B-700 et seq.; operation of ABC stores, G.S. 18B-800 et seq.

Section 2-113 Limited Liability.

A person serving as a member of a the ABC board shall be immune individually from civil liability for monetary damages, except to the extent covered by insurance, for any act or failure to act arising out of this service, except where the person:

- (1) Was not acting within the scope of his official duties;
- (2) Was not acting in good faith;
- (3) Committed gross negligence or willful or wanton misconduct that resulted in the damage or injury;
- (4) Derived an improper personal financial benefit from the transaction; or
- (5) Incurred the liability from the operation of a motor vehicle. The immunity in this subsection is personal to the members of the ABC board, and does not immunize the local ABC board for liability for the acts or omissions of the members of the local ABC board.

Statutory reference— Local ABC boards, G.S. 18B-700 et seq.; operation of ABC stores, G.S. 18B-800 et seq.

Section 2-114 Nepotism.

Members of an immediate family shall not be employed within the ABC board if such employment will result in one member of the immediate family supervising another member of the immediate family, or if one member of the immediate family will occupy a position which has influence over another member's employment, promotion, salary administration, or other related management or personnel considerations. This subsection applies to local board members and employees.

For the purpose of this subsection, the term "immediate family" includes wife, husband, mother, father, brother, sister, son, daughter, grandmother, grandfather, grandson, and granddaughter. Also included are the step-, half-, and in-law relationships. It also includes other people living in the same household, who share a relationship comparable to immediate family members, if either occupies a position which requires influence over the other's employment, promotion, salary administration, or other related management or personnel considerations.

Statutory reference— Local ABC boards, G.S. 18B-700 et seq.; operation of ABC stores, G.S. 18B-800 et seq.

Section 2-115 Powers and duties.

The alcoholic beverage control board shall have all the powers and duties imposed by Chapter 18B of the General Statutes on Town boards of alcoholic control, and shall be subject to the powers and authority of the state board of alcoholic beverage control the same as county boards of alcoholic control, as provided in Chapter 18B of the General Statutes; provided, no Town alcoholic beverage control stores shall be located or operated within four hundred fifty (450) feet of any school or church in the Town . The alcoholic beverage control board and the operation of any Town alcoholic beverage control store shall be subject to the provisions of Chapter 18B of the General Statutes, except to the extent which the same may be in conflict with the provisions of this chapter.

Statutory reference— Local ABC boards, G.S. 18B-700 et seq.; operation of ABC stores, G.S. 18B-800 et seq.

Section 2-116 Distribution of profits.

Out of the net profits remaining after the payment of all costs and operating expenses, and after retaining a sufficient and proper working capital, the board of alcoholic beverage control shall distribute the net profits as follows: The first fifteen (5) percent for law enforcement; of the remaining balance, sixty-five percent (65%) to the Pembroke General Fund for any governmental, library, recreational, or educational purposes; and thirty-five percent (35%) to the Robeson County General Fund for any governmental, library, educational or hospital purpose.

Statutory reference— Similar provisions, G.S. 18B-805 (c) (2).

Section 2-117 Penalty.

Any violation of any rule, regulation or ordinance adopted pursuant to the authority granted in Sections 2-101 through 2-111 shall subject the violator to the penalty provisions contained in Section 1-6 of this code.

Sections 2-118 through 2-140: Reserved.

DIVISION 5: PEMBROKE TOURISM DEVELOPMENT AUTHORITY

Section 2-141 Commission Established.

There shall continue to be a board known as the Pembroke Tourism Development Authority of the Town of Pembroke, which shall have and may exercise all of the powers and duties enumerated herein.

Motion 2/7/2011

Section 2-142 Membership; Terms.

The Pembroke Tourism Development Authority shall consist of up to three (3) members who shall be appointed by the Town Council. Each member shall be appointed for a term of three years and shall serve until reappointed or his/her successor is appointed. Terms shall end on August 15th of the year in which the terms expires. The Town Manager shall serve as an Ex-Officio member of this Board.

Section 2-143 Membership: Composition.

At least one of the members shall be a business owner in town and all members shall be engaged in active promotion of travel and tourism in the town.

Section 2-143 Vacancies.

Vacancies shall be filled by the Town Council as they occur for the period of the unexpired term.

Section 2-144 Compensation.

The members of the Board shall serve as such without compensation.

Section 2-145 Meetings.

The Board shall hold regular meetings at such times and places as it may designate.

Section 2-146 Officers appointed.

The Town Council shall appoint from its membership a Chairperson and such other officers as it may deem necessary for the orderly conduct of its business.

Section 2-147 Powers and duties.

The duties of the Board shall be as follows:

- (a) To assist in formulating a Travel and Tourism program for the Town.
- (b) To serve the Town in an advisory capacity in the formulation of a Travel and Tourism budget and policy.

Section 2-148 Bylaws, Rules And Regulations.

The Board may adopt bylaws, rules and regulations covering its procedure not inconsistent with the provisions of State law, subject to the approval of the Town Council.

Section 2-149 Reports To Town Council.

The Board shall make full and complete reports to the Town Council at such times as may be requested and at such times as the Town Council may deem proper.

Sections 2-150 through 2-160: Reserved.

ARTICLE V: FINANCE AND PURCHASING.

DIVISION 1. PURCHASING APPARATUS, SUPPLIES, MATERIALS OR EQUIPMENT

Section 2-161 Authority.

Subject to the restrictions and conditions hereinafter provided, when purchasing, apparatus, supplies, materials or equipment for use by the Town, in addition to that authority as may be provided by law and/or otherwise delegated by the Town Council, the Town Manager or his or her designee shall have the authority to:

- (A) 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;

- (B) Include, where appropriate, in specifications for the item(s) to be purchased an opportunity for bidders to purchase specified personal property owned by the Town;
- (C) Advertise, or otherwise secure bids, for those item(s), if required under applicable law;
- (D) Award contracts for the purchase of item(s) and, where applicable, award contracts for the purchase of the item(s) and the sale of trade-in property;
- (E) Reject bids;
- (F) Re-advertise to receive bids;
- (G) Waive bid bond or deposit requirements;
- (H) Waive performance and payment bond requirements; and
- (I) Execute and deliver the purchase contract(s).

Section 2-162 Extent of Authority.

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 \$30,000 for any one item or group of similar items.

Statutory reference – Bidding, G.S. 143-129(a) and Informal Bidding, G.S. 143-131.

Section 2-163 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 Manager or his or her designee by statute, law or action of the Town Council.

Section 2-164 Appropriation Required.

No purchase shall be made by the Town Manager or his or her designee under authority of this article unless an appropriation for that purpose has been authorized in the annual budget, or by supplemental appropriation or budget appropriation amendment duly adopted by the Town Council.

Section 2-165 Application of General Statutes.

In acting pursuant to the authority delegated by this article, the Town Manager or his or her designee shall comply with the requirements of G.S. Chapter 143, Article 8, as from time to time amended, modified, supplemented, revised or superseded, to the same extent as would have otherwise applied to the Town Council.

Section 2-166 Report to Town Council.

At the first meeting of the Town Council following the award of any contract(s) pursuant to this article, the Town Manager or his or her designee shall submit a report to the Town Council summarizing the bids received and the contract(s) awarded. The report shall be included in the minutes of the meeting at which it is received.

Section 2-167 Requisition.

All departments shall prepare a purchase requisition in accordance with purchasing procedure approved by the Town Manager.

Statutory reference: Public purchasing and contracts generally, G.S. 143-129 et seq.

Section 2-168 Purchase Orders.

Purchase orders shall be prepared and issued in accordance with purchasing procedures approved by the Town Manager.

Statutory reference: Pre-audit of disbursements, G.S. 159-28; Regulation of contracts, G.S. § 160A-16 et seq.

Section 2-169 Construction and Repair Contracts; Authorization to Contract.

Town contracts for construction or repair work not subject to formal bidding requirements under G.S. 143-128 et seq. and service contracts in the amount of fifty thousand dollars (\$50,000.00) or less may be awarded by the Town Manager, and the Town Council hereby delegates to the Town Manager such authority to contract on behalf of the Town .

Section 2-170 Execution of Town Contracts.

All contracts entered into by the Town may be signed by the Mayor; in his absence, the Mayor pro tem; and, in addition, by the Town Manager or his written designee, who is hereby delegated such authority to execute contracts on behalf of the Town , unless otherwise provided by law.

Sections 2-171 through 2-180: Reserved.

DIVISION 2. TOWN FISCAL POLICIES AND PROCEDURES

Section 2-181 Fiscal Policy.

The Town Manager shall maintain a formal Town fiscal policy to guide the Town's fiscal decisions. Said policy shall be as approved by the Town Council and amended from time to time as necessary or desired.

Section 2-182 Internal Control Policy.

The Town Manager shall maintain a formal internal control policy for the Town's financial operations. Said policy shall be as approved by the Town Council and amended from time to time as necessary or desired.

Section 2-183 Purchasing and Contracting Policy.

The Town Manager shall maintain a purchasing and contracting policy governing all purchases and contracts of the Town. Said policy shall be as approved by the Town Council and amended from time to time as necessary or desired.

Section 2-184 Policy for Disposal of Surplus Property.

The Town Manager shall maintain a policy regarding the disposition of the Town's surplus real and personal property. Said policy shall be as approved by the Town Council and amended from time to time as necessary or desired.

(Ordinance 1998-1, adopted 8 September 1998)

Section 2-185 Maintenance of Policies

Maintenance of the policies outlined above in Sections 2-161 through 2-164 shall be the responsibility of the Town's Finance Officer subject to the review and approval of the Town Manager.

Section 2-186 Town Depositories.

- (A) Town depositories shall be designated as such by ordinance. When at any time there is more than one Town depository, the Town Council shall, by ordinance, specify which of the several Town funds shall be maintained on deposit in each Town depository, and no single fund shall be divided for deposit in more than one depository except for compelling reasons stated in the ordinance.
- (B) The Town Council, for the best interests of the Town, shall from time to time, but not less frequently than biennially, review the situation as to Town depositories, and may make such changes as prudence may dictate.

Statutory reference: Selection of depositories, see G.S. § 159-31.

Section 2-187 Compliance with Local Government Budget and Fiscal Control Act.

- (A) Incurring Obligations.
 - (1) No obligation may be incurred in a program, function, or activity accounted for in a fund included in the budget ordinance unless the budget ordinance includes an appropriation authorizing the obligation and an unencumbered balance remains in the appropriation sufficient to pay in the current fiscal year the sums obligation by the transaction in the current fiscal year.
 - (2) No obligation may be incurred for a capital project or a grant project authorized by a project ordinance unless that project ordinance includes an appropriation authorizing the obligation and an unencumbered balance remains in the appropriation sufficient to pay in the current fiscal year the sums obligation by the transaction in the current fiscal year.
 - (3) If an obligation is evidenced by a contract or agreement requiring the payment of money or by a purchase order for supplies and materials, the contract, agreement, or purchase order shall include on its face a certificate stating that the instrument has been preaudited to assure compliance with this division. The certificate, which shall be signed by the Finance Officer or any Deputy Finance Officer approved for this purpose by the Town Council shall take substantially the following form:

“This instrument has been preaudited in the manner required by the Local Government Budget and Fiscal Control Act.

Signature of Finance Officer.”

- (4) An obligation incurred in violation of this division is invalid and may not be enforced.
 - (5) The Finance Officer shall establish procedures to comply with this division.
- (B) Disbursement.
 - (1) When a bill, invoice, or other claim against the Town is presented, the Finance Officer shall either approve or disapprove the disbursement. If the claim involves a program, function, or activity accounted for in a fund included in the budget ordinance or a capital project ordinance or grant authorized by a project ordinance, the Finance Officer may approve the claim only if the following can be established:
 - a. He/She determines the amount to be due and payable; and
 - b. The budget ordinance includes an appropriation authorizing the expenditure and either an encumbrance has been previously created for the

transaction or an unencumbered balance remains in the appropriation sufficient to pay the amount to be disbursed.

- (2) The Finance Officer may approve a bill, invoice, or other claim requiring disbursement from an intragovernmental service fund or trust or agency fund not included in the budget ordinance, only if the amount claimed is determined to be payable. A bill, invoice, or other claim may not be paid unless it has been approved by the Finance Officer or, under division (C) of this section, by the Town Council.

- (3) The Finance Officer shall establish procedures to comply with this division.

(C) Town Council approval of bills, invoices, and claims.

- (1) The Town Council may, as permitted by this division, approve a bill, invoice, or other claim against the Town that has been disapproved by the Finance Officer. It may not approve a claim for which no appropriation appears in the budget ordinance or in a project ordinance, or for which the appropriation contains no encumbrance and the unencumbered balance is less than the amount to be paid.
- (2) The Town Council shall approve payment by formal resolution stating the Council's reasons for allowing the bill, invoice, or other claim. The resolution shall be entered into the minutes together with the names of those voting in the affirmative. The Mayor or some other member of the Council so designated for this purpose shall sign the certificate on the check or draft given in payment of the bill, invoice, or other claim. If payment results in a violation of the law, each member of the Council voting to allow payment is jointly and severally liable for the full amount of the check or draft given in payment.

(D) Payment:

- (1) The Town may pay a bill, invoice, salary, or other claim except by check, credit card, draft on an official depository, or a bank by wire transfer from an official depository.
- (2) Except as provided in this division, each check or draft on an official depository shall bear on its face a certificate signed by the Finance Officer or a Deputy Finance Officer approved for this purpose by the Town Council or signed by the Mayor or some other member of the Town Council pursuant to division (C) of this section.
- (3) The certificate shall take substantially the following form:

"This disbursement has been preaudited in the manner required by the Local Government Budget and Fiscal Control Act.

Signature of Finance Officer."

- (4) No certificate is required on payroll checks or drafts on an imprest account in an official depository if the check or draft depositing the funds in the imprest account carried a signed certificate.
- (5) Payments made by credit card shall be subject to the Town's Credit Card Policy.

(Town Credit Card Policy, adopted 6 October 2014.)

(E) Penalties:

- (1) If an officer or employee of the Town incurs an obligation or pays out or causes to be paid out any funds in violation of this section, he/she and the sureties on his official bond are liable for any sums so committed or disbursed.
- (2) If the Finance Officer or and properly designated Deputy Finance Officer gives a false certificate to any contract, agreement, purchase order, check, draft, or other document, he/she and the sureties of his official bond are liable for any sums illegally committed or disbursed thereby.

Statutory reference – G.S. Section 159-28

Section 2-188 Signatures on checks; Exceptions.

Checks drawn on Town funds shall require two signatures. Signatures shall include either the Mayor or the Town Manager together with the signature of Town Treasurer/Finance Officer.

Statutory reference: Signing checks, see G.S. § 159-25(b)

Section 2-189 Deposits of funds received by the Town.

The Finance Officer shall deposit to the credit of the Town, in such banks as may be designated by the Town Council as depositories, all money received by him and belonging to the Town, on the same day he shall receive such money or on the following day, unless the following day is a Sunday or legal holiday, in which event he shall deposit such money the first day thereafter which is not a Sunday or a legal holiday.

Section 2-190 Capital Reserve Fund- Water and Sewer Enterprise Fund.

- (A) Pursuant to the Municipal Capital Reserve Act as set forth in G.S. §§ 159-18 et seq., a Capital Reserve Fund is hereby authorized and declared to be established for the Town.
- (B) The Capital Reserve Fund shall consist of money derived from unappropriated surplus revenues and unencumbered balances, being receipts from revenues from the sale of water and sewer.

Section 2-191 Consolidation of Functions.

The Town Council may provide for the consolidation of any two (2) or more positions of Town Clerk, Town Tax Collector and Town Finance Officer, or may assign the functions of any one or more of these positions to the holder or holders of any other of these positions, subject to the Local Government Budget and Fiscal Control Act.

Statutory Reference— Authority to consolidate, etc., offices, G.S. § 160A-146.

Sections 2-192 through 2-200: Reserved.

DIVISION 3. PERSONNEL

Section 2-201 Establishment of Personnel Policy.

The Town of Pembroke hereby establishes a personnel policy, under the direction of the Town Manager, which will provide for the recruitment, selection, development and maintenance of an effective and responsible work force. It is the purpose of this policy and the rules and regulations set forth to establish a fair and uniform system of

personnel administration for all employees of the Town under the supervision of the Town Manager. This policy is established under authority of Chapter 160A, Article 7, of the General Statutes of North Carolina.

Section 2-202 Responsibilities of the Town Council.

The Town Council shall be responsible for establishing and approving personnel policies, the position classification and pay plan, and changing the policies and benefits as necessary. They shall also make and confirm appointments when so specified by the general statutes.

Section 2-203 Responsibilities of the Town Manager.

The Town Manager shall be responsible to the Town Council for the administration and technical direction of the personnel program. The Town Manager shall appoint, suspend, and remove all Town employees except those appointed by the Town Council. The Town Manager shall make appointments, dismissals, and suspensions in accordance with the Town Charter and other policies and procedures spelled out in other Articles in the Policy. The Town Manager shall make recommendations to the Council for amendments and revisions of the Policy as may be necessary.

Cross Reference – Duties of the Town Manager, Section 2-72.

Section 2-204 Code of Conduct.

- (A) No employee, officer or agent of the Town shall knowingly solicit or accept any form of gratuity from any person, firm, or organization whereby such gratuity shall in any way persuade or affect the outcome of the award of any contract.
- (B) No employee, officer or agent of the Town shall participate in the selection or in the award or administration of a contract supported by federal funds if such a conflict of interest, real or apparent, would be involved. Such a conflict would arise when the employee, officer, or agent, member of his/her immediate family, his/her partner or an organization which employs, or is about to employ, any of the above individuals, has a financial or other interest in the firm selected for the award.
- (C) No employee, officer or agent of the Town shall solicit nor accept any form of gratuity, favor or anything of monetary value from contractors, vendors or parties to sub agreements.
- (D) If any employee, officer or agent shall knowingly violate any provision of this section, such employee, officer or agent will be subject to disciplinary measures as may be deemed appropriate by the Town Council, including, but not limited to, suspension without pay, demotion or dismissal.
- (E) If any contractor or his agent violates any provision of this section, such violation will constitute grounds for action deemed appropriate by the Town Council including, but not limited to, withdrawal from consideration of any proposal or bid submitted by such contractor, withdrawal of award or rescission of the contract.

(1992 Code, Section 31.01)

Sections 2-205 through 2-220: Reserved.

CHAPTER 3: ALCOHOLIC BEVERAGE REGULATION

ARTICLE I: IN GENERAL

Section 3-1 Definitions.

- (A) Unfortified wine means any wine of sixteen percent (16%) or less alcohol by volume made by fermentation from grapes, fruits, berries, rice, or honey; or by the addition of pure cane, beet, or dextrose sugar; or by the addition of pure brandy from the same type of grape, fruit, berry, rice, or honey that is contained in the base wine and produced in accordance with the regulations of the United States according to the definition contained in NC General Statutes Section 18B-100.
- (B) Fortified wine means any wine, of more than sixteen percent (16%) and no more than twenty-four percent (24%) alcohol by volume, made by fermentation from grapes, fruits, berries, rice, or honey; or by the addition of pure cane, beet, or dextrose sugar; or by the addition of pure brandy from the same type of grape, fruit, berry, rice, or honey that is contained in the base wine and produced in accordance with the regulations of the United States.
- (C) Malt beverage means beer, lager, malt liquor, ale, porter, and any other brewed or fermented beverage except unfortified or fortified wine as defined by this Chapter, containing at least one-half of one percent (0.5%), and not more than fifteen percent (15%), alcohol by volume. Any malt beverage containing more than six percent (6%) alcohol by volume shall bear a label clearly indicating the alcohol content of the malt beverage.
- (D) Mixed beverage means either of the following:
 - (1) A drink composed in whole or in part of spirituous liquor and served in a quantity less than the quantity contained in a closed package.
 - (2) A premixed cocktail served from a closed package containing only one serving.
- (E) Open container means a container whose seal has been broken or a container other than the manufacturer's unopened original container (G.S. 18B-300(c)).
- (F) **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.

Section 3-2 Consumption of alcoholic beverages on public streets and municipal property prohibited.

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, public greenways, playgrounds, recreational areas, tennis courts, and other athletic fields; provided that this sentence shall not apply to property owned or leased by the Town which is leased or subleased to another party under terms that transfer the day-to-day control and operation of the property to the other party.

Section 3-3 Possession of open containers on public streets and municipal property prohibited.

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, public greenways, playgrounds, recreational areas, tennis courts, and other athletic fields; provided that this sentence shall not apply to property owned or leased by the Town which is leased or subleased to another party under terms that transfer the day-to-day control and operation of the property to the other party.

Statutory reference:

Manufacture, sale and the like, forbidden except as expressly authorized, see G.S. Section 18B-102

Public intoxication, see G.S. Section 14-443 et seq.

Purpose of alcoholic beverage law, see G.S. Section 18B-100

Sale, possession and consumption, see G.S. Section 18B-300 et seq.

Section 3-4 Consumption of malt beverages and unfortified wine in Town Hall.

Consumption of malt beverages and unfortified wine, as defined by G.S. Chapter 18B, shall be lawful in Town Hall at special events with the prior approval of the Town Council.

Section 3-5 Penalty.

Any violation of any rule, regulation or ordinance adopted pursuant to the authority granted in Sections 3-1 through 3-4 shall subject the violator to the penalty provisions contained in Section 1-6 of this code.

Sections 3-6 through 3-20: Reserved.

CHAPTER 4: ANIMALS AND FOWL

ARTICLE I: IN GENERAL

Section 4-1 Purpose .

- (A) The Town of Pembroke recognizes the importance of creating a safe and healthy environment for all its citizens, whether that citizen is an animal owner or a citizen that prefers not to own an animal. The purpose of this chapter is to promote responsible ownership of animals and provide controls that maintain the health and safety for all citizens. This chapter provides supplemental authority to the Town and the Robeson County Animal Control agency, said agency being the primary enforcement agency within the corporate limits at the time of enactment of this chapter.
- (B) This chapter also provides the Town's law enforcement department, working in conjunction with County Animal Control, authority to protect against animal nuisances and activities by providing quick response time, greater local coverage, additional assistance to County staff and a local presence and familiarity within the Town and activities conducted therein.

Section 4-2 Definitions.

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

Adequate food means the provision, at suitable intervals, of a quantity of wholesome foodstuff suitable for the species and age, sufficient to maintain a reasonable level of nutrition in an animal. Such foodstuff shall be served in a sanitized receptacle, dish or container.

Adequate shelter means an enclosure sufficient to provide shelter from the extremes of weather, and a means to remain cool, dry and comfortable. Adequate shelter should consist of at least three solid sides, a roof and a floor with bedding to be ventilated and there is sufficient room for an animal to move about freely and lie down comfortably.

Adequate water means the provision of, or constant access to, a supply of clean and fresh portable water.

Animal means every vertebrate nonhuman species of animal, domestic or non-domestic, male or female, including, but not limited to, dogs, cats, pets, livestock and other mammals, birds, reptiles, amphibians and fish.

Animal Cruelty means Acts of violence or neglect perpetrated against animals are considered animal cruelty. Examples include overt animal abuse, dog and cock fighting and companion animal neglect where the animal is denied basic necessities of care such as fresh water and food or shelter.

Animal owner means any person, possessor, group of persons or family owning, keeping, having charge of, or right of property in, an animal that harbors an animal, or who has an animal for care, possession, custody or control, or who knowingly permits an animal to remain on property occupied by any person, group or family.

Animal running at-large means any animal not under the immediate control, not on a leash, not at heel, not beside and under restraint of a competent person, not in a vehicle driven or parked or not confined within the property

limits of its owner. Hunting and tracking dogs under the control of the owner when hunting with the landowner's permission, or horses within a pasture or fenced area, or livestock as part of a bona fide farm shall not constitute animals running at-large.

Bark, barks or barking means barking, yelping, howling, growling, bays, cries or otherwise makes noise that constitutes a nuisance.

Choke-type collar means a collar that, as the restraining device, is pulled or pressure is applied; the collar becomes tighter around the neck of an animal.

Continuously, in regards to noise, means noise which occurs during the majority of ten minutes in any 15-minute period.

Dangerous animal/dog.

- (2) The term "dangerous animal/dog" means any animal that has demonstrated a fierce or dangerous propensity or tendency to do any act, which may endanger persons or property and/or any non-domesticated animal indigenous to the State of North Carolina, including hybrid animals that are part wild. This would include, but not be limited to, any animal/dog which:
 - a. Assaults, bites, attacks or inflicts serious injury on a human being without provocation on public or private property; and/or
 - b. Which has killed or injured a pet or domestic animal.
- (2) Exceptions. Notwithstanding this definition, no animal/dog may be determined a dangerous animal/dog if, at the time the threat, injury or damage was sustained, a person was teasing, tormenting, abusing or assaulting the animal/dog or has in the past teased, tormented, abused or assaulted the animal/dog, or was committing or attempting to commit a crime. Nor shall an animal/dog be considered dangerous if it has attacked or injured a pet or domesticated animal in defense of an attack by another animal/dog or if it is protecting or defending its young.

Domestic animal means any species of animals that normally and customarily share and adapt to human living conditions and habitat and are normally dependent on humans for food and shelter, such as, but not limited to, dogs, cats, cattle, horses, swine, fowl, sheep and goats.

Impoundment means placement of an animal in the custody of and by Robeson Animal Control.

Livestock means horses, cows, goats, sheep, pigs, fowl or any other four-legged animal, excluding dogs and cats, used for pleasure or profit.

Minimum care means care sufficient to preserve the health and well-being of an animal and, except for emergencies or circumstances beyond a reasonable control of a person having custody or control of the animal, includes, but is not limited to:

- (1) Adequate quantity and quality of food to allow for normal growth or maintenance of body weight.
- (2) Adequate access to possible water in sufficient quantity to satisfy the animal's needs.
- (3) Adequate access to shelter or other enclosed structure sufficient to protect the animal from wind, rain, snow or sun, and which has adequate bedding to protect against cold and dampness.

- (4) Veterinary care deemed necessary by a reasonably prudent person to relieve distress from injury, neglect or disease.
- (5) Adequate space for exercise necessary for the health of the animal and that provides access to a dry place for the animal to rest.
- (6) Areas of confinement must be kept reasonably clean and free from excess animal waste or other contaminants and odor which could affect the animal's health and/or comfort of residence within the area.

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

Nuisance means an action by an animal that is annoying, unpleasant or obnoxious, whether or not the animal is on the owner's real property or other public or private property.

Owner's real property means any real property, lot, parcel, tract or subdivision owned or leased by the owner of the animal, but does not include any public right-of-way or a common area of a condominium, apartment complex or Townhouse development.

Pet means a domesticated animal for pleasure rather than service or utility.

Premises means a defined portion of real property or real estate including land with its appurtenances; a building or part of a building.

Pronged collar means a collar that when the restraining device is pulled or pressure is exerted causing the prongs or spikes to administer pain to the neck of an animal.

Public nuisance animal means any animal that causes a nuisance in one or a combination of the following:

- (1) Damage to property of any person other than the owner's property.
- (2) Running at-large, not on the owners' property and not on a leash.
- (3) Continuously making disturbing noises to the discomfort of neighbors or others in proximity to the disturbance. An animal is considered a "public nuisance animal" under this chapter when disturbing another person or neighbor by continuously, persistently, habitually, incessantly making noises for ten minutes within a 15-minute period.
- (4) Unsanitary or objectionable odors.
- (5) Failure of the owner of an animal to remove animal waste (feces) deposited by the animal on public property, sidewalks, parks, or privately owned property other than the property of the owner where the animal is kept and maintained.
- (6) Failure of the owner to keep and maintain a female animal, while in estrus, in a secure enclosure or in a manner that prevents contact with another animal; this does not prohibit intentional breeding of an animal on the premises of the owner and following the pertinent provisions of this Code.
- (7) An animal owner or possessor who fails to provide minimum care, sanitary conditions, adequate food, water or shelter or causes unnecessary suffering or cruelty.

Secure fencing or enclosure means a structure which is suitable to prevent the entry of children and to prevent the animal from escaping; secure sides and top which are a sufficient height to prevent an animal from jumping, climbing or otherwise escaping over the sides; sides are constructed at the bottom so as to prevent the animal's

escape by digging under the sides; and the structure provides appropriate protection from the elements for the animal.

Service animal means any animal that is specifically trained to assist a person with a disability or a law enforcement agency or officer to perform their duty in the interest of the public.

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

Tether, tethering means restraining an animal using a chain, wire, rope, cable trolley system, or any other similar type of device that fastens, chains, ties, or restrains an animal to a pole, tree, fence, post, stake, dog house or any other structure or object.

Town Animal Control Officer – means a Town or County employee whose responsibility includes animal control. The term "Town Animal Control Officer" may also include agents of a private organization that is operating an animal shelter under contract with a Town or County whenever those agents are performing animal control functions at the shelter.

Unattended means the owner of an animal is not on the premises, real property or real estate where an animal is kept or maintained outside.

(1992 Code, Chapter 91)

Section 4-3 Robeson County Animal Control Ordinance adopted by reference.

The Town of Pembroke hereby adopts the Robeson County Animal Control Ordinance as the minimum standard of care and requirement for control of animals within the Town of Pembroke jurisdiction. See **Appendix A**.

Section 4-4 Animals running at-large; public nuisance.

- (A) It shall be unlawful for any animal to run at-large off its owner's real property or premises within the Town corporate limits.
- (B) Any animal not on the real property or premises of the owner's residence shall be required to be restrained by the owner using a leash and maintaining control of the animal while off the real property or premises of the owner.
- (C) An animal may be permitted to be unleashed while off the owner's real property or premises, but only when on the premises of another real property owner, and with said real property owner's consent.
- (D) It shall be the responsibility of the owner or possessor of any animal to ensure that the animal is physically restrained from leaving the owner's real property or premises either by:
 - a. Keeping and maintaining the animal within the owner's residence;
 - b. Installation of a secure fence or enclosure; or
 - c. Installation of an invisible containment system UL approved.
- (E) The Pembroke Police Department or the designated Town Animal Control Officer shall have the authority to seize an animal running at-large and/or notify County Animal Control to seize and impound the animal at the County Animal Shelter. The owner shall be responsible for paying all penalties, fines and costs imposed or associated with such animal seizure and impoundment.

(1992 Code, Section 91.03)

Section 4-5 Provisions for Public Property.

- (A) Unless such area is posted otherwise, the owner or possessor of an animal is prohibited from bringing such animal onto Town-owned or Town-maintained property, including, but not limited to, parks, recreation uses, public rights-of-way, parking lots, greenways, walking trails or any other outdoor public property, without the animal restrained by a leash and under the control of the owner or possessor.
- (B) The owner or possessor of a service animal is permitted to enter any public property with said service animal, including, but not limited to, buildings, parks, recreation use facilities, public rights-of-way, parking lots or any other property kept and maintained by the Town, provided the service animal is restrained by a leash. Such service animal may be temporarily freed from its leash, provided it is performing a service function for its owner and provided further that the service animal remains under the constant control of the owner.

Section 4-6 Animal Noise.

- (A) It shall be a violation of this chapter for an owner or possessor to keep, maintain or permit the keeping or maintenance of a public nuisance animal within the Town's corporate limits whereby such animal makes continuous disturbing or annoying noises so as to constitute a public nuisance or disturbance.
- (B) In order for a valid noise complaint against the owner of an animal to constitute a public nuisance in violation of this provision, such complaint must be based on either two or more complaining witnesses from separate households filing such complaint with the Town Police Department, or if there is a single noise complaint then a law Enforcement Officer, investigating the noise complaint, must confirm that the noise is indeed a public nuisance in violation of this provision. If the animal is creating a public nuisance for noise in violation of this provision, then the owner of the animal committing the nuisance shall be given a written warning to abate the nuisance upon the first offense or, if the owner cannot be found or contacted, the premises where the animal is located shall be posted with such warning. In either case, the owner shall abate the public nuisance within 72 hours of the warning or be subject to subsequent penalties as provided in this chapter. Whether the animal is the same animal or a different animal, or various animals belonging to the same owner, any subsequent complaints shall constitute additional violations and the owner shall face additional penalties in accordance with this chapter.
- (C) Any public nuisance caused by provocation or incitement of the subject animal by someone other than the owner of the animal shall not constitute a violation of this provision.

(1992 Code, Section 91.04)

Section 4-7 Unsanitary conditions; animal cruelty; public nuisance.

- (A) The owner or possessor of an animal that is kept in unsafe or unsanitary conditions, or which creates noxious odors, or becomes a danger or risk to the health, safety or welfare of the public or otherwise constitutes a public nuisance shall immediately abate such nuisance, offending activity, conduct or condition.
- (B) The owner or processor of an animal shall provide such animal minimum care as included in Section 4-2.
- (C) A citizens' complaint of unsanitary conditions, animal cruelty or failure to provide minimum care shall be submitted to the Town Animal Control Officer or the Town Police Department. The Police Department shall contact the County Animal Control Office as needed to investigate any such

complaint. The Town Animal Control Officer shall be entitled to pursue abatement and enforcement of all unsanitary conditions and impose such penalties as provided in applicable County ordinances.

- (D) The owner or possessor of any animal shall immediately and properly dispose of all animal waste deposited by the animal on Town property, public rights-of-way or on the private property of others. In addition, the owner of such animal shall not permit it to damage or deface any property.

Section 4-8 Dangerous or Vicious animals; public nuisance.

- (A) If the Town Animal Control Officer declares an animal dangerous as defined in Section 4.2, then the owner of such dangerous animal shall follow the regulations and requirements of the Robeson County Animal Control Ordinance.
- (B) An animal declared dangerous by the Town Animal Control Officer shall not be permitted on public rights-of-way or public property of the Town, nor shall not it be permitted to run at-large on private property other than the owner's property.
- (C) If a citizen complaint is filed or a law Enforcement Officer of the Town observes an animal declared dangerous that is not properly secured within the premises of the owner, or if the dangerous animal is not properly under control of the owner off-premises, the Town Police Department or the Town Animal Control Officer may assist with the seizure of the animal. If such animal attacks, injures, or threatens a human being or pet, the Town Police Department shall have authority to seize, by any means, the dangerous animal.
- (D) If an animal declared dangerous is permitted by the Town to remain with the owner, the Town Police Department or the Town Animal Control Officer shall have the authority to order the owner to confine the dangerous animal to the owners' property, either kept in the residence of the owner or in an area of the property that is securely fenced to keep the animal on the premises. Any costs for securing the animal on the owners' premises will be the responsibility of the owner.
- (E) For purposes of determining the level of punishment under this chapter, the number of offenses by an owner or animal of the County Animal Control Ordinance shall constitute a prior offense or offenses.

(1992 Code, Chapter 91, Sections 91.02, 91.05)

Section 4-9 Tie an animal.

- (A) It shall be unlawful to tie an unattended animal for more than four hours in a 12-hour period outside of the owner's principal residence to a post, pole, tree, fence, stake, trolley system, dog house or other structure or object.
- (B) It shall be prohibited for an owner, possessor or person maintaining an animal to attach a rope, chain, wire or other tethering device to a choke-type or pronged collar on an animal.
- (C) Tying or restraining an animal may be permitted when actively engaged in:
- (1) Shepherding or herding livestock.
 - (2) Cultivating agricultural products, if restraining is reasonable and necessary for the safety of the animal.
 - (3) Lawful activities during hunting, if the restraint is reasonable and necessary for the safety of the animal.
 - (4) Walking an animal with a hand-held leash.

Section 4-10 Penalties for Violation.

(A) *General provisions.*

- (1) When the Town Animal Control Officer, law Enforcement Officer or person appointed by the Town Manager observes a violation, the owner will be provided with notification of such violation and be given 48 hours from time of the notification to abate the nuisance.
- (2) Each day that a violation of this chapter continues to exist beyond the designated time to abate the said violation, then such failure to take corrective action or remedial measures shall constitute a separate and distinct violation.
- (3) Upon receipt of a written detailed and signed complaint being made to the Town Manager or Town Animal Control Officer by any person or persons that any other person is maintaining a nuisance as defined in this chapter, the Town Manager shall cause the owner of the animal or animals in question to be notified that a complaint has been received, and shall cause the situation complained of to be investigated and a report and findings thereon to be reduced to writing.
- (4) It shall be a violation of this chapter for the owner of an animal, causing a public nuisance, to fail to comply with this chapter or fail to abate the nuisance or fail to obey the request of a law Enforcement Officer to secure a dangerous animal. Such failure or disregard shall constitute a separate and distinct violation of this chapter and any other applicable law or ordinance.
- (5) All violations of this chapter shall be shall be a Class 3 misdemeanor and enforced pursuant to the provisions of G.S. 14-4, unless another specific provision herein imposes only a civil penalty or some other specific criminal penalty.
- (6) Any civil penalty imposed pursuant to this ordinance shall be paid within 72 hours following the date of issuance of a citation. When the Town initiates a proceeding at law to collect the penalty then the violator shall also pay the cost of such proceeding, including attorney's fees and court costs.

(B) *Animal running at-large; public nuisance.* The following shall be the penalties imposed for permitting an animal to run at-large or creating a public nuisance.

- (1) For the first offense, the owner will be issued a written warning. If the owner of the animal cannot be identified the Town Police Department shall impound the animal and may coordinate with the Robeson County Animal Control to do so.
- (2) For a second violation, if a warning has already been given within the preceding 12 months, a civil penalty of \$100.00 shall be imposed on the owner.
- (3) For a third violation, within the same preceding 12-month period, a civil penalty of \$250.00 shall be imposed on the owner of the animal. In lieu of said penalty, the owner may enroll the animal in obedience classes and/or install a secure fence enclosure on the premises of the owner; both shall be at the owner's expense. The owner must furnish evidence of successfully completing such classes and/or install secure fencing.
- (4) For any violations committed subsequent to the third violation and within the same preceding 12 months, a civil penalty of \$500.00 shall be imposed. For any violation following the third or subsequent violation, such animal may be impounded and the cost associated with such and Town shall be assessed to the owner.

(C) *Animal noise; public nuisance.* The following penalties shall be imposed for permitting an animal to create a disturbing noise or public nuisance.

- (1) For the first offense the owner shall be issued a written warning to abate the public nuisance, noise or disturbance. The owner shall have 72 hours from the date of the issuance of the warning to abate the public nuisance, noise or disturbance.
 - (2) For a second violation, if a warning has already been given within the same preceding 12 months, a civil penalty of \$100.00 shall be imposed on the owner. In lieu of said penalty, the owner may enroll the animal in obedience classes at the owners' expense. The owner must furnish evidence of successfully completing the classes.
 - (3) For a third violation, within the same preceding 12-month period, a civil penalty of \$150.00 shall be imposed on the owner. In addition to the penalty, the Town may seize and impound the animal until the owner determines a resolution to abate the noise nuisance. Any penalties or cost associated with impoundment shall be the responsibility of the owner in addition to penalties imposed herein.
 - (4) For any committed violations of this provision within the same preceding 12-month period, a civil penalty of \$250.00 shall be imposed on the owner for each violation; the violator shall be issued a criminal citation setting out the basis of such violation and shall be guilty of a Class 3 misdemeanor and enforced pursuant to the provisions of G.S. 14-4.
- (D) *Unsanitary conditions or animal cruelty; public nuisance.* If the Town Animal Control Officer determines the existence of an unsanitary condition or animal cruelty, the owner shall be subject to the following penalties:
- (1) For failure to abate a violation of unsanitary conditions or animal cruelty declared by Town or Robeson County Animal Control, a civil penalty of \$100.00 shall be imposed by the Town as a first violation.
 - (2) For a second and subsequent violations committed within the preceding 12 months of the date of the first violation, a civil penalty of \$250.00 shall be imposed.
- (E) *Dangerous animals; public nuisance.* If the Town or County Animal Control Officer has declared an animal dangerous then the owner shall be guilty of a Class 1 misdemeanor and ordered to pay a fine of up to \$500.00. In addition to any criminal penalties Robeson County Animal Control may seize and impound the dangerous animal and order it euthanized for any of the following circumstance:
- (1) The owner fails to secure the dangerous animal on or off the owner's property.
 - (2) The owner fails to control and secure the dangerous animal on the owner's real property as required by this chapter, the County Animal Control Ordinance or an order by a court.
 - (3) The dangerous animal threatens attacks, injures, or causes the death of a human being or pet, unless such animal is attempting to thwart the criminal act of another.
- (F) *Animal waste and damage to property; public nuisance.* If the owner or possessor in control of an animal fails to immediately remove and properly dispose animal waste deposited by the animal on Town property, public right-of-way or private property, other than the owner's property, or the animal damages property other than the owner's property as provided herein, then such failure shall constitute a public nuisance with a civil penalty of \$50.00 for each violation.

(1992 Code, Chapter 91, Sections 91.03)

Section 4-11 Disposal of dead animals.

No person shall deposit or cause to be deposited the carcass of any dead animal in the streets, roads, alleys, woods or waters within the corporate limits of the Town.

Statutory Reference— *NCDOT's authorization to remove dead animals from rights-of-way, G.S. § 136-118(21); disposition of dead domesticated animals, G.S. § 106-403.*

Section 4-12 Removal of feces deposited by dogs required.

- (A) It shall be unlawful for any person walking or in control of any dog to allow or permit such animal to defecate upon any public property, including but not limited to parks, trails, streets, sidewalks and school grounds, unless such person removes all feces and other animal waste so deposited by such animal before leaving the immediate premises.
- (B) It shall be unlawful for any person walking or in control of any dog to allow or permit such animal to defecate upon any private property not owned by or in the possession of the person that owns such dog, unless such person removes all feces and other animal waste so deposited by such animal before leaving the immediate premises; provided that this restriction shall not apply if the owner or other person in possession of such private property has in writing authorized the dog to be walked on such property without the removal of feces so deposited.
- (C) This section shall not apply to dogs being walked by persons with visual or other physical disabilities that substantially interfere with the ability of such persons to comply with its provisions.
- (D) All feces removed in accordance with the provisions of this section shall be (i) properly wrapped or packaged to contain odors and protect the public health, and deposited in a trash container where the person making the deposit is otherwise authorized to deposit trash, or (ii) disposed of in another sanitary manner.

Sections 4-13 through 4-15: Reserved.

ARTICLE II: RABIES CONTROL

Section 4-16 Definitions.

The following definitions apply in this Part:

Cat - A domestic feline of the genus and species *Felis catus*.

Certified rabies vaccinator - A person appointed and certified to administer rabies vaccine to animals in accordance with this Part.

Dog - A domestic canine of the genus, species, and subspecies *Canis lupus familiaris*.

- (1) Feral. - An animal that is not socialized.
- (2) Ferret. - A domestic mammal of the genus, species, and subspecies *Mustela putorius furo*.

Rabies vaccine - An animal rabies vaccine licensed by the United States Department of Agriculture and approved for use in this State by the Commission.

State Public Health Veterinarian - A person appointed by the Secretary to direct the State public health veterinary program.

Stray. - An animal that meets both of the following conditions:

- (1) Is beyond the limits of confinement or lost.
- (2) Is not wearing any tags, microchips, tattoos, or other methods of identification.

Town Animal Control Officer – means a Town or County employee whose responsibility includes animal control. The term "Town Animal Control Officer" may also include agents of a private organization that is operating an animal shelter under contract with a Town or County whenever those agents are performing animal control functions at the shelter.

Vaccination - The administration of rabies vaccine by a person authorized to administer it under G.S. 130A-185.

Statutory Reference – NCGS 130A-184

Section 4-17 Vaccination Required.

- (A) The owner of an animal listed in this subsection over four months of age shall have the animal vaccinated against rabies:
 - (1) Cat.
 - (2) Dog.
 - (3) Ferret.
- (B) Only animal rabies vaccine licensed by the United States Department of Agriculture and approved by the Commission shall be used on animals in this State. A rabies vaccine may only be administered by one or more of the following:
 - (1) A licensed veterinarian.
 - (2) A registered veterinary technician under the direct supervision of a licensed veterinarian.
 - (3) A certified rabies vaccinator.

(1992 Code, Section 91.18)

Statutory Reference – NCGS 130A-185

Section 4-18 Vaccination Tag Required.

A person who administers a rabies vaccine shall issue a rabies vaccination tag to the owner of the animal. The rabies vaccination tag shall show the year issued, a vaccination number, the words "North Carolina" or the initials "N.C." and the words "rabies vaccine." Dogs shall wear rabies vaccination tags at all times. Cats and ferrets must wear rabies vaccination tags unless they are exempt from wearing the tags by local ordinance.

(1992 Code, Section 91.18)

Statutory Reference – NCGS 130A-190

Section 4-19 Animal bite cases.

- (A) Notice. - When a person has been bitten by an animal required to be vaccinated under this Part, the person or parent, guardian or person standing in loco parentis of the person, and the person owning the animal or in control or possession of the animal shall notify the local health director immediately and give the name and address of the person bitten and the owner of the animal. If the animal that bites a person is a stray or feral animal, the local agency responsible for animal control shall make a

reasonable attempt to locate the owner of the animal. If the owner cannot be identified within 72 hours of the event, the local health director may authorize the animal be euthanized, and the head of the animal shall be immediately sent to the State Laboratory of Public Health for rabies diagnosis. If the event occurs on a weekend or State holiday the time period for owner identification shall be extended 24 hours.

- (B) A physician who attends a person bitten by an animal known to be a potential carrier of rabies shall report the incident within 24 hours to the local health director. The report must include the name, age, and sex of the person.
- (C) Confinement. - When an animal required to be vaccinated under this Part bites a person, the animal shall be immediately confined for 10 days in a place designated by the local health director. The local health director may authorize a dog trained and used by a law enforcement agency to be released from confinement to perform official duties upon submission of proof that the dog has been vaccinated for rabies in compliance with this Part. After reviewing the circumstances of the particular case, the local health director may allow the owner to confine the animal on the owner's property. An owner who fails to confine an animal in accordance with the instructions of the local health director shall be guilty of a Class 2 misdemeanor. If the owner or the person who controls or possesses the animal that has bitten a person refuses to confine the animal as required by this subsection, the local health director may order seizure of the animal and its confinement for 10 days at the expense of the owner.

(1992 Code, Section 91.17)

Statutory Reference – NCGS 130A-196

Section 4-20 Impoundment.

Any animal which appears to be lost, straying, or unwanted, or which is found not to be wearing a currently valid rabies tag, as required by State law, county ordinance and this part, shall be impounded by the Town Animal Control Officer and confined in an animal control facility in a humane manner. Impoundment of such animal shall not relieve the owner thereof from any penalty which may be imposed for violation of this part.

(1992 Code, Section 91.30)

Section 4-21 Notice to owner.

Immediately upon impoundment of an animal, the Town Animal Control Officer shall make reasonable effort to notify the owner and inform the owner of the conditions whereby the animal may be redeemed. If the owner is unknown and cannot be located, notice of such impoundment shall be left at the nearest residence where the animal was found stating that the animal will be kept for five (5) days or until the animal is disposed of.

(1992 Code, Section 91.31)

Section 4-22 Redemption by owner.

- (A) *Redemption within five days.* The owner of an animal impounded under this part may redeem such animal within five consecutive days after notice of impoundment is given or posted, except as provided in this chapter, upon complying with the license provisions of this chapter, the payment of all redemption fees, the furnishing of proof of ownership and upon complying with any other conditions that may be required herein.

- (B) *Redemption fees.* Redemption fees provided in this section shall include an impoundment fee, the license fee for an unlicensed dog or cat, any veterinarian's fees, and the daily fee for the shelter and feeding. The impoundment fee and daily fee may be set by the animal control shelter, and may be revised from time to time. The redemption fee for an animal which has once previously been impounded within the previous six months shall be double the impoundment fee that would otherwise be due. No owner of an impounded animal will be allowed to avoid the payment of any fee imposed under the provisions of this chapter by attempting to adopt the animal instead of redeeming it.
- (C) *Vaccination.* 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 issued a proof-of-rabies vaccination card at the time of redemption or adoption. This card will be stamped with the date stating the date by which the animal must be given a rabies vaccination by a provider of the owner's choice. The time limit for dogs and cats aged four months and older will be 72 hours, with Sundays and holidays excluded. For puppies and kittens aged under four months, the limit will vary according to their age. The proof-of-rabies vaccination card will be completed and returned to the animal shelter by the veterinarian. If this card is not returned to the animal control shelter within two weeks of the time limit specified on the card, an animal control officer will be dispatched to retrieve the animal. Payment for rabies vaccination provided for in this section shall be the responsibility of the person redeeming or adopting the animal.

(1992 Code, Section 91.32 and 91.34)

Section 4-23 Destruction or adoption of unredeemed animal.

At the end of the minimum time period indicated in the section above, unclaimed animals shall be deemed abandoned and shall be disposed of in a humane manner. The animal may be destroyed in a humane manner or the animal may become the property of the animal shelter or may be offered for adoption to a legitimate rescue group or may be offered for adoption to any responsible adult who complies with the provisions of this chapter. Such animal may be adopted or purchased by the first person who pays the adoption or purchase fee. No rabies vaccination fee will be required for animals sold to dealers licensed pursuant to the United States Department of Agriculture's Animal Welfare Act.

(1992 Code, Section 91.36)

Section 4-24 Duties of the Town Animal Control Officer.

The Town Animal Control Officer shall be charged with the responsibility of:

- (A) Enforcing, in the Town of Pembroke, all Town, state and county laws and ordinances relating to the care, control and custody of animals.
- (B) Cooperating with the County Animal Control Office, Health Director and assisting in the enforcement of the laws of the State, with regard to animals and especially in regard to the vaccinations of animals against rabies and the confinement or leashing of vicious and nuisance animals.
- (C) Canvassing the Town to determine if there are any dogs, cats, or ferrets not wearing the required rabies vaccination tag. Compliance with procedures shall be in accordance with G.S. Section 130A-192.

(1992 Code, Section 91.50)

Section 4-25 Interference with enforcement.

It shall be unlawful for any person to interfere with or hinder the Town Animal Control Officer(s) or veterinarians in the performance of any duty authorized by this part, or to seek to release any animal in the custody of such agents, except as otherwise specifically provided.

(1992 Code, Section 91.51)

Section 4-26 Records to be kept.

It shall be the duty of the Town's animal control program to keep, or cause to be kept, accurate and detailed records of:

- (A) Impoundment and disposition of all animals coming into the animal shelter.
- (B) Bite cases, violations and complaints, and investigation of the same.
- (C) All other records deemed necessary.

(1992 Code, Section 91.52)

Section 4-27 Penalty.

Any violation of any rule, regulation or ordinance adopted pursuant to the authority granted in Sections 4-16 through 4-26 shall subject the violator to the penalty provisions contained in Section 1-6 of this code.

Sections 4-28 through 4-35: Reserved.

ARTICLE III: LIVESTOCK

Section 4-36 Keeping of livestock within the Town Limits prohibited.

It shall be unlawful for a resident of the Town of Pembroke to keep or harbor livestock including but not limited to horses, donkeys, cattle, sheep, goats and swine, consistent with the definition in Section 4-2, within the Town limits.

(1992 Code, Section 91.01)

Sections 4-37 through 4-40: Reserved.

ARTICLE IV: CHICKENS and FOWL

Section 4-41 Keeping of chickens within the Town Limits.

Chickens will be allowed upon issuance of a valid permit within the municipal limits of the Town of Pembroke provided that:

- (1) No more than six hens shall be kept or maintained on any individual lot. No roosters shall be allowed under any circumstance.

- (2) The chickens must be confined in a chicken coop not less than four square feet of floor area for each chicken. Chicken coops must not exceed eight feet in height at the peak of the roof.
- (3) Chickens may be allowed outside their coops during daytime hours if fencing is constructed to restrict the chickens from leaving the owner or possessor's property
- (4) The chicken coop and/or property shall be kept clean, sanitary and free from accumulation of animal excrement and objectionable odors.
- (5) The chicken coop shall be a minimum of 30 feet from the nearest residence other than that of the owner and a minimum of five feet from the lot line. Not all lots in Town will be able to accommodate chicken coops.
- (6) If chickens are removed from the premises for a violation of this section or other applicable law, the owner or possessor is not allowed to obtain a chicken permit for a minimum of one year from the date of removal.
- (7) No residential sale of slaughtered chickens is allowed within the Town of Pembroke
- (8) Noisy fowl. It shall be unlawful for any person to keep or maintain on any premises or lot within the Town any rooster or other such bird or fowl that by loud and habitual crowing or in any other manner constitutes a public nuisance. Failure to abate such nuisance within two (2) days after written notice to do so from any Town official authorized by the Town of Pembroke Town Council shall be a violation of this Ordinance and punishable pursuant to Section 2 (a) below

Section 4-42 Citation for violation.

- (A) The Police Department may issue to the known owner or custodian of any animal, or any other violator, a citation giving notice of the violation of this ordinance. Citations so issued may be delivered in person or mailed by registered mail to the person charged if that person cannot be readily found. The citation issued shall impose upon the custodian or violator a civil penalty of fifty (\$50.00) dollars which may be paid to the Town Clerk within fourteen (14) days of receipt in full satisfaction of the assessed civil penalty.
- (B) In the event that the custodian of the animal or any other violator does not appear before the Town Clerk in response to the above described citation or the applicable civil penalty is not paid within the time period prescribed, a criminal summons may be issued against the custodian of the animal or any other violator for violation of the Ordinance and upon conviction the custodian or other violator shall be punished as provided by state law and be subject to a fine of five hundred (\$500.00) dollars or imprisonment for not more than thirty (30) days.

Sections 4-43 through 4-50: Reserved.

ARTICLE V: BIRD SANCTUARY

Section 4-51: Bird Sanctuary established.

The entire area within the municipal limits of the Town of Pembroke is hereby designated as a bird sanctuary.

(1992 Code, Article 1, local laws)

Statutory reference - Bird sanctuaries, see G.S. Section 160A-188

Section 4-52: Birds; shooting, trapping and the like prohibited.

- (A) No person shall trap, hunt, shoot or attempt to shoot, take, kill or molest in any manner any bird or wildfowl or shall rob bird nests or wildfowl nests; provided, that if starlings or similar birds are found to be congregating in such numbers in a particular locality as to constitute a nuisance or menace to health or property in the opinion of the proper health authorities, the health authorities shall meet with the representatives of the Audubon Society, bird club, garden club or humane society, after having given at least three days' actual notice of the time and place of the meeting to the representatives of the clubs.
- (B) If as a result of the meeting no satisfactory alternative is found to abate the nuisance, the birds may be destroyed in those numbers and in a manner as is deemed advisable by the health authorities under the supervision of the Town Manager.
- (C) Subsections (A) and (B) above do not protect any birds classed as a pest under G.S. Chapter 113, Article 22A (G.S. Section 113-300.1 et seq.) and the Structural Pest Control Act of North Carolina of 1955 (G.S. Section 106-65.22 et seq.) or the State Pesticide Law of 1971 (G.S. Section 143-434 et seq.).
- (D) Subsections (A) and (B) do not limit the authority of any person holding a valid permit issued by the State Wildlife Resources Commission under G.S. Section 113-274(c)(1a) or under any other license or permit of the Wildlife Resources Commission specifically made valid for use in taking birds within Town limits.

(1992 Code, Local Laws of 1957, Chapter 1094, Section 3)

Sections 4-53 through 4-55: Reserved.

CHAPTER 5 – BUILDINGS AND BUILDING REGULATIONS

ARTICLE I. - IN GENERAL

Section 5-1 Scope of chapter and codes.

The provisions of this chapter and of the regulatory codes herein adopted shall apply to the following:

- (A) The location, design, materials, equipment, construction, reconstruction, alteration, repair, maintenance, moving, demolition, removal, use, and occupancy of every building or structure or any appurtenances connected or attached to such building or structure;
- (B) The installation, erection, alteration, repair, use and maintenance of plumbing systems consisting of house sewers, building drains, waste and vent systems, hot and cold water supply systems, and all fixtures and appurtenances thereof;
- (C) The installation, erection, alteration, repair, use and maintenance of mechanical systems consisting of heating, ventilating, air conditioning, and refrigeration systems, fuel burning equipment, and appurtenances thereof;
- (D) The installation, erection, alteration, repair, use and maintenance of electrical systems and appurtenances thereof.
- (E)

(1992 Code, Chapter 150, Section 150.01)

Section 5-2 Building code adopted.

The latest edition of the North Carolina State Building Code, (Volume I, General Construction), as adopted by the North Carolina Building Code Council and as amended, is hereby adopted by reference as fully as though set forth herein.

(1992 Code, Chapter 150, Section 150.03)

Statutory reference— Authority to adopt building code, G.S. 143-138.

Section 5-3 Plumbing code adopted.

The latest edition of the North Carolina Plumbing Code (North Carolina State Building Code, Volume II, Plumbing) as adopted by the North Carolina Building Code Council and as amended, is hereby adopted by reference as fully as though set forth herein.

(1992 Code, Chapter 150, Section 150.04)

Section 5-4 Heating code adopted.

The latest edition of the North Carolina Heating Code (North Carolina State Building Code, Volume III, Heating) as adopted by the North Carolina Building Code Council and as amended, is hereby adopted by reference as fully as though set forth herein.

(1992 Code, Chapter 150, Section 150.05)

Section 5-5 Electrical code adopted.

The latest edition of the North Carolina Electrical Code (North Carolina State Building Code, Volume IV, Electrical), as adopted by the North Carolina Building Code Council and as amended, is hereby adopted by reference as fully as though set forth herein.

(1992 Code, Chapter 150, Section 150.06)

Section 5-6 Residential building code.

The latest edition of the North Carolina Residential Code (North Carolina State Building Code, Volume VII, Residential), as adopted by the North Carolina Building Code Council, is hereby adopted by reference as fully as though set forth herein.

(1992 Code, Chapter 150, Section 150.07)

Section 5-7 Accessibility code adopted.

The 1989, or later addition of the North Carolina Accessibility Code (North Carolina State Building Code, Volume IC, Handicap) as adopted by the North Carolina Building Code Council and as amended, is hereby adopted by reference as fully as though set forth herein.

Section 5-8 Administrative code adopted.

The 1990, or later addition of the North Carolina Administrative Code (North Carolina Building Code, Volume IA, Administrative), as adopted by the North Carolina Building Code Council and as amended, is hereby adopted by reference as fully as though set forth herein.

Section 5-9 Fire code adopted.

The 1991, or later addition of the North Carolina Fire Code (North Carolina Building Code, Volume V, Fire), as adopted by the North Carolina Building Code Council and as amended, is hereby adopted by reference as fully as though set forth herein.

(1992 Code, Chapter 93, Section 93.01, Fire Prevention Code Adopted by Reference)

Section 5-10 Gas code adopted.

The 1991, or later addition of the North Carolina Gas Code (North Carolina Building Code, Volume VI, Gas), as adopted by the North Carolina Building Code Council and as amended, is hereby adopted by reference as fully as though set forth herein.

Section 5-11 Modular construction code.

The latest edition of the North Carolina Modular Construction Regulations (North Carolina State Building Code, Volume VIII, Modular Construction Regulations), as adopted by the North Carolina Building Code Council, is hereby adopted by reference as fully as though set forth herein.

Section 5-12 Existing building code.

The latest edition of the North Carolina Existing Building Code (North Carolina State Building Code, Volume IX, Existing Buildings), as adopted by the North Carolina Building Code Council, is hereby adopted by reference as fully as though set forth herein.

Section 5-13 Amendments to codes.

Amendments to the regulatory codes adopted by reference herein, which are from time to time adopted and published by the agencies or organizations referred to herein shall be effective in the Town at the time such amendments are filed with the Robeson County building inspector as provided in **Section 5-24**.

(1992 Code, Chapter 150, Section 150.08)

Sections 5-14 through 5-20: Reserved.

ARTICLE II: STATE BUILDING CODE INSPECTIONS AND ENFORCEMENT

Section 5-21 Organization.

The Robeson County Building Inspections Department exercises their powers within the Town of Pembroke for inspections and enforcement of the North Carolina State Building Code.

(Resolution 1995-5, adopted 6 March 1995)

Section 5-22 General duties of department and inspectors.

It shall be the duty of the inspection department to enforce all of the provisions of this chapter and of the regulatory codes adopted herein, and to make all inspections necessary to determine whether or not the provisions of this chapter and such codes are being met.

Statutory reference— Powers and duties of inspectors, NC General Statutes 160A-412, 160A-417, 160A-420 et seq.

Section 5-23 Compliance with codes.

- (A) All buildings or structures which are hereafter constructed, reconstructed, erected, altered, extended, enlarged, repaired, demolished or moved shall conform to the requirements, minimum standards, and other provisions of the North Carolina State Building Code, General Construction, Volume I; North Carolina State Building Code, Residential, Volume II; North Carolina State Building Code, Modular Construction Regulations, Volume VIII; and/or the North Carolina State Building Code, Existing Buildings, Volume IX; whichever is applicable.
- (B) Every building or structure intended for human habitation, occupancy or use shall have plumbing, plumbing systems or plumbing fixtures installed, constructed, altered, extended, repaired or reconstructed in accordance with the minimum standards, requirements and other provisions of the North Carolina Plumbing Code (North Carolina State Building Code, Volume II, Plumbing).
- (C) All mechanical systems consisting of heating, ventilating, air conditioning, and refrigeration systems, fuel burning equipment (other than gas), and appurtenances shall be installed, erected, altered, repaired, used and maintained in accordance with the minimum standards, requirements, and other provisions of the North Carolina Heating Code (North Carolina State Building Code, Volume III, Heating).
- (D) All electrical wiring, installations and appurtenances shall be erected, altered, repaired, used and maintained in accordance with the minimum standards, requirements, and other provisions of the North Carolina Electrical Code (North Carolina State Building Code, Volume IV, Electrical).
- (E) All handicap facilities equipment, appliances, fixtures, fittings and appurtenances, other than one and two family dwellings and Townhomes, shall be constructed, altered, repaired, replaced, used and maintained

in accordance with the minimum standards, requirements and other provisions of the North Carolina State Accessibility Code (North Carolina Building Code, Volume IC, Handicap).

- (F) All existing buildings or structures, other than one- and two-family dwellings and Townhomes, and the repair, equipment, use occupancy, and maintenance of same shall be in accordance with the provisions of the North Carolina State Fire Code (North Carolina Building Code, Volume V, Fire Prevention). The provisions of the fire prevention code shall apply to the installation of fire prevention systems for all new buildings or structures.
- (G) All gas piping systems extending from the point of delivery to the inlet connections of equipment served, and the installation and operation of residential and commercial gas appliances and related accessories shall be in accordance with the provisions of the North Carolina State Gas Code (North Carolina Building Code, Volume VI, Gas).

(1992 Code, Chapter 150, Section 150.02)

Section 5-24 Copies of codes filed with Robeson County Building Inspections Department.

An official copy of each regulatory code adopted herein, and official copies of all amendments thereto, shall be kept on file in the office of the Robeson County building inspector. Such copies shall be the official copies of the codes and the amendments.

Section 5-25 Permit Required

- (A) The erection, construction or alteration of any building, structure, or part thereof shall not be commenced until a building permit has been issued by the inspection department pursuant to the authority contained in G.S. 160A-417, pertaining to permits.
- (B) *Failure to obtain a permit.* Failure to obtain a permit before commencing or proceeding with construction as outlined above, hereafter, shall constitute a violation of this article and shall be punishable as a misdemeanor, in addition to an administrative fee or penalty in the amount as specified in the approved fee schedule.
- (C) Fees for permits and inspections shall be established by Robeson County.

(1992 Code, Chapter 150, Section 150.20)

Statutory reference— Building permits generally, G.S. 160A-417 et seq.

Sections 5-26 through 5-30: Reserved.

ARTICLE III: ZONING PERMIT REQUIRED

Section 5-31 Zoning Permit Required; Penalty.

- (A) Prior to taking an application for any construction or alteration of structures within the Town of Pembroke, the Robeson County Building Inspections Department will secure from the applicant a duly signed and executed Zoning Permit issued by the Town of Pembroke.
- (B) All construction or alteration within the Town of Pembroke started without a properly issued zoning permit shall be considered in violation of this ordinance and subject to all penalties that may apply.

Cross Reference – Unified Development Ordinance, Article 12, Sections 12-1 and 12-6.

Section 5-32 Zoning Permit Fees.

The fee for a Zoning Permit shall be set by the Town Council as part of the Schedule of Rates and Fees for the Town of Pembroke.

Sections 5-33 through 5-35: Reserved.

ARTICLE IV: FIRE PREVENTION INSPECTIONS AND ENFORCEMENT

Section 5-36 Fire Prevention Inspections Required.

- (A) In order to preserve and protect public health and safety and to satisfy the requirements of General Statute 160A-424, political subdivisions assuming inspection duties shall have a periodic inspection schedule for the purpose of identifying activities and conditions in buildings, structures and premises that pose dangers of fire, explosion or related hazards.
- (B) In no case shall inspections be conducted less frequently than described in the schedule below:

Once every year:

- Hazardous- locations with hazardous materials, flammable liquids, explosives facilities, etc.
- Institutional Facilities- hospitals, nursing homes, licensed care facilities, etc.
- High-rise assembly except those noted below
- Residential (not including one- and two- family dwellings) including dormitories
- Interior common areas of dwelling units of multi-family occupancies
- New and existing lodging establishments, including hotels, motels and tourist homes that provide accommodations for 7 or more continuous days (extended-stay establishments)
- Bed and breakfast inns and bed and breakfast homes as defined in General Statute 130A-247 for the installation and maintenance of carbon monoxide alarms and detectors in accordance with General Statute 143-138(b2).
- Places of Assembly including restaurants, clubs, gyms, theaters and the like

Once every two years:

- Industrial Facilities
- Educational Facilities (except public schools)

Once every three years:

- Assembly occupancies with an occupant load less than 100
- Business and Mercantile - Banks, barber & beauty shops, gas stations & self-service, educational occupancies above the 12th grade, print shops, professional service offices (architects, attorneys, dentists, physicians, engineers), etc.; Department stores, drug stores, markets, retail or wholesale stores, etc.

- Storage - Warehouses, garages, hangers, etc.
- Churches and synagogues

- (C) Frequency rates for inspections of occupancies as mandated by the North Carolina General Statutes shall supersede this schedule.
- (D) Nothing in this section is intended to prevent the Town from conducting more frequent inspections than the schedule listed above or the schedule filed with the Office of State Fire Marshal of the Department of Insurance.

(See Resolution 2001-2 adopted 1 October 2011)

Statutory Reference – G.S. Section 160A-424 and 292; **Statutory Reference** – Section 106, North Carolina State Building Code: Fire Prevention Code

Section 5-37 Organization

- (A) The Town of Pembroke will provide for the required fire inspections either with designated Town employees or contracted services. Such individual shall be designated the Fire Inspector.
- (B) When securing its own employee or in contracting for the service, the individual responsible shall be at a minimum a qualified and certified Fire Inspector, Level III.
- (C) When contracting for services, compensation shall be set by the Town Manager and the Town Council.

(Resolution 2001-15)

Section 5-38 Identification of Locations, Facilities, and Business to be Inspected

- (A) As established in **Section 5-36** above, the Town in cooperation with the Fire Inspector and Fire Chief, shall identify all locations, businesses and the like that will require a fire inspection. Every effort should be made to coordinate the work of this effort with the annual registration of businesses required by the Town of Pembroke and the knowledge and experience of the Fire Department Chief and members regarding structures within the Town..
- (B) Such inspection schedule shall be approved by the local governing body and shall be submitted to the Office of State Fire Marshal of the Department of Insurance.

Statutory Reference – Section 106, North Carolina State Building Code: Fire Prevention Code

Section 5-39 Fees

The Fire Inspector shall provide to the Fire Chief and the Town Manager a proposed schedule of rates and fees annually as part of the budget process of the Town.

- (A) Listed below are mandatory operational permits that the Town must issue and for which fees shall be developed.

Mandatory Operational Permits
Amusement buildings
Carnivals and fairs
Covered mall buildings
Exhibits and trade shows

Explosives
Flammable and combustible liquids
Fumigation and thermal insecticidal fogging
Hazardous materials
Liquid or gas fueled vehicles or equipment in assembly
Private fire hydrants
Pyrotechnic special effects material
Spraying and dipping
Temporary membrane structures, tents and canopies

- (B) Listed below are mandatory construction permits that the Town must issue and for which fees must be developed.

<i>Mandatory Construction Permits</i>
Automatic fire extinguishing systems
Compressed gases
Fire alarm and detection systems and related equipment
Fire pumps and related equipment
Flammable and combustible liquids
Hazardous materials
Industrial ovens
Private fire hydrants
Spraying and dipping
Standpipe systems
Temporary membrane structures, tents and canopies

Section 5-40 Inspection Authority.

The Fire Inspector is authorized to enter and examine any building, structure, marine vessel, vehicle or premises in accordance with applicable laws for the purpose of enforcing this code.

Statutory Reference – Section 106, North Carolina State Building Code: Fire Prevention Code

Section 5-41 Service of orders or notices.

- (A) The service of orders or notices for the correction of violations of the Code shall be made upon the owner, occupant or other person responsible for the conditions, either by personally delivering a copy of the same to that person or by delivering the same to and leaving it with any person in charge of the premises or by sending a copy of the order or notice by certified or registered mail to the owner's last known address.

- (B) When buildings or other premises are occupied by other than the owner under a lease or other agreement, the orders or notices issued to correct violations of the Code shall apply to the occupant thereof provided that where the orders or notices require the making of additions to or changes in the premises themselves which may become part of the real property of the owner, then in those cases, the orders or notices shall also be issued to the owner of the premises or real property. Failure to deliver an order or notice to the owner, if other than an occupant, shall not invalidate the order or notice.

Cross Reference – Chapter 12, Section 12-33, Orders for fire hazards to be remedied.

Section 5-42 Violations and penalties.

- (A) Any person who shall violate any of the provisions of this article adopted or who shall fail to comply with any judicial warrant, lawful order or regulation made thereunder or any permit issued thereunder, shall be guilty of a misdemeanor. Each day that the violation continues shall constitute a separate offense. In the name of the Town, the Town Fire Inspector, through the Town Attorney, may enjoin the construction or erection of any facility, building or structure which does not conform to the provisions of this article.
- (B) This article may be enforced by any of the remedies set forth in G.S. Section 160A-175, in addition to others specifically set out herein or in the Town.
- (C) Any person who violates any of the provisions of this article shall be subject to a civil penalty for each violation in the amount established by ordinance of the Town Council. The civil penalty schedule shall be filed with the Town Clerk and in the Fire Inspector's office for public inspection. Each violation shall constitute a separate offense.
- (D) Civil penalties must be paid within the number of days specified in the billing or notice after a citation has been issued by the Fire Inspector for a violation.
- (E) Any person who shall violate any provisions of this article hereby adopted or who shall fail to comply with any notice of violation issued by the Town Fire Inspector shall be issued a civil penalty as listed below. Each violation shall constitute a separate offense.

<i>Violation</i>	<i>Fee</i>
Locked - blocked unmarked exits	
First offense	No charge
Second offense	\$200
Third offense	\$400
All other violations	
First offense	No charge
Second offense	\$50
Third offense	\$75
Failure to obtain a permit	\$50

Section 5-43 Inspections; Reports.

The Fire Inspector is authorized to conduct such inspections as are deemed necessary to determine the extent of compliance with the provisions of this code and to approve reports of inspection by approved agencies or individuals. All reports of such inspections shall be prepared and submitted in writing for review and approval. Inspection reports shall be certified by a responsible officer of such approved agency or by the responsible individual. The Fire Inspector is authorized to engage such expert opinion as deemed necessary to report upon unusual, detailed or complex technical issues subject to the approval of the governing body.

Statutory Reference – Section 106, North Carolina State Building Code: Fire Prevention Code

Section 5-44 Inspection of Unattended or Vacant Structures.

On unattended or vacant structures, the Fire Inspector shall affix a letter on the premises in a conspicuous place at or near the entrance to such premises requesting an inspection in accordance with this section. This order of notice shall be mailed by registered or certified mail with return receipt requested, to the last known address of the owner, occupant or both. If the owner, occupant or both shall fail to respond to said notice within 10 calendar days, these actions by the Fire Inspector shall be deemed to constitute an inspection in accordance with this section.

Sections 5-45 through 5-50: Reserved.

ARTICLE V. – NON-RESIDENTIAL BUILDING CODE ESTABLISHED

DIVISION 1. - GENERALLY

Section 5-46 Title

This article shall be known and may be cited and referred to as the "Nonresidential Structure Code". Throughout this article references to "structure" shall include building, singular or plural.

Section 5-47 Definitions

The following definitions shall apply in the interpretation and enforcement of this article:

Agent: Any person, firm or corporation who has the charge, care or control of any structure as agent of the owner, or as executor, executrix, administrator, administratrix, trustee or guardian of the estate of the owner or is responsible for the management, maintenance, operation, renting, leasing or sale of any property, or who makes application for or seeks a permit or certificate on behalf of the owner of any property or who in any other way represents the owner of the property in any particular case under this article.

Basic structural elements: The parts of a structure that provide the principal strength, stability, integrity, shape and safety of the structure, including, but not limited to plates, studs, joists, rafters, stringers, stairs, subflooring, flooring, sheathing, lathing, roofing, siding, window frames, door frames, porches, railings, eaves, chimneys, flashing, masonry and all other essential components.

Building: Any structure, place or other construction, or part thereof, built for the support, shelter or enclosure of persons, animals, chattels or property of any kind.

Building inspector: The town's Building Inspector or his designee.

Deteriorated: A structure that is unsafe for use and can be repaired, altered or improved to comply with the requirements of this article at a cost to repair, alter or improve that is less than or equal to fifty (50) percent of the current value of the structure.

Dilapidated: A structure that is unsafe for use and can be repaired, altered or improved to comply with the requirements of this article at a cost to repair, alter or improve that exceeds fifty (50) percent of the current value of the structure.

Enforcement Officer: The housing inspector, hearing officer or other person charged with the enforcement of this article and who may also be referred to as "public officer".

Health or safety hazard: The structure has not been properly maintained to meet the requirements of this article so that the health or safety of its occupants or others is jeopardized.

Nonresidential structure: Any structure occupied or intended to be occupied, in whole or in part, for a use other than a dwelling, home, residing place, living space or sleeping space for one (1) or more people, either permanently or transiently.

Occupancy: The purpose for which a structure is used or intended to be used.

Occupant: Any person who is a tenant or has actual possession of a structure.

Owner: Any person who alone, or jointly, or severally with others or by entirety has legal or equitable title to any structure, with or without accompanying actual possession thereof.

Parties in interest: All individuals, associations and corporations who have interests of record in a structure and any who are in possession thereof.

Premises: A lot, plot or parcel of land including any structure thereon and any appurtenances thereto and improvements thereon.

Safe: A condition which is not likely to do harm to people or property.

Structurally sound: Substantially free from flaw, defect, decay or deterioration to the extent that the structure, any basic structural element or structural member is capable of adequately or safely accomplishing the purpose for which it was intended or designed.

Structure: Anything or any part thereof, constructed, erected or placed with a fixed location on the ground or attached to something having a fixed location on the ground including, but not limited to, buildings, mobile structures, billboards, freestanding signs and fences, except a currently operable licensed vehicle.

Unsafe: A condition that is dangerous to the public health, safety and welfare and/or a condition which is reasonably likely to do harm to people or property if not corrected or stopped.

Vacant industrial warehouse: Any structure designed for the storage of goods or equipment in connection with manufacturing processes, which has not been used for that purpose for at least one (1) year and has not been converted to another use.

Vacant manufacturing facility: Any structure previously used for the lawful production or manufacturing of goods, which has not been used for that purpose for at least one (1) year and has not been converted to another use.

Vacate and close: Properly board and secure a structure from intrusion or entry by trespassers or other people except as necessary to effectuate the purposes of this article.

Value, current: The assessed tax value of a structure determined by the Robeson County Tax Department or the fair market value as determined by a qualified real estate appraiser with proper credentials to determine fair market value.

Section 5-48 Intent

- (A) Pursuant to the authority granted by G.S. § 160A-439, it is the intent of this article to provide for the repair, closing or demolition of nonresidential structures as a public necessity caused by conditions that are dangerous to the public health, safety and welfare. This article is remedial and shall secure the public health, safety and welfare through structurally sound and safe nonresidential structures which are now in existence or which may be built within the Town.
- (B) This article establishes minimum requirements for the initial and continued use of all nonresidential structures and does not replace or modify requirements otherwise established for the construction, repair, demolition, removal, alteration or use of the structure, equipment or facilities contained therein.
- (C) Every nonresidential structure and the premises on which it is situated shall comply with the provisions of this article, whether or not the structure was constructed, altered or repaired before or after the enactment of this article, and irrespective of any permits or licenses which have been issued for the use or occupancy of the structure or for the installment or repair of equipment or facilities.
- (D) The powers conferred by this article are in addition to and supplemental to the powers conferred by any other law.

Statutory reference - NC General Statutes § 160A-439.

Section 5-49 Conflict with Other Provisions.

In any case where a provision of this article is found to be in conflict with a provision of any zoning, structure, fire, safety or health provisions of this code, other ordinances and regulations of the Town, the provisions which establish the higher standard or more stringent requirement for the promotion and protection of public health and safety shall prevail.

Sections 5-50 through 5-55: Reserved.

DIVISION 2. - REQUIREMENTS

Section 5-56. Application of Building Codes.

The North Carolina State Building Code and the North Carolina Rehabilitation Code, as amended from time to time and any new editions adopted by the North Carolina Building Code Council, including general construction, electrical, plumbing, mechanical, and ventilation shall govern all repairs, alterations and/or additions to any existing nonresidential structure. Any unidentified violations under the state building code or rehabilitation code shall be certified by the structure inspector to the Enforcement Officer.

Section 5-57 Unsafe Non-Residential Structures.

All nonresidential structures shall be free of all conditions that are dangerous and injurious to the public health, safety and welfare of occupants or others. Without limitation of the foregoing requirement, the basic structural elements of all nonresidential structures shall be structurally sound and the existence of any of the following conditions shall be deemed to be dangerous to the public health, safety and welfare for which a public necessity exists for the repair, closing, or demolition of the structure and must be corrected in accordance with the provisions of this article:

- (A) **Access.** Access is not provided to all rooms within a structure such that reasonable exit is available if necessitated by circumstances; or all entrances and exits do not meet the standards set forth in the North Carolina State Building Code; or safe, continuous and unobstructed exit is not provided from the interior of the structure to the exterior at street or grade level; or platforms and steps are not provided, where appropriate, to serve exits or are not maintained in a safe condition.
- (B) **Attachments, extensions, signs, etc.** Loose wood, loose or broken plastic or other dangerous objects or similar hazardous conditions; or loose and insufficiently anchored overhanging objects or attachments that are not safe to use, not kept in sound condition and in good repair, or which constitute a danger of falling on pedestrians or property, or objects and elements protruding from structure walls or roofs which are unsafe or that are not properly secured or which can create a hazard such as abandoned electrical boxes and conduits, wires, sign brackets and other brackets and similar objects; or canopies, metal awnings, standpipes, exhaust ducts, air conditioners, and similar overhanging extensions that are not maintained so as to be free of missing, defective, rotting or deteriorated foundations, supports, other members and basic structural elements; or improperly attached gutters or downspouts that are located so as to cause a hazard to pedestrians or property; or gutters and downspouts, if installed, that do not properly collect, conduct and discharge the water from the roof and away from the structure; or advertising signs attached or freestanding awnings, marquees and their supporting members or basic structural elements and other similar attachments that cause a safety hazard to the occupants or others.
- (C) **Boarding.** All openings originally designed as windows, doors, loading docks, or other means of egress or ingress which have been temporarily closed by boarding or another manner that are not secure and might allow unauthorized admittance; or boarding that is not trim fit, sealed to prevent water intrusion, and painted or stained to properly conform with the other exterior portions of the structure; or boarding that is not maintained in a state that secures the structure from any unauthorized admittance of people, animals or birds.
- (D) **Building code.** Possible violations of the North Carolina State Building Code and the North Carolina Rehabilitation Code, as amended from time to time and any new editions adopted by the North Carolina Structure Code Council, including general construction, electrical, plumbing, mechanical, and ventilation.
- (E) **Chimneys.** Chimneys, flues, and vent attachments thereto which are not structurally sound; or chimneys, flues, gas vents, or other draft-producing equipment which are in use that do not provide sufficient draft to develop the rated output of the connected equipment, or are not structurally sound and safe, durable, smoke-tight and capable of withstanding the action of flue gases; or deterioration of external chimneys that causes leaning, sagging, splitting, listing or buckling.
- (F) **Decay.** Rotting, holes and other forms of decay.
- (G) **Doors, exterior and windows.** Broken or missing exterior doors or windows; or exterior doors or windows containing broken or cracked glass that could be in danger of falling or shattering; or exterior doors or windows with missing glass or their frames that are not weather-tight; or doors that are not tight-fitting with frames of proper size and design or not free from rotten wood; or windows without sashes of proper size and design, or not free from rotten wood, broken joints, or broken or loose mullions; or which have holes that might permit animals or birds to enter the structure; or defective protection or lack of weather protection for exterior doors or windows including lack of paint or weathering due to lack of paint or other protective covering.
- (H) **Doors, interior.** Doors are not provided at all doorways leading to bathrooms.

- (I) **Electrical, heating, plumbing.** Lack of proper electrical, heating or plumbing facilities which is unsafe or constitutes a health or safety hazard.
- (J) **Exterior surfaces.** Exterior surfaces or finishes that are not weather-tight, watertight and painted or sealed with sufficient frequency to protect the underlying surface from deterioration; or are not maintained in such material or treated in such a manner as to prevent deterioration or crumbling; or are not repaired or replaced with like or similar material according to its original use; or have holes, cracks or rotted boards which permit outside air or water to penetrate rooms or animals or birds to enter; or exterior surfaces that have been painted which are not maintained generally free of peeling and flaking or that may cause unsafe conditions due to a lack of maintenance; or deterioration or crumbling of exterior stone, brick, plasters or mortars. (Where fifty (50) percent or more of the aggregate of any painted surface shall have peeling or flaking or previous paint worn away, the entire surface shall be repainted in order to prevent further deterioration.)
 - a. Where a wall of a structure has become exposed as a result of demolition of adjacent structures, such wall does not have all doors, windows, vents, or other similar openings closed with material of the type comprising the wall; or the exposed wall is not painted, stucco finished or bricked with like materials and sufficiently weatherproofed to prevent deterioration of the wall.
- (K) **Feature, exterior.** Deterioration of any exterior feature, including but not limited to cornices, entablatures, wall facings and architectural details, so as to create or permit the creation of any hazardous or unsafe conditions; or that are deteriorated and causes delamination, instability, loss of shape and form or crumbling; or exterior features that are not structurally sound; or that contain rotten or weakened portions requiring repair and/or replacement.
- (L) **Fire, etc.** Such damage by fire, wind, or other causes so as to render the structure unsafe; or defects significantly increasing the hazards of fire, accident or other calamities; or inadequate facilities for egress in case of fire or panic.
- (M) **Floors.** Floors that are not kept structurally sound or which have improperly distributed loads, which are overloaded, or which have insufficient strength to be reasonably safe for the purpose used; or deterioration of flooring, floor supports, horizontal members or basic structural elements that causes leaning, sagging, splitting, listing or buckling; or floors or flooring that are not maintained in a safe manner and have no defects; or which might admit rain or cause dampness in the walls or interior portion of the structure; or are not maintained by renewal, repair, waterproofing or other suitable means; or which have holes that might permit animals or birds to enter the structure.
- (N) **Foundation.** Foundation walls, piers or other basic structural elements which are not maintained in a safe manner; or are not capable of supporting the load which normal use may cause to be placed thereon; or which have insufficient strength to be reasonably safe for the purpose used; or which are deteriorated, decayed or damaged to the extent that causes leaning, sagging, splitting, listing or buckling; or the structure's strength and soundness are questionable.
- (O) **Porches, stairs, etc.** Exterior porches, landings, balconies, stairways, stairs or fire escapes which are not structurally sound or free of defects so as to be safe to use; or are incapable of supporting the load that normal use may cause to be placed thereon; or that do not have banisters or railings properly designed and maintained to minimize the hazard of falling.
- (P) **Premises.** Structures including their premises that have insufficiently protected holes, excavations, breaks, projections, obstructions and other such dangerous impediments on and around walks, driveways, parking lots, alleyways and other areas which are accessible to and generally used by people on or around the premises; or heaving, subsidence or cracking of sidewalks, steps or pathways.
- (Q) **Roofs.** Roofs that are not kept structurally sound; or with improperly distributed loads, which are overloaded, or which have insufficient strength to be reasonably safe for the purpose used; or that are not supported properly or that have rafters that are rotted, broken, sagging or have improperly supported ends; or that are deteriorated or have horizontal members or other basic structural elements that cause leaning, sagging, splitting, listing or buckling; or that are not maintained in a safe manner; or are not maintained by renewal, repair, waterproofing or other suitable means; or with loose shingles that may fall on people or property; or that have defects which might admit rain or cause dampness in the

walls or interior portion of the structure; or which have holes that might permit animals or birds to enter the structure.

- (R) **Unsanitary, etc.** Structures with unsanitary conditions, dilapidation, decay, or disrepair which is unsafe or dangerous to the health and safety of the occupants or others; or structures including their premises that have accumulations of garbage, trash, or rubbish, which creates health and sanitation problems; or the collection of unreasonable or excessive amounts of garbage or rubbish in or near the structure which may attract rodents and insects or become breeding places for rodents and insects; or garbage and solid waste that is not placed in approved containers or stored in a safe and sanitary manner in the structure or on the premises.
- (S) **Ventilation, etc.** Lack of adequate ventilation, light, heating or sanitary facilities so as to be unsafe or to endanger the health, safety or general welfare of the occupants or others.
- (T) **Walls, exterior.** Exterior walls or vertical supports that are not structurally sound, or not maintained in sound condition and good repair and free from defects and damages, or are not capable of bearing imposed loads safely; deterioration of exterior walls or other vertical support that causes leaning, sagging, splitting, listing or buckling; or structural or load bearing walls that are bowed or out of plumb and not structurally sound; or exterior walls that are not substantially weather-tight and watertight or not impervious to the adverse effects of weather.
- (U) **Walls, interior.** Interior walls, vertical studs, partitions, supporting members, sills, joists, rafters or other basic structural elements or members that list, lean, or buckle or are rotted, deteriorated or damaged to such an extent as to render the structure unsafe; or that have holes or cracks which might admit animals or birds; or structural or load bearing walls that are bowed or out of plumb and not structurally sound
- (V) Any combination of conditions which in the judgment of the public officer renders any structure unsafe or dangerous or injurious to the health, safety, or general welfare of the owners, occupants or others.

Section 5-58 through 5-60: Reserved.

DIVISION 3. - ENFORCEMENT

Section 5-61 Designation of Enforcement Officer.

The Enforcement Officer is hereby designated as the public officer to enforce the provisions of this article and to exercise the powers and duties set forth herein.

Section 5-62 General Powers of the Enforcement Officer.

The Enforcement Officer shall have such powers as may be necessary or convenient to carry out, enforce and effectuate the purposes and provisions of this article, including and without limiting the generality of the foregoing and in addition to others herein granted, the following powers:

- (A) *Investigations.*
 - (1) To undertake an investigation of nonresidential structures in the Town to determine whether they have been properly maintained in compliance with the minimum requirements of this article so that the safety or health of the occupants or others are not jeopardized; and
 - (2) To undertake a preliminary investigation whenever it appears that any nonresidential structure has not been properly maintained so that the safety or health of its occupants or others is jeopardized for failure of the property to meet the minimum requirements of this article.
- (A) *Right of entry.* To enter upon and within premises and nonresidential structures at all reasonable times when necessary for the purpose of making examinations and investigations pursuant to a duly issued administrative inspection warrant in accordance with G.S. § 15-27.2

or with the permission of the owner, the owner's agent, a tenant or other person legally in possession of the premises; provided, that such entries shall be made in such a manner so as to cause the least possible inconvenience to the persons in possession and shall otherwise be in accordance with the provisions of applicable law.

- (B) *Hearings, etc.* To conduct hearings, administer oaths and affirmations and to examine witnesses and receive evidence, make findings of fact and issue orders as provided in this article.
- (C) *Periodic inspections.* To conduct quarterly periodic examinations and inspections of nonresidential structures to determine compliance with the requirements of this article following the hearing and a determination that a structure is unsafe and a health or safety hazard and an order issued that it be repaired, altered or improved, vacated and closed, removed and/or demolished.
- (D) *Delegation of functions.* To delegate any of these powers and functions and others under this article to such officers and agents as he may designate.

Section 5-63 Reports by employees of fire and police departments.

The employees of the fire department and police department of the Town shall make a report in writing to the Enforcement Officer of each structure which they know or suspect may be in violation of this article. Any such report shall be delivered to the Enforcement Officer within forty-eight (48) hours of the discovery of such structure by such employee. All identified violations of the fire prevention code shall be certified to the Enforcement Officer by the fire chief or his designee.

Section 5-64 Complaint and hearing and notice of lis pendens.

- (A) *Complaint and hearing.* If the preliminary investigation of a nonresidential structure discloses evidence of conditions set forth in **Section 5-57** of this article, the Enforcement Officer shall issue and cause to be served upon the owner and parties in interest in the structure a complaint. The complaint shall state the charges and contain a notice that a hearing will be held before the Enforcement Officer at a place within the county scheduled not less than ten (10) days nor more than thirty (30) days after the serving of the complaint; that the owner and parties in interest shall be given the right to file an answer to the complaint and to appear in person, or otherwise, and give testimony at the place and time fixed in the complaint; and that rules of evidence prevailing in courts of law or equity shall not be controlling in hearings before the Enforcement Officer.
- (B) *Notice of lis pendens.* Upon mailing or otherwise serving the complaint and notice of hearing pursuant to subsection (1) above, and within a reasonable time thereafter, the Enforcement Officer shall file with the office of the clerk of superior court for Robeson County a notice of lis pendens in the manner and form provided for in G.S. § 1-116. Such notice shall be served on the owners and parties in interest in the nonresidential structure in the same manner as the complaint and notice of hearing. Upon a finding by the Enforcement Officer, after a hearing pursuant to subsection (A) above, that the structure is not in violation of this article, or upon certification after inspection that the structure has been repaired or demolished in accordance with an order issued pursuant **Section 5-65** of this article, the Enforcement Officer shall cause the notice of lis pendens filed pursuant to this section to be cancelled of record.

Section 5-65 Order.

If, after notice and a hearing as provided for in this article, the Enforcement Officer determines that the nonresidential structure is a health and/or safety hazard and has not been properly maintained so that the health or safety of its occupants or others is jeopardized because of conditions of the structure and premises set forth in **Section 5-57** of this article, the Enforcement Officer shall state in writing findings of fact to support the

determination and shall cause an order to be served upon the owner. The order may require the owner to take remedial action, within a reasonable time specified, as follows:

- (A) An order may require the owner to repair, alter or improve the nonresidential structure to bring it into compliance with the minimum requirements of this article or to vacate and close the nonresidential structure for any use.
- (B) An order may require the owner to remove or demolish the nonresidential structure if the cost of repair, alteration or improvement of the structure would exceed fifty (50) percent of its then current value.

Section 5-66 Service of Complaints or Orders.

- (A) Complaints or orders issued by the Enforcement Officer under this article shall be served upon persons either personally or by registered or certified mail, and in conjunction therewith may also be served by regular mail. Service shall be deemed sufficient if the registered or certified mail is refused, but the regular mail is not returned by the post office within ten (10) days after the mailing. The person mailing the complaint or order by regular mail shall certify that fact and the date thereof and such certificate shall be conclusive in the absence of fraud. If regular mail is used, a notice of the pending proceedings shall be posted in a conspicuous place on the premises affected.
- (B) If the identities of any owners or the whereabouts of persons are unknown and cannot be ascertained by the Enforcement Officer in the exercise of reasonable diligence, and the Enforcement Officer makes an affidavit to that effect, then the serving of such complaint or order upon such owners or other persons may be made by publication in a newspaper having general circulation in the Town at least once no later than the time that personal service would be required under the provisions of this section. When service is made by publication, a copy of such complaint or order shall be posted in a conspicuous place on the premises affected by the complaint or order.
- (C) Failure on the part of any owner or party in interest to receive or have served upon him any complaint, notice or order herein provided for shall not affect or invalidate the proceedings with respect to any other owner or party in interest or any other person.

Section 5-67 Failure to comply with order; adoption of ordinance.

- (A) It shall be unlawful for the owner of any nonresidential structure to fail, neglect or refuse to repair, alter or improve the same or to vacate and close or to remove or demolish the same, upon order of the Enforcement Officer duly made and served in accordance with the provisions of this article, within the time specified in such order, and 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 nonresidential structure, with respect to which an order has been issued pursuant to Section 5-65 of this article to occupy or permit the occupancy of the same after the time prescribed in such order for its repair, alteration, improvement or its vacating and closing, and each day that such occupancy continues after such prescribed time shall constitute a separate and distinct offense.
- (C) If the owner fails to comply with an order to repair, alter or improve or to vacate and close the nonresidential structure, the council may adopt an ordinance ordering the Enforcement Officer to proceed to effectuate the purpose of this article with respect to the particular structure that the Enforcement Officer found to be jeopardizing the health or safety of its occupants or others. Following adoption of an ordinance, the Enforcement Officer may cause the structure to be repaired, altered or improved or to be vacated and closed. The Enforcement Officer may cause to be posted on the main entrance of any such structure so closed a placard with the following words: "This structure is unfit for any use; the use or occupation of this structure for any purpose is prohibited and unlawful." Any person who occupies or knowingly allows the occupancy of a structure so posted shall be guilty of a Class 3 misdemeanor.
- (D) If the owner fails to comply with an order to remove or demolish the nonresidential structure, the council may adopt an ordinance ordering the Enforcement Officer to proceed to effectuate the purpose

of this article with respect to the particular structure that the Enforcement Officer found to be jeopardizing the health or safety of its occupants or others. No ordinance shall be adopted to require demolition of the structure until the owner has first been given a reasonable opportunity to bring it into conformity with the minimum requirements established in this article by removing the conditions set forth in **Section 5-57** of this article. The reasonable time herein prescribed may include or consist of the time allowed in the Enforcement Officer's order issued pursuant to **Section 5-65** of this article. Following adoption of an ordinance, the Enforcement Officer may cause the structure to be removed or demolished.

Section 5-68 Limitation on orders and ordinances; historic landmark or district.

Notwithstanding any other provision of this article, if the nonresidential structure is designated as a local landmark, listed in the National Register of Historic Places or located in one (1) of the historic districts of the Town or in a historic district in the National Register of Historic Places and the council determines, after a public hearing, that the structure is of individual significance or contributes to maintaining the character of the district, and the structure has not been condemned as unsafe, the order of the Enforcement Officer issued pursuant to **Section 5-65** of this article may only require that the structure be vacated and closed until it is brought into compliance with the minimum requirements established in this article by removing the conditions set forth in this article.

Section 5-69 Limitation on orders and ordinances; vacant manufacturing facility or vacant industrial warehouse.

Notwithstanding any other provision of this article, the order of the Enforcement Officer issued pursuant to **Section 5-65** of this article may not require repairs, alteration or improvement to be made to vacant manufacturing facilities or vacant industrial warehouse facilities to preserve the original use. The order may require such structure to be vacated and closed, but repairs may be required only when necessary to maintain structural integrity or to abate a health or safety hazard that cannot be remedied by ordering the structure closed for any use.

Section 5-70 Vacated and closed nonresidential structures; ordinance.

- (A) If the council has adopted an ordinance or the Enforcement Officer has issued an order requiring the nonresidential structure to be repaired or vacated and closed and the structure has been vacated and closed for a period of two (2) years pursuant to the ordinance or order, the council may make findings that the owner has abandoned the intent and purpose to repair, alter or improve such structure and that the continuation of the structure in its vacated and closed status would be inimical to the health, safety and welfare of the Town in that it would continue to deteriorate, would create a fire or safety hazard, would be a threat to children and vagrants, would attract persons intent on criminal activities or would cause or contribute to blight and the deterioration of property values in the area. Upon such findings, the council may, after the expiration of the two-year period enact an ordinance and serve such ordinance on the owner, setting forth the following:
- (1) If the cost to repair the nonresidential structure to bring it into compliance with the minimum requirements by removing the conditions set forth in **Section 5-65** of this article is less than or equal to fifty (50) percent of its then current value, the ordinance shall require that the owner either repair or demolish and remove the structure within ninety (90) days; or
 - (2) If the cost to repair the nonresidential structure to bring it into compliance with the minimum requirements by removing the conditions set forth in **Section 5-65** of this article exceeds fifty (50) percent of its then current value, the ordinance shall require the owner to demolish and remove the structure within ninety (90) days.
 - (3) In the case of vacant manufacturing facilities or vacant industrial warehouse facilities, the structure must have been vacated and closed pursuant to an order or ordinance for a period of five (5) years before the council may take action under this section.

Section 5-71 Recordation of ordinances.

An ordinance adopted by council pursuant to **Sections 5-67 and 5-70** of this article shall be recorded in the office of the register of deeds and shall be indexed in the name of the property owner or owners in the grantor index. If the owner fails to comply with the ordinance, the Enforcement Officer shall effectuate the purpose of the ordinance.

Section 5-72 Lien for costs.

- (A) The amount of the cost of any repairs, alterations or improvements, or vacating and closing, or removal or demolition caused to be made or done by the Enforcement Officer pursuant to this article shall be a lien against the real property upon which such costs were incurred. Such lien shall be filed, have the same priority, and be enforced and the costs collected as the lien for special assessment in G.S. Ch. 160A, Article 10. Such costs are also a lien on any other real property of the owner located within the Town limits except for the owner's personal residence. The additional lien provided in this subsection is inferior to all prior liens and shall be collected as a money judgment.
- (B) If the nonresidential structure is demolished and removed by the Enforcement Officer, the Enforcement Officer shall offer for sale the recoverable materials of the structure and any personal property, fixtures or appurtenances found in or attached to the structure and shall credit the proceeds of the sale, if any, against the cost of the removal or demolition and any balance remaining shall be deposited in the superior court by the Enforcement Officer, shall be secured in such manner as may be directed by such court, and shall be disbursed by such court to the persons found to be entitled thereto by final order or decree of such court in a special proceeding brought before the clerk of superior court for said purpose.
- (C) Repairs, alterations, improvements, or vacating and closing or removals or demolitions may be made under the supervision of the Enforcement Officer, or he may let the same to contract on competitive bids or by private contract if no bids are received.

Statutory Authority- NC General Statutes Chapter 160A, Article 10.

Section 5-73 Alternative remedies.

Nothing in this article shall be construed to impair or limit in any way the power of the Town to define and declare nuisances and to cause their removal or abatement by summary proceedings or otherwise, nor shall enforcement of one remedy provided herein prevent the enforcement of the other remedies provided in this article or in other chapters or articles of the Town Code or any other laws.

Section 5-74 Ejectment.

If any occupant fails to comply with an order to vacate a nonresidential structure, the Enforcement Officer may cause a civil action to be filed in the name of the Town to remove such occupant. The action to vacate shall be in the nature of summary ejectment and shall be commenced by filing a complaint naming as parties-defendant any person occupying the structure. The clerk of superior court shall issue a summons requiring the defendant to appear before a magistrate at a certain time, date and place not to exceed ten (10) days from the issuance of the summons to answer the complaint. The summons and complaint shall be served as provided in G.S. § 42-29. The summons shall be returned according to its tenor, and if on its return it appears to have been duly served, and if at the hearing the Enforcement Officer produces a certified copy of an ordinance adopted by the council pursuant to **Section 5-67** of this article authorizing the Enforcement Officer to proceed to vacate the occupied structure, the magistrate shall enter judgment ordering that the nonresidential structure and premises be vacated and that all persons be removed. The judgment ordering that the structure and premises be vacated shall be enforced in the same manner as the judgment for summary ejectment entered under G.S. § 42-30. An appeal from any judgment entered hereunder by the magistrate may be taken as provided in G.S. § 7A-228, and the execution of such judgment may be stayed as provided in G.S. § 7A-227. An action to remove an occupant of a nonresidential structure who is a tenant of the owner may not be in the nature of a summary ejectment proceeding pursuant to this section unless such occupant was served with notice at least thirty (30) days before

the filing of the summary ejectment proceeding that the council has ordered the Enforcement Officer to proceed to exercise his duties under Section 5-67 of this article to vacate and close or remove and demolish the structure.

Statutory Authority – NC General Statutes § 42-29, § 42-30, § 7A-227, and § 7A-228.

Section 5-75 Appeals.

Any owner or person who is aggrieved by the order or decision of the Enforcement Officer relative to the interpretation or enforcement of the provisions of this article may appeal to the Board of Adjustment.

Section 5-76 through 5-85: Reserved.

ARTICLE VI. - ABANDONED STRUCTURES

Section 5-86 Finding; intent.

It is hereby found that there exists within the Town abandoned structures which the Mayor and Town Council find to be hazardous to the health, safety and welfare of the residents of the Town due to the attraction of insects or rodents, conditions creating a fire hazard, dangerous conditions constituting a threat to children, or frequent use by vagrants as living quarters in the absence of sanitary facilities. Therefore, pursuant to the authority granted by G.S. 160A-441, it is the intent of this chapter to provide for the repair, closing or demolition of any such abandoned structures in accordance with the same provisions and procedures as are set forth by law for the repair, closing or demolition of dwellings unfit for human habitation.

(1992 Code, Section 150.75) (Ordinance 2005-1)

Statutory Reference – G.S. 160A-441

Section 5-87 Duties of Enforcement Officer.

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

- (A) To locate abandoned structures within the Town and determine which structures are in violation of this article;
- (B) To take such action pursuant to this article as may be necessary to provide for the repair, closing or demolition of such structures;
- (C) To keep an accurate record of all enforcement proceedings begun pursuant to the provisions of this article; and
- (D) To perform such other duties as may be prescribed herein or assigned to him by the mayor and commissioners.

Section 5-88 Powers of Enforcement Officer.

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

- (A) To investigate the condition of buildings within the Town in order to determine which structures are abandoned and in violation of this article;
- (B) To enter upon premises for the purpose of making inspections;

- (C) To administer oaths and affirmations, examine witnesses, and receive evidence; and
- (D) To designate such other officers, agents and employees of the Town as he deems necessary to carry out the provisions of this article.

Section 5-89 Standards for enforcement.

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

Section 5-90 Procedure for enforcement.

- (A) *Preliminary investigation; notice; hearing.* Whenever a petition is filed with the inspector by at least five (5) residents of the Town charging that any structure exists in violation of this article or whenever it appears to the inspector, upon inspection, that any structure exists in violation hereof, he shall, if his preliminary investigation discloses a basis for such charges, issue and cause to be served upon the owner of and parties in interest in such structure a complaint stating the charges and containing a notice that a hearing will be held before the inspector at a place therein fixed, not less than ten (10) nor more than thirty (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 (1) of the persons signing a petition relating to such structure. Any person desiring to do so may attend such hearing and give evidence relevant to the matter being heard. The rules of evidence prevailing in courts of law or equity shall not be controlling in hearings before the inspector
- (B) *Procedure after hearing.* After such notice and hearing, the inspector shall state in writing his determination whether such structure violates this article. If the inspector determines that the dwelling is in violation he shall state in writing his findings of fact to support such determination, and shall issue and cause to be served upon the owner thereof an order directing and requiring the owner to either repair, alter and improve such structure or else remove or demolish the same within a specified period of time not to exceed ninety (90) days.
- (C) *Failure to comply with order.*

- a. *In personam remedy.* If the owner of any structure shall fail to comply with an order of the inspector within the time specified therein, the inspector may submit to the mayor and commissioners at its next regular meeting a resolution directing the Town attorney to petition the superior court for an order directing such owner to comply with the order of the inspector, as authorized by G.S. 160A-446(g).
- b. *In rem remedy.* After failure of an owner of a structure to comply with an order of the inspector within the time specified therein, if injunction relief has not been sought or has not been granted as provided in the preceding paragraph (1), the inspector shall submit to the mayor and commissioners an ordinance ordering the inspector to cause such structure to be removed or demolished, as provided in the original order of the inspector, and pending such removal or demolition, to placard such dwelling as provided by G.S. 160A-443.
- c. *Petition to superior court by owner.* Any person aggrieved by an order issued by the inspector shall have the right, within thirty (30) days after issuance of the order, to petition the superior court for a temporary injunction restraining the inspector pending a final disposition of the cause, as provided by G.S. 160A-446(f).

Statutory Reference – G.S. 160A-443 and 446.

Section 5-91 Methods of service of complaints and orders.

Complaints or orders issued by the inspector shall be served upon persons either personally or by registered or certified mail, but if the whereabouts of such persons are unknown and the same cannot be ascertained by the inspector in the exercise of reasonable diligence, the inspector shall make an affidavit to that effect, and the serving of such complaint or order upon such person may be made by publication in a newspaper having general circulation in the Town at least once no later than the time at which personal service is required. . 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.

Section 5-92 - In rem action by inspector; placarding.

After failure of an owner of a structure to comply with an order of the inspector issued pursuant to the provisions of this article, and upon adoption by the mayor and commissioners of an ordinance authorizing and directing him to do so, as provided by G.S. 160A-443(5) an **Section 5-90(c)** the inspector shall proceed to cause such structure either to be repaired or else removed or demolished, as directed by the ordinance of the mayor and commissioners and shall cause to be posted on the main entrance of such structure a placard prohibiting the use or occupation of the structure. Use or occupation of a building so posted shall constitute a misdemeanor. Each such ordinance shall be recorded in the office of the register of deeds of the county, and shall be indexed in the name of the property owner in the grantor index, as provided by G.S. 160A-443(5).

Statutory Reference – G.S. 160A-443.

Section 5-93 Costs of lien on premises.

As provided by G.S. 160A-446(6), the amount of the cost of any removal or demolition caused to be made or done by the inspector pursuant to this article shall be a lien against the real property upon which such cost was incurred. Such lien shall be filed, have the same priority, and be enforced and the costs collected as provided by G.S. Chapter 160A.

Statutory Reference – G.S. 160A-446.

Section 5-94 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, to enforce this article by criminal process, and the enforcement of any remedy provided herein shall not prevent the enforcement of any other remedy or remedies provided in this article or in other ordinances or laws.

Section 5-95 through 5-110: Reserved.

ARTICLE VII. - MINIMUM HOUSING STANDARDS

Section 5-111 Finding; purpose.

- (A) Pursuant to G.S. 160A-441, it is hereby found and declared that there exist in the Town dwellings which are unfit for human habitation due to dilapidation, defects increasing the hazards of fire, accidents and other calamities, lack of ventilation, light and sanitary facilities, and due to other conditions rendering such dwellings unsafe or unsanitary, and dangerous and detrimental to the health, safety and morals, and otherwise inimical to the welfare of the residents of the Town.
- (B) In order to protect the health, safety and welfare of the residents of the Town as authorized by the General Statutes, it is the purpose of this 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.

(1992 Code)

Statutory Reference – G.S. 160A-444.

Section 5-112 Definitions.

- (A) Generally. 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 building which is located partly underground, having direct access to light and air from windows located above the level of the adjoining ground.

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

Deteriorated means 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 fifty (50) percent of its value, as determined by the finding of the inspector.

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 at a cost not in excess of fifty (50) percent of its value, as determined by finding of the inspector.

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

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

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

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

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

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

Inspector means a building inspector of the Town or any agent of the inspector who is authorized by the inspector.

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

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

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

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

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

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 grinder), waste pipes, water closets, sinks, installed dishwashers, lavatories, bathtubs, shower baths, installed clothes washing machines, catch basin, drains, vents and any other similar supplied fixtures, together with all connections to water, sewer or gas line.

Public authority means the Town Council 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 dwelling in the Town.

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

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

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

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

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

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

- (B) *Meaning of certain words.* 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."

Section 5-113 Dwellings and dwelling units.

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 Section 5-114 through 5-119 of this article. 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 Section 5-114 through 5-119 of this article.**

Section 5-114 Structural conditions.

- (A) 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.
- (B) Floors or roofs shall have adequate supporting members and strength to be reasonably safe for the purpose used.
- (C) Foundations, foundation walls, piers or other foundation supports shall not be deteriorated or damaged.
- (D) Steps, stairs, landings, porches, or other parts or appurtenances shall be maintained in such condition that they will not fall or collapse.
- (E) Adequate facilities for egress in case of fire or panic shall be provided.
- (F) 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.

- (G) 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.
- (H) There shall be no chimneys or parts thereof which are defective, deteriorated or in danger of falling, or in such condition or location as to constitute a fire hazard.
- (I) There shall be no use of the ground for floors, or wood floors on the ground.

Section 5-115 Basic equipment and facilities.

(A) Plumbing system

- (1) Each dwelling unit shall be connected to a potable water supply and to the 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 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 building 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 same. The water closet and tub or shower shall be located in a room or rooms affording privacy to the user.

(B) Heating system. Every dwelling and dwelling unit used for rental purposes, which is to be occupied for any period of time between October 1 and April 1, shall have facilities for providing heat in accordance with either subsection (1) or (2) below:

- (1) *Central and electric heating systems.* Every central or electric heating system shall be of sufficient capacity so as to heat all habitable rooms, bathrooms and water closet compartments in every dwelling unit to which it is connected with a minimum temperature of seventy (70) degrees Fahrenheit measured at a point three (3) feet above the floor during ordinary winter conditions.
- (2) *Other heating facilities.* When a central or electric heating system is not provided, each dwelling and dwelling unit shall be provided with sufficient fireplaces, chimneys, flues or gas vents whereby heating appliances may be connected so as to heat all habitable rooms with a minimum temperature of seventy (70) degrees Fahrenheit measured three (3) feet above the floor during ordinary winter conditions.

(C) Electrical system.

- (1) Every dwelling and dwelling unit shall be wired for electric lights and convenience receptacles. Every habitable room shall contain at least two (2) floor- or wall-type electric convenience receptacles, connected in such manner as determined by the state building code. There shall be installed in every bathroom, water closet room, laundry room and furnace room at least one (1) supplied ceiling, or wall-type electric light fixture. In the event wall or ceiling light fixtures are not provided in any habitable room, then each such habitable room shall contain at least three (3) 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 building code.

Section 5-116 Space, use.

- (A) *Room sizes.* Every dwelling unit shall contain at least the minimum room size in each habitable room as required by the Town building code.
- (B) *Floor area.* Every dwelling unit shall contain at least one hundred fifty (150) square feet of habitable floor area for the first occupant, at least one hundred (100) square feet of additional

habitable area for each of the next three (3) occupants, and at least seventy-five (75) square feet of additional habitable floor area for each additional occupant.

- (C) *Floor area; sleeping purposes.* Every dwelling unit or in every rooming unit occupied for sleeping purposes by more than one (1) occupant shall contain at least one hundred twenty (120) square feet of floor area for each occupant twelve (12) years of age and over and at least thirty-five (35) square feet of floor area for each occupant under twelve (12) years of age.

Section 5-117 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 rodent proof; shall be kept in sound condition and good repair; shall be capable of affording privacy; shall be safe to use and capable of supporting the load which normal use may cause to be placed thereon. Every exterior wall shall be protected with paint or other protective covering to prevent the entrance or penetration of moisture or the weather.
- (B) *Interior floor, walls, and ceilings.* Every floor, interior wall, and ceiling shall be substantially rodent proof; shall be kept in sound condition and good repair; and shall be safe to use and capable of supporting the load which normal use may cause to be placed thereon.
- (C) *Windows and doors.* Every window, exterior door, basement or cellar door, and hatchway shall be substantially weathertight, watertight, and rodent proof; 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 may 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 as to be reasonably impervious to water and so as to 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.* In the event rain water, or water from other sources, is retained on site, the topographical features used for such retention shall be designed and maintained to minimize the accumulation of stagnant water. Should the accumulation of stagnant water on a property pose a threat to health or safety, the water shall be drained in such fashion so as not to flood streets, alleys or the property of others.
- (H) *Egress.* Every dwelling unit shall be provided with adequate means of egress as required by the state building code.
- (I)

Section 5-118 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 have supplied and installed screens and a self-closing device; and every window or other device with openings to outdoor space, used or intended to be used for ventilation, shall likewise be supplied with screens installed.
- (B) *Rodent control.* Every basement or cellar window used or intended to be used for ventilation, and every other opening to a basement which might provide an entry for rodents, shall be supplied with screens installed or such other approved device as will effectively prevent their entrance.
- (C) *Infestation.* Every 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 (1) dwelling unit shall be

responsible for such extermination whenever his dwelling unit is the only one infested. When 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 (2) or more of the dwelling units in any dwelling or in the shared or public parts of any dwelling containing two (2) 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 an approved garbage disposal facility, which may be an adequate mechanical garbage disposal unit (mechanical sink grinder) in each dwelling unit or an incinerator unit, to be approved by the inspector, in the structure for the use of the occupants of each dwelling unit, or an approved outside garbage can as required by Town ordinances.

Section 5-119 Rooming houses; exceptions.

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

- (A) *Water closet, hand lavatory, and bath facilities.* At least one (1) water closet, lavatory basin, and bathtub or shower, properly connected to an approved water and sewer system and in good working condition, shall be supplied for each four (4) rooms within a rooming house wherever 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 not be more than one (1) 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.
- (B) *Sanitary conditions.* The operator of every rooming house shall be responsible for the sanitary maintenance of all walls, floors, and ceilings, and for the sanitary maintenance of every other part of the rooming house; and he shall be further responsible for the sanitary maintenance of the entire premises where the entire structure or building within which the rooming house is contained is leased or occupied by the operator.
- (C) *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 affords privacy and are separate from the habitable rooms, and which are accessible from a common hall and without going outside the rooming house or through any other room therein.

Section 5-120 Responsibilities of owners and occupants.

- (A) *Public areas.* Every owner of a dwelling containing two (2) or more dwelling units shall be responsible for maintaining in a clean and sanitary condition the shared or public areas of the dwelling and premises thereof.
- (B) *Cleanliness.* Every occupant of a dwelling or dwelling unit shall keep in a clean and sanitary condition that part of the dwelling, dwelling unit, and premises thereof which he occupies and controls.
- (C) *Rubbish and garbage.* Every occupant of a dwelling or dwelling unit shall dispose of all his rubbish and garbage in a clean and sanitary manner by placing it in the supplied storage facilities. In all cases the owner shall be responsible for the availability of rubbish and garbage storage facilities.

- (D) *Supplied plumbing fixtures.* Every occupant of a dwelling unit shall keep all supplied plumbing fixtures therein in a clean and sanitary condition and shall be responsible for the exercise of reasonable care in the proper use and operation of same.
- (E) *Care of facilities, equipment and structure.* No occupant, who is not also the owner, shall willfully destroy, deface, or impair any of the facilities or equipment, or any part of the structure of a dwelling or dwelling unit.

Section 5-121 Enforcement Officer.

- (A) *Duties.* The Enforcement Officer is hereby designated as the officer to enforce the provisions of this article and to exercise the duties and powers herein prescribed. It shall be the duty of the building inspector:
 - (1) To investigate the dwelling conditions, and to inspect dwellings and dwelling units, located in the Town, in order to determine which dwelling and dwelling units are unfit for human habitation, and for the purpose of carrying out the objectives of this article with respect to such dwellings and dwelling units;
 - (2) To take such action, together with other appropriate departments and agencies, public and private, as may be necessary to effect rehabilitation of housing which is deteriorated;
 - (3) To keep a record of the results of inspections made under this article and an inventory of those dwellings that do not meet the minimum standards of fitness herein prescribed; and
 - (4) To perform such other duties as may be herein prescribed.
- (B) *Powers.* The building inspector is authorized to exercise such powers as may be necessary or convenient to carry out and effectuate the purpose and provisions of this article, including the following powers in addition to others herein granted:
 - (1) To investigate the dwelling conditions in the Town in order to determine which dwellings therein are unfit for human habitation;
 - (2) To administer oaths and affirmations, examine witnesses and receive evidence;
 - (3) To enter upon premises for the purpose of making examinations and inspections, provided five (5) days' written notice has been given to owner, or the owner and/or occupant gives verbal consent upon request of the building inspector. Entries shall be made in such a manner as to cause the least possible inconvenience to the person in possession; and
 - (4) To appoint and fix the duties of such officers, agents, and employees as he deems necessary to carry out the purposes of this article.

Section 5-122 Inspections; duty of owners and occupants.

For the purpose of making inspections, the inspector, after having provided five (5) days' written notice to the owner, or, the owner and/or occupant having given verbal consent to the Enforcement Officer, the owner or occupant of every dwelling, dwelling unit, or rooming unit, or the person in charge thereof, shall give the inspector free access to such dwelling, dwelling unit, or rooming unit, and its premises at all reasonable times for the purposes of such inspection, examination, and survey. Every occupant of a dwelling or dwelling unit shall give the owner thereof, or his agent or employee, access to any part of such dwelling or dwelling unit, and its premises, at all reasonable times for the purpose of making such repairs or alterations as are necessary to effect compliance with the provisions of this article or with any lawful order issued pursuant to the provisions of this article.

Section 5-123 Procedure for enforcement.

- (A) *Preliminary investigation; notice; hearing.* Whenever a petition is filed with the inspector by a public authority or by at least five (5) residents of the Town charging that any dwelling or dwelling unit is

unfit for human habitation, or whenever it appears to the inspector, 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 inspector at a place therein fixed, not less than ten (10) nor more than thirty (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 (1) of the persons signing a petition relating to such dwelling. Any person desiring to do so may attend such hearing and give evidence relevant to the matter being heard. The rules of evidence prevailing in courts of law or equity shall not be controlling in hearings before the inspector.

(B) *Procedure after hearing.* After such notice and hearing, the inspector shall state in writing his determination whether such dwelling or dwelling unit is unfit for human habitation, and, if so, whether it is deteriorated or dilapidated.

(1) If the inspector determines that the dwelling or dwelling unit is deteriorated, he shall state in writing his findings of fact in support of such determination, and shall issue and cause to be served upon the owner thereof an order directing and requiring the owner to repair, alter, and improve such dwelling or dwelling unit to comply with the minimum standards of fitness established by this chapter within a specified period of time, not to exceed ninety (90) days. Such order may also direct and require the owner to vacate and close such dwelling or dwelling unit until such repairs, alterations, and improvements have been made.

(2) If the inspector 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 to either repair, alter and improve such dwelling or dwelling unit to comply with the minimum standards of fitness established by this article or else vacate and remove or demolish the same within a specified period of time not to exceed ninety (90) days.

(C) *Failure to comply with order.*

(1) *In personam remedy.* If the owner of any deteriorated dwelling or dwelling unit shall fail to comply with an order of the inspector to repair, alter, or improve the same within the time specified therein, or if the owner of a dilapidated dwelling shall fail to comply with an order of the inspector to vacate and close, and remove or demolish the same within the time specified therein, the inspector shall submit to the Town Council 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 inspector, as authorized by G.S. 160A-446(g).

(2) *In rem remedy.* After failure of an owner of a deteriorated dwelling or dwelling unit, or of a dilapidated dwelling, to comply with an order of the inspector within the time specified therein, if injunctive relief has not been sought or has not been granted as provided in the preceding paragraph (1), the inspector shall submit to the Town an ordinance ordering the inspector to cause such dwelling or dwelling unit to be repaired, altered, improved, or vacated and closed and removed or demolished, as provided in the original order of the inspector, and pending such removal or demolition, to placard such dwelling as provided by G.S. 160A-443 and **Section 5-125.**

(D) *Appeals from orders of inspector.* An appeal from any decision or order of the inspector may be taken by any person aggrieved thereby. Any appeal from the inspector shall be taken within ten (10) days from the rendering of the decision or service of the order, and shall be taken by filing with the inspector and with the 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 inspector shall forthwith transmit to the board of adjustment all the papers constituting the record upon which the decision appealed from was made. When appeal is from a decision of the inspector refusing to allow the person aggrieved thereby to do any act, his decision shall remain in force until modified or reversed.

When any appeal is from a decision of the inspector requiring the person aggrieved to do any act, the appeal shall have the effect of suspending the requirement until the hearing by the board of adjustment, unless the inspector certifies to the board of adjustment, after the notice of appeal is filed with him, that by reason of the facts stated in the certificate (a copy of which shall be furnished the appellant), a suspension of his requirement would cause imminent peril to life or property, in which case the requirement shall not be suspended except by a restraining order, which may be granted for due cause shown upon not less than one (1) day's written notice to the inspector, by the board of adjustment, or by a court of record upon petition made pursuant to G.S. 160A-446(f) and subsection (e) of this section. The board of adjustment 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 of adjustment 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 powers of the inspector, but the concurring vote of four members of the board of adjustment shall be necessary to reverse or modify any decision or order of the inspector. The board of adjustment shall have power also in passing upon appeals, in any case where there are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of the ordinance, to adapt the application of the ordinance to the necessities of the case to the end that the spirit of the ordinance shall be observed, public safety and welfare secured, and substantial justice done. Every decision of the board of adjustment shall be subject to review by proceedings in the nature of certiorari instituted within fifteen (15) days of the decision of the board of adjustment, but not otherwise.

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

Section 5-124 Methods of service of complaints and orders.

Complaints or orders issued by the inspector shall be served upon persons either personally or by registered or certified mail, but if the whereabouts of such persons are unknown and the same cannot be ascertained by the inspector in the exercise of reasonable diligence, the inspector shall make an affidavit to that effect, and the serving of such complaint or order upon such person may be made by publishing the same once each week for two (2) successive weeks in a newspaper, (printed and published or circulating) in the Town. Where service is made by publication, a notice of the pending proceedings shall be posted in a conspicuous place on the premises affected by the complaint or order.

Section 5-125 In rem action by inspector; placarding.

- (A) After failure of an owner of a dwelling or dwelling unit to comply with an order of the inspector 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-443(5) and **Section 5-123(c)** of this article, the inspector shall proceed to cause such dwelling or dwelling unit to be repaired, altered, or improved to comply with the minimum standards of fitness established by this article, or to be vacated and closed and removed or demolished, as directed by the ordinance of the Town Council 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.
- (B) Each such ordinance shall be recorded in the office of the register of deeds in the county wherein the property is located, and shall be indexed in the name of the property owner in the grantor index, as provided by G.S. 160A-443(5).

Section 5-126 Costs, a lien on premises.

As provided by G.S. 160A-446(6), the amount of the cost of any repairs, alteration, or improvement, or vacating and closing, or removal or demolition, caused to be made or done by the inspector pursuant to **Section 5-125** shall be a lien against the real property upon which such cost was incurred. Such lien shall be filed, have the same priority, and be enforced and the costs collected as provided by the General Statutes.

Section 5-127 Alternative remedies.

Neither this article or 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 5-129** , and the enforcement of any remedy provided herein shall not prevent the enforcement of any other remedy provided herein or in other ordinances or laws.

Section 5-128 Town Council to hear appeals.

All appeals which may be taken from decisions or order of the inspector pursuant to Section 5-123(d) shall be heard and determined by the Town Council. 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 Town Council shall perform the duties prescribed in **Section 5-123(d)** and shall keep an accurate journal of all its proceedings.

Section 5-129 Conflict 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.

Section 5-130 Violations.

It shall be unlawful for the owner of any dwelling or dwelling unit to fail, neglect, or refuse to repair, alter, or improve the same, or to vacate and close and remove or demolish the same, upon order of the inspector duly made and served as herein provided, with the time specified in such order, and each day that any such failure, neglect, or refusal to comply with such order continues shall constitute a separate and distinct offense. 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 5-123, to occupy or permit the occupancy of the same after the time prescribed in such order for its repair, alteration or improvement or its vacation and closing, and each day that such occupancy continues after such prescribed time shall constitute a separate and distinct offense.

Sections 5-131 through 5-140: Reserved.

ARTICLE VIII. - MINIMUM MAINTENANCE STANDARDS FOR NONRESIDENTIAL BUILDINGS AND STRUCTURES

Section 5-141 Finding, purpose.

- (A) Pursuant to N.C.G.S. 160A-174 and G.S. 160A-424 through 160A-429, it is hereby found and declared that there exist in the Town nonresidential buildings and structures which are not being adequately or appropriately maintained according to their original or subsequent permitted design and construction; and that the lack of appropriate maintenance and care of such buildings and structures is unsightly and thereby detrimental to the desired aesthetic qualities of the Town which creates a negative effect upon neighboring property values and to the local tourist industry which is vital to the economic prosperity of the community, and are otherwise inimical to the general welfare of the residents of the Town.
- (B) In order to protect the general welfare of the residents of the Town as authorized by the General Statutes, it is the purpose of this article to establish minimum building and structural maintenance standards for the maintenance and appearance of nonresidential buildings within the Town.

Statutory Reference – G.S. 160A 174 and G.S. 160A 424 through 429.

Section 5-142 Definitions.

- (A) *Generally.* 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:

Building means a nonresidential structure designed to be used as a place of occupancy, storage or shelter.

Building inspector or inspector means the Enforcement Officer or his designee having primary responsibility for the enforcement of this article.

Deteriorated means a building that has fallen into disrepair, but 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 fifty (50) percent of its value, as determined by the finding of the inspector.

Dilapidated means that a building cannot be repaired, altered or improved to comply with all of the minimum standards established by this article at a cost not in excess of fifty (50) percent of its value, as determined by finding of the inspector.

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

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

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

Nonresidential means a building or structure principally used for uses other than residential purposes, and would include but not be limited to commercial, business, institutional, and governmental uses, etc.

Occupant means any person who has charge, care, control of or having actual possession of a nonresidential building or establishment.

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

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

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 grinder), waste pipes, water closets, sinks, installed dishwashers, lavatories, bathtubs, shower baths, installed clothes washing machines, catch basin, drains, vents and any other similar supplied fixtures, together with all connections to water, sewer or gas line.

Principal use means the primary permitted use under the terms of the zoning ordinance that is being conducted on the subject lot, parcel or premises.

Public authority means any official of the government of the Town or of the county or the state relating to health, fire, building regulations, zoning or other activities concerning land use within the Town.

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

Structure means anything constructed or erected.

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

- (B) *Meaning of certain words.* Whenever the words "building, establishment, structure, or premises" are used in this article, they shall be construed as though they were followed by the words "or any part thereof."

Section 5-143 Application.

This article shall apply to all structures that:

- (A) Required or would require a building permit in order to be constructed;
- (B) The principal use of which is nonresidential.

Section 5-144 Structural conditions.

- (A) 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.
- (B) Floors or roofs shall have adequate supporting members and strength to be reasonably safe for the purpose used.
- (C) Foundations, foundation walls, piers or other foundation supports shall not be deteriorated or damaged.
- (D) Steps, stairs, landings, porches, or other parts or appurtenances shall be maintained in such condition that they will not fall or collapse.
- (E) Adequate facilities for egress in case of fire or panic shall be provided.

- (F) The roof, lashings, 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.
- (G) 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.

Section 5-145 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 rodent proof; shall be kept in sound condition and good repair as originally designed and permitted; and shall be safe to use and capable of supporting the load which normal use may cause to be placed thereon. Every exterior wall shall be protected with paint or other protective covering to prevent the entrance or penetration of moisture or the weather.
- (B) *Interior floor, walls, and ceilings.* Every floor, interior wall, and ceiling shall be substantially rodent proof; shall be kept in sound condition and good repair; and shall be safe to use and capable of supporting the load which normal use may cause to be placed thereon.
- (C) *Windows and doors.* Every window, exterior door, basement or cellar door, and hatchway shall be substantially weathertight, watertight, and rodent proof; and shall be kept in sound working condition and good repair as originally designed and permitted.
- (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 may 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 as to be reasonably impervious to water and so as to 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.* Yards and open spaces shall be properly graded so as to obtain thorough drainage and so as to prevent the accumulation of stagnant water.
- (H) *Egress.* Every building and structure shall be provided with adequate means of egress as required by the state building code.

Section 5-146 Control of insects, rodents and infestations.

- (A) *Infestation.* Every lessee or owner of a building shall be responsible for the extermination of any insects, rodents, or other pests therein or on the premises. When infestation is caused by failure of the owner to maintain a building in a rodent proof or reasonably insect proof condition, extermination shall be the responsibility of the owner.
- (B) *Rubbish storage and disposal.* Every building 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 building or structure shall be responsible for the removal of rubbish.
- (C) *Garbage storage and disposal.* All buildings shall be supplied with an approved garbage disposal facility, which may be an adequate mechanical garbage disposal unit (mechanical sink grinder) in each structure or an incinerator unit, to be approved by the inspector, or an approved outside garbage can as required by Town ordinances.

Section 5-147 Responsibilities of owners and occupants.

- (A) *Public areas.* Every owner of a building that contains multiple nonresidential uses shall be responsible for maintaining in a clean and sanitary condition the shared or public areas of the building and premises thereof.
- (B) *Cleanliness.* Every occupant of a building or structure 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 building or structure 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 building or structure that is plumbed for water service 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 same.
- (E) *Required maintenance.* Every owner of a building shall be required to repair, alter, maintain, reconstruct or rework the building or its parts or components therein so that the structural, sanitary and infestation control standards under Sections 5-144, 5-145 and 5-146 are met.

Section 5-148 Inspector.

- (A) *Duties.* The building inspector (See **Definitions Section 5-142**) is hereby designated as the officer to enforce the provisions of this article and to exercise the duties and powers herein prescribed. It shall be the duty of the building inspector:
 - (1) To investigate and inspect building conditions or structure units located in the Town, in order to determine which building or structure units are in violation of this article with respect to such building or structures and building or structure units;
 - (2) To take such action, together with other appropriate departments and agencies, public and private, as may be necessary to effect rehabilitation of buildings which are deteriorated;
 - (3) To keep a record of the results of inspections made under this article and an inventory of those building or structures that do not meet the minimum standards of fitness herein prescribed; and
 - (4) To perform such other duties as may be herein prescribed.
- (B) *Powers.* The inspector is authorized to exercise such powers as may be necessary or convenient to carry out and effectuate the purpose and provisions of this article, including the following powers in addition to others herein granted:
 - (1) To investigate the building or structure conditions in the Town in order to determine which building or structures therein are unfit for use and occupation or fail to meet the requirements of this article;
 - (2) To enter upon premises for the purpose of making examinations and inspections, provided five (5) days' written notice has been given to owner, or the owner and/or occupant gives verbal consent upon request of the inspector. Entries shall be made in such a manner as to cause the least possible inconvenience to the person in possession; and
 - (3) To appoint and fix the duties of such officers, agents, and employees as he deems necessary to carry out the purposes of this article.
 - (4) For the purpose of making inspections, the inspector, after having provided five (5) days' written notice to the owner, or, the owner and/or occupant having given verbal consent to the inspector, the owner or occupant of every building or structure, or the person in charge thereof; shall give the inspector free access to such building or structure, building or structure unit, and its premises at all reasonable times for the purposes of such inspection, examination, and survey. Every occupant of a building or structure shall give the owner thereof; or his agent or employee, access to any part of such building or structure, 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.

Section 5-149 Procedure for enforcement.

- (A) *Notice to take corrective action.* If the inspector herein after investigation determines that the owner's buildings has one or more deficiencies with regard to the structural standards, sanitary maintenance standards, or infestation control standards set forth in Sections 5-144, 5-145 and 5-146 but that the conditions are not so substantial or onerous as to constitute a fire or safety hazard or be dangerous to

life, health or property, then the inspector shall notify the owner of the building in writing at the owner's last known address or by personally delivering a copy of the notice in writing to the owner, and shall further post notice of the deficiency on the front entrance to the building. Said notice shall notify the owner of the deficiency and shall give the owner thirty (30) days to correct the same. Owner shall be required to comply with the notice by notifying the inspector in writing that owner intends to correct the deficiency by outlining and detailing in said written response the actions said owner shall take within a period of thirty (30) days thereafter to begin in good faith to remedy the deficiency. Failure of the owner to either respond in writing outlining in good faith his intent to comply or failure thereafter within thirty (30) days to begin to make substantial progress towards correcting said deficiency shall constitute a violation of this article. A violation of this article shall be punishable by a civil penalty in the amount of one hundred dollars (\$100.00) per occurrence. After the thirty (30) days owner has to begin to correct the deficiency in the building, each day said deficiency continues thereafter without effort being made to abate or lessen the same shall constitute a separate offense hereunder. Additionally, the Town reserves the right at law or in equity to abate or enjoin the deficiency by civil action or to seek an order requiring the owner to correct the same.

- (B) *Appeals from orders of inspector.* An appeal from any decision or order of the inspector may be taken by any person aggrieved thereby. Any appeal from the inspector shall be taken within ten (10) days from the rendering of the decision or service of the order, and shall be taken by filing with the inspector and with the 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 inspector shall forthwith transmit to the board all the papers constituting the record upon which the decision appealed from was made. When appeal is from a decision of the inspector refusing to allow the person aggrieved thereby to do any act, his decision shall remain in force until modified or reversed. When any appeal is from a decision of the inspector requiring the person aggrieved to do any act, the appeal shall have the effect of suspending the requirement until the hearing by the board, unless the inspector certifies to the board, after the notice of appeal is filed with him, that by reason of the facts stated in the certificate (a copy of which shall be furnished the appellant), a suspension of his requirement would cause imminent peril to life or property, in which case the requirement shall not be suspended except by a restraining order, which may be granted for due cause shown upon not less than one (1) day's written notice to the inspector, by the board, or by a court of record upon petition made pursuant 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 inspector, but the concurring vote of the majority of the board shall be necessary to reverse or modify any decision or order of the inspector. The board shall have power also in passing upon appeals, in any case where there are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of the ordinance, to adapt the application of the ordinance to the necessities of the case to the end that the spirit of the ordinance shall be observed, public safety and welfare secured, and substantial justice done. Every decision of the board shall be subject to review by proceedings in the nature of certiorari instituted within fifteen (15) days of the decision of the board, but not otherwise.
- (C) *Petition to superior court by owner.* Any person aggrieved by an order issued by the inspector or a decision rendered by the board shall have the right, within thirty (30) days after issuance of the order or rendering of the decision, to petition the superior court for a temporary injunction restraining the inspector pending a final disposition of the cause.

Section 5-150 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 the enforcement of any remedy provided herein shall not prevent the enforcement of any other remedy provided herein or in other ordinances or law.

Statutory reference – NC General Statutes §14-4.

Section 5-151 Board of adjustment to hear appeals.

All appeals which may be taken from decisions or order of the inspector pursuant to Section 5-147(e) shall be heard and determined by the 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.

Section 5-152 Conflict 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.

Section 5-153 Violations.

Violations of this article shall subject the offender to the provisions outlined in **Section 1-6** of the Town of Pembroke Code of Ordinances.

Section 5-154 through 5-160: Reserved.

ARTICLE IX: REGULATION OF BOARDED UP RESIDENTIAL STRUCTURES

Section 5-161 Purpose and authority.

- (A) It is the purpose of this article to promote the health, safety and welfare of the citizens of the city by establishing reasonable regulations for boarded up residential structures in order to prevent their detrimental effects in the Town's neighborhoods.
- (B) The Town's enforcement official shall be responsible for the administration and enforcement of the provisions of this article. The code enforcement official or designee(s) shall have the following authority:
 - a. To inspect the properties;
 - b. To obtain administrative search and inspection warrants, if necessary, as provided in G.S. 15-27.2; and
 - c. To issue notices of violation and impose civil penalties.

(Ord. No. 99-1)

Section 5-162 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:

Board up means the boarding up of any means of egress and ingress, including, without limitation, windows and doors, to an unoccupied residential structure.

Enforcement official means the person who has been designated, in writing, by the Town Manager to enforce this article.

Owner means the holder of title in fee simple.

Residential structure means any building, structure, manufactured home or mobile home, or part thereof, intended to be used for human habitation and includes any appurtenances therewith.

Unoccupied means a residential structure that is not occupied or that is occupied by unauthorized persons. In the case of a multi-unit residential structure, unoccupied means when any one unit is unoccupied or occupied by unauthorized persons.

Section 5-163 Requirements; time limit.

- (A) An owner who registers a boarded up residential structure pursuant to **Section 5-165** must comply with the guidelines for boarding up residential structures established from time to time by the Town.
- (B) An owner's registration of a boarded up residential structure shall expire six months from the date of registration with the Town and may not be renewed.

Section 5-164 Grace period.

Any owner who has boarded up a residential structure prior to the effective date of this article shall comply with the regulations contained herein within six months after the effective date of this article. If after six months, an owner has failed to register the structure, the owner shall be in violation of this article.

Section 5-165 Registration.

- (A) No owner shall board up a residential structure without registering the structure with the Town no later than 48 hours after boarding it up.
- (B) An application for registration must be made by the owner of the boarded up residential structure on a form prescribed by the Town, and submitted to the Town Manager. The completed registration form shall contain at a minimum the following information:
 - (1) The full true name and mailing address of the owner;
 - (2) The full true address and tax parcel number of the residential structure to be boarded;
 - (3) An accurate telephone number at which the owner may be reached;
 - (4) If the owner is a partnership or corporation, the owner shall designate one of its general partners or officers to act as its agent and provide the present residence and business addresses and telephone numbers for the agent;
 - (5) The owner's plan for the occupancy, repair or demolition of the residential structure;
 - (6) The owner's plan for regular maintenance during the period the residential structure is boarded up; and
 - (7) Such other information as the Town shall from time to time deem necessary.
- (C) The owner, under this section, shall have a continuing duty to promptly supplement registration information required by this section in the event that said information changes in any way from what is stated on the original registration.

- (D) Registration of a boarded up residential structure does not excuse the owner from compliance with any other applicable ordinance, regulation, or statute, including, without limitation, Chapter 5. By accepting an owner's registration, the Town has not determined that the residential structure being registered is in compliance with any applicable local or state regulation or law.

Section 5-166 Violations.

- (A) It shall be unlawful for the owner of a boarded up residential structure to fail to register such structure with the Town as required by **Section 5-165** except as otherwise provided in this article.
- (B) It shall be unlawful for an owner who has registered a boarded up residential structure to leave the structure boarded up after the expiration of the registration as set forth in **Section 5-163.**
- (C) It shall be unlawful for an owner to board up a residential structure in a manner that does not comply with the Town's guidelines unless the owner has obtained the Town's prior written approval for an alternative method of boarding up a residential structure.

Section 5-167 Not an infraction or misdemeanor.

A violation of any provision of this article shall not constitute an infraction or misdemeanor punishable under G.S. 14-4 and 14-188.

Section 5-168 Notice of violation; penalties.

Except as otherwise provided in this article, the enforcement official or designee(s) shall notify the owner of a boarded up residential structure of a violation of any provision of this article and the owner shall have ten days from the date of the notice of violation to correct the violation. Any owner who fails to correct the violation within the time specified shall be subject to a civil penalty in the amount of \$500.00 for the first day of noncompliance and \$50.00 for each day thereafter until the owner complies. The civil penalty may be recovered in the nature of a debt if the owner does not pay the penalty within 30 days of assessment of the civil penalty.

Section 5-169 Notices.

Any notice required or permitted to be given by the Town under this article to the owner may be given either by personal delivery or by first class United States mail, postage prepaid, to the most current address as specified in the registration which has been received by the Town or to the address listed for the responsible person in the county property tax records if an owner has not registered with the Town. Notices mailed as above shall be deemed given upon their deposit in the United States mail and shall be deemed to have been received on the third regular postal delivery day thereafter.

Section 5-170 Adjudicatory hearing.

- (A) An owner who has been assessed a civil penalty for a violation of this article may request a hearing with the Town Manager or his designee. Such request must be made in writing, filed with the Town within ten days of the notice of assessment, and state the reasons why the civil penalty should not have been assessed. Failure to request a hearing in the time and manner specified shall constitute a waiver of the right to contest the penalty.
- (B) An owner requesting a hearing must post a \$500.00 bond with the Town before an appeal hearing will be scheduled. Once the bond is posted, the hearing will be scheduled within 15 business days.
- (C) The Town Manager or his designee shall serve as the hearing officer. Any owner against whom a decision of the hearing officer is made may seek judicial review of the decision by filing a written petition within 30 calendar days after receipt of the notice of the decision, but not thereafter,

with the superior court of the county. The proceedings in superior court shall be in the nature of certiorari.

Sections 5-171 through 5-180: Reserved.

CHAPTER 6: HEALTH AND SANITATION

ARTICLE I: IN GENERAL

Section 6-1 Unlawful to violate County health regulations.

It shall be unlawful for any person, firm or corporation to violate any lawfully adopted rule or regulation of the Robeson County Board of Health, or regulations of the Division of Health Services, North Carolina Department of Human Resources. The enforcement of these laws shall be the responsibility of the County Health Officer.

(1992 Code, Section 94.20 and 94.21)

Section 6-2 Unlawful to violate Health Officer or assistants.

It shall be unlawful for any person to hinder, obstruct or delay the County Health Officer or any of his assistants in the lawful discharge of their duties.

(1992 Code, Section 94.22)

Section 6-3 Right of entry.

The County Health Officer or any of his/her assistants shall have the right to enter onto any premises at any reasonable hour for the purpose of making inspections or investigations.

(1992 Code, Section 94.23)

Section 6-4 Removal of nuisances.

The owner, lessee, tenant or occupant of any building or premises where there shall be a nuisance or any violation of any ordinance relating to health and sanitation shall be jointly and severally liable therefore and each of them may be required to abate the same or comply with the order of the appropriate enforcement official within the time specified within the order.

Section 6-5 Offensive matter on premises prohibited.

No owner or occupant of any premises shall suffer to remain on premises owned or occupied by him any decayed animal or vegetable matter, or any other thing which may be offensive to, or injurious to the health of, persons in the vicinity; nor shall any person place or throw such offensive matter upon any street or alley or upon the premises of another person.

(1992 Code, Sections 94.01 and 94.03)

Section 6-6 Smoking in Town-owned or Town-leased facilities and vehicles.

- (A) As used in this section, the term "smoking" shall mean the inhaling, exhaling, burning or carrying of a lighted pipe, cigarette or other combustible tobacco product.
- (B) Smoking shall not be permitted within any building owned by the Town or within any building or space leased by the Town. The Town Manager or person in charge of the building shall conspicuously post signs within the building stating that smoking is not permitted. However, the manager or person in charge of a

Town-owned or -leased building may, in his/her discretion, designate smoking areas within the facility if he/she determines that it is feasible to adequately contain and ventilate the smoke from such smoking areas. The location and size of the smoking areas, if any, shall be determined by the manager or person in charge. Signs shall be conspicuously posted in any area designated as a smoking area.

- (C) No person shall smoke in a nonsmoking area in a Town-owned or -leased building or smoke in any Town-owned or -leased vehicle. Any person who continues to smoke in any nonsmoking area or in any Town-owned or -leased vehicle in following notice by the person in charge or his designee that smoking is not permitted shall be subject to a civil penalty in the amount of \$50.00. If the penalty is not paid or appealed within 30 days of its issuance, a delinquency charge of \$25.00 shall be added to the amount of the penalty. This civil penalty and delinquency charge may be recovered by the Town in a civil action in the nature of a debt if the violator does not pay the full amount within 15 days after the imposition of the delinquency charge.

Section 6-7 Penalty.

Any violation of this chapter shall be subject to the general penalty provisions contained in Section 1-6.

(1992 Code, Section 94.99)

Sections 6-8 through 6-15: Reserved.

CHAPTER 7: MOTOR VEHICLES AND TRAFFIC

ARTICLE I: GENERAL PROVISIONS

Section 7-1 Powers of police department.

The Police Department of the Town of Pembroke shall have the powers:

- (A) To enforce the provisions of the laws regulating the operation or operating of vehicles on the public streets within the Police Department's jurisdiction, including the Town's corporate limits and within one mile of the corporate limits.
- (B) To make arrests upon view and without warrant for any violation committed in their presence.
- (C) At all times to direct traffic in conformance with law, and in the event of fire or other emergency or to expedite traffic or to ensure safety, to direct traffic as conditions may require, notwithstanding the provisions of law.
- (D) When on reasonable belief that any vehicle is being operated in violation of any provisions of law, to require the driver of such vehicle to stop and submit his driver's license and the registration card issued for the vehicle and submit to an inspection of such vehicle, the registration plates, registration card thereon and to an inspection and test of the equipment of such vehicle.
- (E) To inspect any vehicle of a type to be required to be registered hereunder in any public garage or repair shop or in any place where such vehicles are held for sale or wrecking for the purpose of locating stolen vehicles and investigating the title and registration thereof.
- (F) To serve all warrants relating to the enforcement of the laws regulating the operating of vehicles or the use of public streets.
- (G) To investigate traffic accidents and secure testimony of witnesses of persons involved.
- (H) To investigate reported thefts of motor vehicles, trailers and semi-trailers.
- (I) To enforce all parking regulations.

(1992 Code, Sections 70.05 and 70.06)

Section 7-2 Definitions.

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

Alley means a thoroughfare through the middle of a block.

Authorized emergency vehicles means vehicles of the Fire Department, Police Department and such ambulances designated or authorized by the Chief of Police.

Autocycle means a three-wheeled motorcycle that has a steering wheel, pedals, seat safety belts for each occupant, antilock brakes, completely or partially enclosed seating that does not require the operator to straddle or sit astride, and is otherwise manufactured to comply with federal safety requirements for motorcycles

Block means the length at that portion of any street which is located between two street intersections.

Business district means the territory contiguous to a highway or street where 75 percent or more of the frontage thereon for a distance of 300 feet or more is occupied by buildings in use for business purposes.

Crosswalk means either that part of a roadway at an intersection included within the connections of the lateral lines of the sidewalks on opposite sides of the street, measured from the curbs (or in the absence of curbs from the edges of the traversable roadway), and in the absence of a sidewalk on one side of the roadway, that part of a roadway included within the extension of the lateral lines of the sidewalk at right angles to the center line; or any portion of a roadway at an intersection or elsewhere distinctly indicated as a pedestrian crossing by pavement marking lines on the surface, and/or contrasting surface texture, style or color.

Driver means every person who drives or is in actual physical control of a vehicle.

Intersection means the area embraced within the prolongation of the lateral curb or boundary lines of two or more roadways or highways which join and cross one another at an angle.

Laned Roadway means a roadway which is divided into two or more clearly marked lanes for vehicular traffic.

Motorcycle means vehicles having a saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground, including autocycles, motor scooters, and motor-driven bicycles, but excluding tractors and utility vehicles equipped with an additional form of device designed to transport property, three-wheeled vehicles while being used by law-enforcement agencies, electric assisted bicycles, and mopeds.

Motor vehicle means every vehicle which is self-propelled and every vehicle which is propelled by electric power obtained from overhead trolley wires, but not operated from rails.

Official standard time, whenever certain hours are named herein, means standard time or daylight saving time as may be in current use in the Town.

Official traffic control devices means all signs, signals, markings and devices not inconsistent with these ordinances, placed or erected by authority of the Town Council, or an official having jurisdiction, for the purpose of regulating, warning or guiding traffic.

Official traffic signal means any device, whether manually or automatically operated, by which traffic is alternately directed to stop and proceed.

Park means the standing of a vehicle, whether occupied or not, other than temporarily for the purpose of loading or unloading.

Pedestrian means any person on foot, in a wheelchair, on skates or on a skateboard.

Person means every natural person, firm, co-partnership, association or corporation.

Police officer means every officer of the Town Police Department or any officer authorized to direct traffic or to make arrests for the violations of traffic regulations.

Private road or driveway means every road or driveway not open to the use of the public for purpose of vehicular travel, not publicly dedicated and/or maintained, and where a right is typically provided for use of public safety and service personnel.

Public conveyance means any vehicle which is engaged in the business of transporting persons for fare.

Railroad means a carrier of persons or property, other than streetcars, with cars operated on stationary rails.

Railroad train means a steam engine, electric or other locomotor, with or without cars coupled thereto, operated upon rails, not including streetcars.

Residential district means the territory contiguous to a highway or street not comprising a business district, where 75 percent or more is mainly occupied by dwellings or by dwellings and buildings in use for business purposes.

Right-of-way means the privilege of the immediate use of the roadway not inconsistent with regulations and conditions.

Roadway means that portion of a street which has been improved and designed for, or which is ordinarily used for, vehicular traffic.

Safety zone means the area officially set apart within a roadway for the exclusive use of pedestrians which area is either protected or plainly marked at all times while so set apart as a safety zone.

Sidewalk means the same as described in Town Code of Ordinances.

Signs. See *Traffic signs*.

Standing means any stopping of a vehicle, whether occupied or not.

Stop, when required, means complete cessation of movement.

Stop or stopping, when prohibited, means any stopping of a vehicle, except when in conflict with other traffic is imminent, or when otherwise directed by a police officer.

Street, highway means the entire area between internal property lines which is open to the use of the public, as a matter of right, for purposes of vehicular traffic.

Through Street means a street or highway where at the entrances to which vehicular traffic is required to stop before entering or cross same and when stop signs are erected.

Traffic means pedestrians, ridden or herded animals, vehicles, streetcars and other conveyances, either singly or together, while using any street for purpose of travel.

Traffic signs means signs or markers which are assumed to be permanently or temporarily placed or erected or installed at certain places and which purport to give warning or notice of direction or to convey a prohibition or

warning; the presence of such signs, though not compulsory, is generally dictated by necessity or common sense, with a view to furtherance of public safety.

Vehicle means every device in or upon which any person or property may be transported; provided that, for the purpose of this part, a bicycle or a ridden animal shall also be deemed a vehicle.

(1992 Code, Section 70.01)

Statutory Reference – NCGS Section 20 –4.01 Motor Vehicles, Definitions.

Sections 7-3 through 7-5: Reserved

ARTICLE II: OPERATION OF VEHICLES ON THE PUBLIC STREETS

Section 7-6 Required obedience to traffic ordinances.

- (A) It shall be unlawful for any person to perform any act in violation of these ordinances, or fail to perform any act required by these ordinances.
- (B) Any person violating the provisions of these ordinances shall be guilty of a misdemeanor.

(1992 Code, Section 70.20)

Section 7-7 Obedience to police.

It shall be unlawful for any person to refuse or disobey any lawful order of a police officer when such officer is on duty. For the provisions of this section, an officer is considered to be on duty when in uniform or when he has identified himself to be a police officer.

(1992 Code, Section 70.05)

Section 7-8 Traffic control in special cases.

In the event of a fire or other emergency, or when it is deemed necessary to expedite traffic, or when it is deemed necessary to safeguard pedestrians, or when a special hazard exists, police officers may direct traffic as existing conditions require, notwithstanding the provisions of these ordinances.

(1992 Code, Section 70.06)

Section 7-9 Uniform firefighters may direct traffic at the scene of a fire.

Uniform firefighters may direct traffic at the scene of a fire when called upon by the police to assist, or in the absence of police from the scene, and the full provisions of Sections 6-7 and 6-8 shall be in effect.

(1992 Code, Section 70.06)

Section 7-10 Public employees to obey traffic ordinances.

The provisions of these ordinances shall apply to the drivers of any vehicles owned or operated by, or used in the service of, the United States government, the State government, County government or Town government, and it

shall be unlawful for any driver of such vehicle to violate any of the provisions of these ordinances or statutes of North Carolina.

(1992 Code, Section 70.02)

Section 7-11 Exceptions granted to emergency vehicles.

- (A) The driver of a vehicle upon the public streets shall yield the right-of-way to police and Fire Department vehicles and public and private ambulances when the latter are operated upon official business and the driver thereof sound audible signal by bell, siren or exhaust whistle. This provision shall not operate to relieve the driver of such vehicle from the duty to drive with due regard to the safety of all persons using the public streets, nor shall it protect the driver of such vehicle from the consequence of any arbitrary exercise of such right-of-way.
- (B) Unless otherwise directed by a police officer, the driver of such emergency vehicle, when an actual or believed to be actual emergency and giving audible signal may:
 - (1) Park or stand, notwithstanding the provisions of these ordinances.
 - (2) Proceed past a red or stop signal or stop sign. This shall be done only after slowing down such vehicle as may be deemed necessary for safe operation.
 - (3) Exceed the posted speed limits provided that such action does not endanger life or property.
 - (4) Disregard regulations governing direction of movement, or turning in specified directions, provided that this movement does not endanger life and property. The above listed exemptions shall not protect the driver of such vehicle from the consequences of a reckless disregard for the safety of others.

(1992 Code, Section 70.03)

Section 7-12 What to do on approach of Police or Fire Department vehicles; driving over fire hose or blocking firefighting equipment.

- (A) Upon the approach of any Police or Fire Department vehicle giving audible signal by bell, siren or exhaust whistle, the driver of every other vehicle shall immediately drive such vehicle to a position and parallel to the right-hand edge or curb, clear of any intersection of streets, and shall stop and remain in such position unless otherwise directed by a police or traffic officer until the Police or Fire Department vehicle shall have passed.
- (B) It shall be unlawful for the driver of any vehicle other than one on official business to follow any fire apparatus traveling in response to a fire alarm closer than one Town block or to drive into or park such vehicle within one block where a fire apparatus has stopped to answer to a fire alarm.
- (C) It shall be unlawful to drive a motor vehicle over a fire hose or any other equipment that is being used at a fire at any time, or to block a firefighting apparatus or any other equipment from its source of supply regardless of its distance from the fire.

Section 7-13 Persons propelling push carts or riding bicycles or riding animals or driving animal-drawn vehicle to obey traffic ordinances.

Every person propelling any push cart, or riding a bicycle or an animal, or driving an animal-drawn vehicle upon any public street or alley, shall be subject to the provisions of this part.

(1992 Code, Section 70.04)

Section 7-14 Driving of vehicles on sidewalk.

No person shall drive a vehicle upon any sidewalk area with the exception of a permanent or temporary driveway. It is the driver's responsibility to yield to the pedestrian at the driveway-sidewalk interface. No person shall park a vehicle upon any sidewalk area including at the driveway-sidewalk interface.

Section 7-15 Vehicles moving from parked position.

The driver of any vehicle parallel parked shall leave such position in the direction that the vehicle is headed, or the driver of any vehicle parked at an angle, shall back out from the curb at the same angle until such vehicle has cleared the other vehicles so parked and shall then proceed in the direction that the vehicle is most nearly headed, provided that such movement can be made in safety.

Section 7-16 Driving through a funeral procession.

No person shall drive a vehicle through a funeral procession. Exception to this will be Police or Fire Department vehicles, or ambulances in responding to emergency calls.

(1992 Code, Section 71-26)

Section 7-17 Stopping where traffic would be obstructed.

No person shall move a vehicle across an intersection or a marked crosswalk, unless there is sufficient space on the other side of said intersection or crosswalk to accommodate such vehicle without obstructing the passage of other vehicles or pedestrians, even if a traffic control signal indicates such movement to be lawful.

(1992 Code, Section 72.02)

Section 7-18 Backing on a public street

No person shall back a vehicle into any intersection or crosswalk, nor shall such driver back such vehicle otherwise on a public street without ensuring that such movement can be made in safety and only then when ample warning is given by horn, hand signal or other signal.

(1992 Code, Section 71-04)

Section 7-19 Driving on streets laned for traffic.

No person driving a vehicle on a street where such street is clearly marked by lines indicating traffic lanes shall drive outside these lines unless such movement can be made in safety.

Section 7-20 Turning at intersection marked by traffic lanes.

At intersections where turn lanes are clearly marked by arrows or such other markings, the driver of any vehicle shall make a turn from the lane so indicating his intended direction of movement.

Section 7-21 Through streets, required to stop before entering.

Any driver of any vehicle approaching into or across a street that is designated as a through street, and when such street has a stop sign clearly erected indicating that all vehicles are required to stop prior to entering such through street, shall bring such vehicle to a complete stop prior to entering the through street and shall remain in such stopped position until his movement into or across such through street can be made in safety without interfering with any vehicular traffic thereby using such through street.

(1992 Code, Section 71.20)

Section 7-22 Intersection where stop is required.

At any intersection where there is a clearly visible stop sign so located, any driver of any vehicle shall be required to bring such vehicle to a complete stop before entering into or across such intersection, and shall remain in such stopped position until his movement into or across such intersection can be made in safety, and when such movement shall not interfere with any vehicle lawfully using such intersection.

(1992 Code, Section 71.22)

Section 7-23 One-way streets.

Upon certain streets, vehicular traffic shall move only in the direction indicated by clearly visible traffic signs. When such signs are clearly visible indicating that traffic shall proceed in one direction only, it shall be unlawful for the driver or any vehicle to proceed in any direction in opposition to such posted traffic signs.

(1992 Code, Section 71-03)

Section 7-24 Emerging from alley or driveway.

The driver of any vehicle emerging from an alley, driveway, or building, shall bring such vehicle to a complete stop prior to entering onto a sidewalk or the sidewalk area extending across the alleyway, driveway or building frontage, and shall remain in such stopped position until his movement into or across the street can be made in safety without interfering with any vehicular traffic lawfully using such street. It is the driver's responsibility to yield to the pedestrian at the driveway or alley interface with a sidewalk.

(1992 Code, Section 71-25)

Section 7-25 Speed limitations – general.

Unless otherwise provided for it shall be unlawful to operate a vehicle in excess of 35 miles per hour inside the municipal corporate limits.

(1992 Code, Section 71.01)

Statutory reference— Authority for speed limits other than 35 mph, G.S. 20-141.

Section 7-26 Operation of bicycle or motorcycle without hands on handlebars.

No person shall operate a bicycle or motorcycle on the public streets without having both hands on the handlebars at all times with the exception of when such operator is giving an arm signal for a turn, stopping or slowing movement.

(1992 Code, Section 70.03)

Section 7-27 Operation of bicycle, motorcycle, or skateboard on public sidewalks.

No person shall operate a bicycle, motorcycle, or skateboard on the public sidewalk with the exception of when this movement is proceeding across such sidewalk at a private driveway or alleyway where such movement is necessary to enter into a public street.

(1992 Code, Section 73.05)

Section 7-28 Operation of motorcycles or bicycles more than two abreast.

It shall be unlawful for persons operating motorcycles or bicycles on the public street to travel thereon more than two abreast.

(1992 Code, Section 73.04)

Section 7-29 Operator & riders of motorcycles required to wear helmets; overcrowded.

- (A) No motorcycle shall be operated on a public street unless the operator and all passengers thereon wear safety helmets of a type approved by the Commissioner of Motor Vehicles.
- (B) No person shall operate a motorcycle upon the public streets when the number of persons upon such motorcycle, including the operator, shall exceed the number of persons for which it was designed to carry.

(1992 Code, Section 70.03)

Section 7-30 Riding on handlebars of motorcycle or bicycle prohibited.

The operator of a motorcycle or bicycle, while operating such vehicle upon the public street, shall not carry any person upon the handlebars, frame or tank of such vehicle, nor shall any person so ride upon any such vehicle.

(1992 Code, Section 70.03 and 73.08)

Section 7-31 Proper equipment required.

Every bicycle or motorcycle operated on the public streets shall be equipped with lighting and reflectors as required by law.

(1992 Code, Section 70.07)

Section 7-32 Clinging to moving vehicles.

Any person riding upon any bicycle, motorcycle, coaster, sled, roller skates, toy vehicle, skateboard or any other such vehicle shall not attach the same, or himself, to any public conveyance or moving vehicle upon any public street.

(1992 Code, Section 71.41)

Section 7-33 Use of coasters, roller skates, & similar devices restricted.

No person on roller skates or riding in any coaster, toy vehicle, skateboard or similar device shall go upon any public street, other than a street set aside as a play street, unless it be while crossing at a crosswalk or intersection.

(1992 Code, Section 71.43)

Section 7-34 Not more than three persons permitted in front seat.

It shall be unlawful for the driver or the person in charge of any motor vehicle to permit more than three persons, including the driver of such vehicle, to ride in the front seat or driver's seat of such vehicle.

Section 7-35 Persons riding must stay inside vehicle.

No person shall allow any part of his body to protrude beyond the limits of the vehicle in which he is riding, except to give such signals as required by law, and no person shall hang onto any vehicle whatsoever.

Section 7-36 Entering, jumping on or riding vehicle without owner's permission.

No person shall enter, jump on or ride any vehicle or automobile without the owner's or the driver's consent of such vehicle.

Section 7-37 Unlawful riding.

No person shall ride on any public conveyance or vehicle not designed or intended for the use of passengers on the public street. This provision shall not apply to an employee engaged in the necessary discharge of his duty or to persons riding in truck bodies in spaces intended for merchandising.

Section 7-38 Boarding or exiting from vehicles.

No person shall board, or alight from, any public conveyance or other vehicle on the public streets while such conveyance or vehicle is in motion.

Section 7-39 Steering mechanism.

The steering mechanism of every self-propelled vehicle operated on the public streets shall be maintained in good working order, sufficient to enable the operator to control the vehicle's movements and to maneuver it safely.

Section 7-40 Railroad warning signals must be obeyed.

Whenever any person driving a vehicle approaches a street railway grade crossing, and a clearly visible and positive signal gives warning of the immediate approach of a railway train or car, it shall be unlawful for the driver of the vehicle to fail to bring the vehicle to a complete stop before traversing such grade crossing.

Section 7-41 Right-of-way at intersections.

- (A) When an intersection exists where there is no control sign present and two vehicles enter the intersection at approximately the same time, the driver of the vehicle on the left shall yield to the vehicle on the right.
- (B) When the driver of a vehicle approaches such intersection and there is another vehicle already within such intersection, he shall yield to the vehicle so in the intersection.
- (C) Whenever authorized yield right-of-way signs are placed or installed at any street intersection, any vehicle facing such signs shall slow down and yield the right-of-way to any vehicle in movement on the main traveled or through highway or street which is approaching so as to arrive at the intersection at approximately the same time as the vehicle entering the main traveled highway or street.

Section 7-42 Zone of quiet.

Whenever authorized signs are placed indicating a zone of quiet, any person operating a motor vehicle within such zone shall not sound the horn or any other warning device located on such vehicle, except in an emergency.

Section 7-43 Play Street

Whenever authorized signs are placed indicating any street, or part thereof, as a play street, no person shall drive a vehicle upon any such street, except persons who have business, or who reside within the designated areas; all such persons operating a vehicle on such street shall exercise the greatest care when driving upon such street.

(1992 Code, Section 70-.23)

Section 7-44 School Zone.

Whenever authorized signs are placed designating any street, or part thereof, as a school zone, the driver of any motor vehicle using such street or part thereof, shall exercise the greatest care for the protection of children.

Section 7-45 Transporting flammable fluids.

Vehicles carrying flammable fluids may not park within the Town limits and must follow such truck routes as may have been established, except with a maximum capacity of 1,800 gallons (separated in compartments holding no more than 600 gallons each), which may park for the purposes of loading and unloading only.

Section 7-46 Transporting explosives.

- (A) *Transporting of explosives in passenger conveyances.* No person shall transport or carry any explosive in any public conveyance which is carrying passengers for hire.
- (B) *Marking of vehicles carrying explosives.* Every vehicle carrying explosives shall have displayed on its front, side and back, in easily legible white letters at least six inches high, on a red background, the warning: EXPLOSIVES—DANGEROUS. In lieu thereof they shall display upon an erect pole, fastened to the front end of such vehicle and at such height that it is visible from all directions, a red flag with the word DANGER printed, stamped or sewed thereon in white letters. Such flag shall be at least 18 inches by 30 inches in size and the letters thereon shall be at least six inches high.
- (C) *Drivers of vehicles carrying explosives.* No person in charge of a vehicle containing explosives may smoke upon such vehicle, nor may he drive such vehicle while intoxicated, or drive or load such vehicle in a careless manner.
- (D) *Certain articles not to be carried in vehicle carrying explosives.* No person shall carry in the bed or body of any vehicle containing explosives, any metal tools or other pieces of metal, nor any exploiters, detonators, blasting caps, matches or other similar devices of explosive material.

Section 7-47 Operation of vehicles during blackout.

No person shall operate a vehicle on the public streets during a blackout, with the exception of emergency vehicles or civilian defense vehicles.

Section 7-48 Failure to obey citation or notice.

- (A) Any person who violates a citation or notice to appear given by an officer for any traffic violation is guilty of a misdemeanor, regardless of the disposition of the charge on which he was originally arrested.
- (B) Any driver of a motor vehicle who willfully neglects to answer to the charges set forth in a notice affixed to such motor vehicle by a police officer as provided by an ordinance shall be deemed guilty of the charge for which the notice was originally issued.

Section 7-49 Penalty for violation.

Any person violating any of the terms of this article shall be guilty of a misdemeanor.

Sections 7-50 through 7-60: Reserved.

ARTICLE III: PEDESTRIAN RIGHTS AND DUTIES

Section 7-61 Pedestrians subject to traffic signals.

At any intersection controlled by traffic signals, any pedestrian thereby using such intersection shall be subject to the control of the said traffic signals. Where warranted, pedestrian signal indications shall be used at traffic signals, however.

Section 7-62 Pedestrians' right-of-way at crosswalk.

- (A) Where traffic control signals are not in place or in operation, the driver of any vehicle shall yield right-of-way, slowing down or stopping if need be to so yield, to a pedestrian crossing the roadway within any marked crosswalk or within any unmarked crosswalk at an intersection, except as otherwise stated in this article.
- (B) Whenever any vehicle is stopped at a marked crosswalk or at any unmarked crosswalk at an intersection to permit a pedestrian to cross the roadway, the driver of any vehicle to the rear shall not overtake and pass the stopped vehicle.

Section 7-63 Crossing at other than crosswalk.

- (A) Every pedestrian crossing a roadway at any point other than within a marked crosswalk, or within an unmarked crosswalk at an intersection, shall yield the right-of-way to all vehicles upon such roadway.
- (B) Any pedestrian crossing a roadway where a pedestrian tunnel or overhead pedestrian crossing has been provided shall yield the right-of-way to all vehicles on the roadway.
- (C) Between adjacent intersections, at which traffic signals are in operation, pedestrians shall not cross at any place except in a marked crosswalk.
- (D) It shall be unlawful for pedestrians to walk along the traveled portion of the roadway where there is a sidewalk provided; or if there is not a sidewalk, the pedestrian shall walk alongside the extreme left-hand side of the roadway, and the pedestrian shall yield the right-of-way to all approaching vehicular traffic.
- (E) Every driver of every vehicle shall exercise due care to avoid colliding with any pedestrian upon any roadway, and shall give warning by sounding of horn where necessary, and shall observe proper precaution upon observing any child, or any confused, or any incapacitated person upon such roadway.

Section 7-64 Sitting or lying upon streets prohibited.

- (A) No person shall willfully stand, sit or lie upon any street in such a manner as to impede the regular flow of traffic.
- (B) Any person convicted of violating this section shall be punished by fine or imprisonment, or both, at the discretion of the court.

Section 7-65 Right-of-way at crossings, intersections & traffic control points; white cane or guide dog to serve as signal for the blind.

At any street crossing or intersection, where the movement of traffic is not regulated by a traffic officer or by traffic control signal, any blind or partially blind person shall be entitled to the right-of-way at such crossing or intersection, if such blind or partially blind person shall extend before him at arm's length a cane white in color or

white tipped with red or if such person is accompanied by a guide dog. Upon receiving such a signal, all traffic at or approaching such crossing or intersection shall come to a complete stop, leaving a clear lane through which such blind person may pass, and such vehicle shall remain stationary until such blind person has completed such crossing or intersection. At such intersection or crossing where the movement of traffic is controlled by traffic control signals, blind or partially blind persons shall be entitled to the right-of-way if such person having such cane or accompanied by such dog shall be partly across such crossing or intersection at the time that the traffic control signal changes, and all vehicles shall stop and remain stopped until such person has completed the crossing.

Section 7-66 Rights & privileges of blind persons without white cane or guide dog.

Nothing contained in this part shall be construed to deprive any blind or partially blind person not carrying a cane white in color or white tipped in red, or being accompanied by a guide dog, of any of the rights and privileges conferred by law upon pedestrians crossing streets, nor shall the failure of such blind or partially blind person to carry a cane white in color or white with a red tip, or to be accompanied by a guide dog, upon the streets or sidewalks be held to constitute or be evidence of contributory negligence by virtue of this part.

Section 7-67 Penalty.

Any person that willfully violates the provisions of this article shall be guilty of a misdemeanor.

Sections 7-68 through 7-85: Reserved.

ARTICLE IV: PARKING REGULATIONS

Section 7-86 Prima facie rule of evidence for enforcement of parking regulations.

Whenever evidence shall be presented to any court of the fact that any automobile, truck or other vehicle was found upon any street, alley or other public place contrary to and in violation of the provisions of any statute of any municipal ordinance limiting the time during which any such vehicle may be parked or prohibiting or otherwise regulating the parking of any such vehicle, it shall be prima facie evidence in any court in the State of North Carolina that such vehicle was parked and left upon such place by the person, firm or corporation in whose name such vehicle is then registered and licensed according to the records of the department or agency of the State of North Carolina, by whatever name designated which is empowered to register such vehicles and issue license for their operation upon the streets under the authorization in this section shall be admissible or competent in violations of statutes or ordinances limiting, prohibiting or otherwise regulating the parking of automobiles or other vehicles upon public streets, highways or other public places. A penalty at \$5.00 shall be charged upon conviction pursuant to this section.

Section 7-87 Processing of parking violation citations.

All citations received for the violation of a parking offense shall be presented to the Town Hall for processing within 48 hours from the time of offense. Exception to this is when the time limit expires on a holiday or weekend period and the time limit will be extended to the next working day. A warrant shall be issued for the registered owner of the vehicle in question at the expiration of this time.

Section 7-88 Parking in front of fire hydrant, fire station or private driveway.

No person shall park a vehicle or permit it to stand, whether attended or unattended, upon a highway, street or other public place in front of a private driveway or within 15 feet in either direction of a fire hydrant or entrance to a fire station.

(1992 Code, Section 72.03)

Section 7-89 Parking at intersections.

No person shall park a vehicle or permit it to stand, whether attended or unattended, within 25 feet of the intersection of curb lines or, if none, then within 15 feet of the intersection of property lines at the intersection of highways unless otherwise provided by the Town Code of Ordinances.

(1992 Code, Section 72.03)

Section 7-90 Parking on a grade.

Any person having control or charge of a vehicle shall, when such vehicle is standing on a grade, turn the front wheels of such vehicle into the curb or shoulder of the road.

Section 7-91 Brakes to be set when vehicle is unattended.

No person having control or charge of a vehicle shall allow such vehicle to stand on any highway or public street without first effectively setting the brakes thereon and stopping the motor of the vehicle.

Section 7-92 Light requirements for parked vehicles.

Lights will not be required for any vehicle legally parked on any public street or highway where there is sufficient light to reveal a person within 200 feet on such street or highway.

(1992 Code, Section 72.11)

Section 7-93 Parking of Taxicabs.

No more than two taxicabs shall be parked at the same time, owned by one company, within a block unless it is at the established taxi stand for that company.

(1992 Code, Section 72.41)

Section 7-94 Vehicle backed up to curb.

No vehicle shall be parked by backing the vehicle to a curb unless in the actual process of loading or unloading.

Section 7-95 Parking left side to curb.

No vehicle shall be parked either attended or unattended with its left side to the curb in the business district.

Section 7-96 Parking within lines where provided.

All vehicles shall be parked on streets marked with lines indicating parking spaces within these lines.

Section 7-97 Parking for purpose of advertisement.

No person shall park a vehicle on the public street or the primary purpose of advertising.

(1992 Code, Section 72.04)

Section 7-98 Parking for purpose of storage, transferring of merchandise or repairing.

No person shall park a vehicle on a public street for the purpose of storage, washing, greasing, repairing (except emergency repairs) or transferring of merchandise or freight from one vehicle to another.

(1992 Code, Section 72.04)

Section 7-99 Parking in crosswalk.

No person shall park a vehicle whether attended or unattended in a designated crosswalk.

(1992 Code, Section 72.03)

Section 7-100 Parking on sidewalk.

No person shall park a vehicle on the public sidewalk of any street. For the purpose of this section the sidewalk will be continued in front of all places of business including service stations, from a direct line of the sidewalk on each side of such business.

(1992 Code, Section 72.03)

Section 7-101 Parking at underpasses or overhead bridges.

No person shall park a vehicle on either side of a street within 50 feet in any direction of the outer edge of an underpass or overhead bridge.

(1992 Code, Section 72.03)

Section 7-102 Parking at railroad crossing.

No person shall park a vehicle within 50 feet of the closest rail of any railroad crossing, with the exception where there are existing permanent structures located closer than 50 feet, parking may be permitted in front of these structures, unless otherwise prohibited and if such parking does not block the view in either direction of the approach of a locomotive or train.

(1992 Code, Section 72.03)

Section 7-103 Parking adjacent to schools.

When official signs are erected indicating no parking on either side of the street adjacent to any school property, no person shall park a vehicle in any such designated place.

(1992 Code, Section 72.08)

Section 7-104 Parking beside excavations, obstructions, hazards or congested places.

No person shall park a vehicle alongside or opposite any excavation or obstruction, where such parking would obstruct traffic.

(1992 Code, Section 72.03 and 72.10)

Section 7-105 Parking at entrances to public buildings.

No person shall park a vehicle within 15 feet of the entrance to a hotel, theater, hospital, sanatorium or any public building.

Section 7-106 Parking within an alley.

No person shall park a vehicle within any alley or entrance thereto so as to block the alley from the free movement of other traffic.

(1992 Code, Section 72.05)

Section 7-107 Parking double or within traffic lane.

No person shall park a vehicle whether attended or unattended on the roadway side of another vehicle parking at the edge of the roadway or curb or other main traveled portion of any street unless so directed by competent authority or when a special hazard exists.

Section 7-108 Vehicles not to stop in street, exceptions.

No person shall stop a vehicle in the street, except for the purpose of parking, unless such stop is made necessary by the approach of fire apparatus, by the approach of a funeral or other procession which is given right-of-way, by the stopping of a school bus, by the lowering of railroad gates, by being given countermanding traffic signals, or by the passing of some other vehicle or pedestrian, or by some emergency, or when proceeding cannot be done in safety. In all cases covered by these exceptions, such vehicle shall stop so as not to obstruct any footpath, pedestrian aisle, crosswalk, curb ramp, safety zone, crossing or street intersection if possible to avoid doing so.

Section 7-109 Vehicles not to obstruct passage of other vehicles.

No person shall park a vehicle whether attended or unattended so as to interrupt, or interfere with, the passage of public conveyance or other vehicles.

Section 7-110 Parking distance from curb.

No person shall parallel park a vehicle more than 18 inches from the curbing or in such a manner that it extends over the marking lines from the curb.

Section 7-111 Parking in a no parking zone.

No person shall park a vehicle, whether attended or unattended, within a zone designated as no parking by a sign or by yellow markings.

Section 7-112 Parking, two-hour limit.

- (A) When signs are erected giving notice thereof, no person shall park a vehicle on the public street for periods in excess of two hours, within the business district, where such street is designated by signs indicating that the parking thereon is limited to a period of two hours, between the hours of 8:00 a.m. and 6:00 p.m., excluding legal holidays and Sundays.
- (B) A change of position of a vehicle from one point directly to another point, within the same block, shall be deemed one continuous parking.

(1992 Code, Section 72.28)

Section 7-113 Parking, 15-minute limit.

- (A) When signs are erected giving notice thereof, no person shall park a vehicle on the public street for periods in excess of 15 minutes, where such area on the street is designated by a sign or signs indicating that the parking thereon is limited to 15 minutes between the hours of 8:00 a.m. and 6:00 p.m., excluding legal holidays and Sundays.

(1992 Code, Section 72.28)

Section 7-114 Parking, prohibited at all times on certain streets.

- (A) When signs are erected giving notice thereof, no person shall park a vehicle at any time upon this area of the street.

(1992 Code, Section 72.27)

Section 7-115 Parking in loading zones.

- (A) When signs are erected giving notice thereof, no person shall park a vehicle in a loading zone so designated by a sign or signs indicating such area to be a loading zone except for the express purpose of loading and unloading only of the vehicle. Loading and unloading zones shall be considered effective 24 hours a day, seven days a week.

Section 7-116 Parking at curb mailboxes.

No person shall park a vehicle at a curb mailbox when such area has been so designated by yellow markings indicating it to be a no parking zone. Exception to this will be a car parked with driver therein for the purpose of using the curb mail box.

Section 7-117 Moving of other operators into restricted areas prohibited.

No person shall move a vehicle not owned by such person, and/or without the consent of the owner of such vehicle, into any prohibited area or sufficiently away from the curb to make such distance unlawful.

Section 7-118 Spaces reserved for handicapped.

- (A) No person shall park a vehicle in a space marked with an above-ground sign reserving that space for use by handicapped individuals unless the vehicle displays the State-issued handicapped license plate or placard.

(1992 Code, Section 72.30)

Section 7-119 Fire lanes.

- (A) *Unlawful conduct.* It shall be unlawful for any person to park or leave a motor vehicle or to put or place any other object, structure, or obstruction in a fire lane which has been properly established and marked.
- (B) *Fire lanes established.*
1. The Town Council is authorized to establish and designate fire lanes on privately-owned public vehicular area, as that term is defined in G.S. 20-4.01(32), for the protection and safety of lives and property, upon the written request of the owner or the person in general charge of the operation and control of that area.
 2. Fire lanes may be designated on any public vehicular area when the Town Council determines that parking or placing of vehicles or other obstructions in that area would interfere with the proper ingress or egress of fire and other emergency vehicles, equipment, or personnel.

3. Fire lanes shall be clearly marked, with yellow or another suitable color of paint, with the words "No Parking, Fire Lane," and the boundaries, borders or curbs shall be clearly visible and definable.

(C) *Penalty.*

1. Any vehicle unlawfully parked in a properly designated and marked fire lane may be removed or towed to a storage garage at the owner's expense. If vehicles are towed, the statutory requirements of G.S. 160A-303 and G.S. 20-7A concerning notice to the owner and opportunity for hearing must be observed.
2. Violation of this section shall be an infraction, punishable by a penalty of not more than \$50.00, as provided in G.S. 14-4(b).
3. In lieu of infraction penalties, any person violating this section shall be subject to a civil penalty in the amount of \$25.00 to be recovered by the Town. The offender shall be issued a written citation requiring payment be made to the Town within 72 hours.

Section 7-120 Parking, one-hour limit.

When signs are erected giving notice thereof, no person shall park a vehicle on the public street for periods in excess of one hour where such area on the street is designated by sign or signs indicating that the parking thereon is limited to one hour between the hours of 8:00 a.m. and 6:00 p.m., excluding legal holidays and Sundays.

Section 7-121 No parking during specified times.

When signs are erected giving notice thereof, no person shall park a vehicle on the public street during the specified times where such area on the street is designated by sign or signs indicating that parking is limited to specified times, excluding legal holidays and Sundays.

Section 7-122 Emergency/police vehicle parking only.

No person shall park a vehicle in a parking space designated for emergency/police vehicles.

Section 7-123 Parking in municipal parking lots.

- (A) Moving or relocating a motor vehicle or other device within the said municipal parking lot from one position to another may not be done to circumvent this section. The time of parking in each location shall be accumulated to determine a violation hereof.
- (B) This section shall be applicable on Monday through Saturday and 8:00 a.m. to 5:00 p.m.
- (C) Any person violating this section shall be subject to a \$5.00 fine, payable within ten days of issuance of a parking violation citation. Said fine shall be payable within ten days and, if not so paid, a \$20.00 late fee shall be assessed. If the fine and/or late fee is not paid, a criminal summons shall be issued for nonpayment of the same.

Sections 7-124 through 7-130: Reserved.

ARTICLE V: CRUISING

Section 7-131 Prohibition against cruising.

No person shall drive or permit a motor vehicle under his/her care, custody or control to be driven past a fixed traffic control point two (2) or more times in the same direction within a one-hour period from 4:00 p.m. to 3:00 a.m., Friday through Sunday, in or around a posted no cruising area so as to contribute to traffic congestion, obstruction of streets, sidewalks, or parking lots, impediment of access to shopping centers or other buildings open to the public, or interference with the use of property or conduct of business in the area adjacent thereto.

(1992 Code, Section 7, Article I)

Ordinance January 2, 1990, amended April 8, 1997.

Section 7-132 Posting of signs.

At every point where a public street or alley becomes or provides ingress to a no cruising area, there shall be a posted sign which designates "No Cruising" areas and appropriate times.

(1992 Code, Section 7, Article I)

Ordinance January 2, 1990, amended April 8, 1997.

Section 7-133 "No Cruising Area" defined.

A "No Cruising" area shall be defined as follows: No person shall drive or permit a motor vehicle under his care, custody or control to be driven past a fixed traffic control point two (2) or more times in the same direction within a one- hour period in or around this area so as to contribute to traffic impediment of access to shopping centers or other buildings open to the public, or interference with the use of property or the conduct of business in the adjacent area.

(1992 Code, Section 7, Article I)

Ordinance January 2, 1990, amended April 8, 1997.

Section 7-134 Traffic Control Points

A fixed traffic control point, as used in this section, means any point or points within the "No Cruising" area established by the Police Department for the purposes of monitoring cruising.

(1992 Code, Section 7, Article I)

Ordinance January 2, 1990, amended April 8, 1997.

Section 7-135 Violation on second pass.

No violations shall occur except upon the second passage in the same direction by the same traffic control point within the aforementioned one hour period.

(1992 Code, Section 7, Article I)

Ordinance January 2, 1990, amended April 8, 1997.

Section 7-136 Resolution of Board required to establish a “No Cruising” area.

No area shall be designated or posted as a "No Cruising" area except upon the passage of a resolution by the Board specifically mandating said designation and posting for a particular area. (G) This section shall not apply to in-service emergency vehicles, taxicabs for hire, buses and other vehicles being driven for business purposes.

(1992 Code, Section 7, Article I)

Ordinance January 2, 1990, amended April 8, 1997.

Section 7-137 Violations.

Where there is a violation of any provision of this Article, the Town shall take the following actions:

- (A) A police officer shall issue to the violator a traffic citation. Violation of the Ordinance shall constitute a Class Three (3) Misdemeanor, punishable upon conviction by fine of \$50.00 together with the costs of prosecution or imprisonment in the Robeson County Detention Center for a period of not more than thirty (30) days, as provided in G.S. 14-4; however, persons desiring to avoid criminal prosecution in accordance with this section may do so by complying with Section 7-137(B) below.
- (B) Each violator of this Ordinance may avoid criminal prosecution by paying a \$100.00 fine at the Pembroke Town Hall, 100 South Union Chapel Road, Pembroke, North Carolina 28372 within fifteen (15) days after receiving the traffic citation.
- (C) Every violator of the provisions of the Ordinance shall be subject to the penalty imposed by the Section for each and every separate offense.

(1992 Code, Section 7, Article I)

Ordinance January 2, 1990, amended April 8, 1997.

Sections 7-138 through 7-139: Reserved.

ARTICLE VI: GOLF CARTS ON PUBLIC STREETS AND ROADS

Section 7-140 Definition.

For purposes of this article, those definitions set out in N.C.G.S. 20-4.01 shall also apply throughout this article. A “golf cart” is defined as a vehicle designed and manufactured for operation on a golf course for sporting or recreational purposes and that is not capable of exceeding 20 mph. The definition is republished here for convenience only and the definition set out in N.C.G.S. 204.01 (12), as amended from time to time, is controlling for all purposes.

Section 7-141 Disqualified Vehicles.

Disqualified Vehicles. ATV's, 4-wheel utility vehicles and other similar utility vehicles which are not manufactured for operation on a golf course and golf carts which have been modified so that it no longer meets the definition of a golf cart, may not be registered as a golf cart nor shall such vehicles be operated on the public roads, streets and highways within the unincorporated areas of the County unless such vehicles are otherwise registered with and allowed under the motor vehicle laws of the State of North Carolina

Section 7-142 Liability Disclaimer.

This article is adopted to address the interest of public safety. Golf carts are not designed or manufactured to be used on the public streets and the Town in no way advocates or endorse their operation on public streets or roads. The Town, by regulating such operation is merely trying to address obvious safety issues, and adoption of this article is not to be relied upon as a determination that operation on public streets is safe or advisable if done in accordance with this article. All persons who operate or ride upon golf carts on public streets or roads do so at their own risk and peril, and must be observant of, and attentive to the safety of themselves and others, including their passengers, other motorists, bicyclists, and pedestrians. The Town has no liability under any theory of liability and the Town assumes no liability, for permitting golf carts to be operated on the public streets, roads or highways as enacted by the North Carolina General Assembly.

All golf cart owners must complete a Waiver of Liability, releasing the Town of Pembroke, its employees, and affiliates from all liability that may arise as a result of operating a Golf Cart inside the Town of Pembroke. A current Waiver of Liability must be on file with the Town of Pembroke, and must be renewed annually.

Ordinance 2010-4-1, adopted April 5, 2010

Section 7-143 Standards of Operation.

It is unlawful to operate a golf cart on a public street, road or highway within the Town unless the following requirements are met:

- (A) The golf cart must display a valid registration sticker as provided in Section 6-154.
- (B) The golf cart may only be operated on streets, roads or highways with a posted speed limit of 35 mph or less. In no instance is it permissible to cross or travel upon any street, road, highway or right of way thereof, with a speed limit greater than 35 mph.
- (C) No person less than 16 years of age may operate a golf cart on a public street, road, or highway.
- (D) An operator may not allow the number of people in the golf cart at any one time to exceed the maximum capacity specified by the manufacturer. The operator shall not allow occupants to ride on any part of a golf cart not designated to carry passengers, such as the part of the cart designed to carry golf bags.
- (E) No golf cart may be operated at a speed greater than reasonable and prudent for the existing conditions, and in no instance at a speed greater than 20 miles per hour.
- (F) No golf cart may be operated in a careless or reckless manner.
- (G) Golf carts must be operated in accordance with all applicable state and local laws and ordinances, including all laws, regulations and ordinances pertaining to the possession and use of alcoholic beverages.
- (H) Golf carts must be operated to the extreme right of the roadway and must yield to all vehicular and pedestrian traffic.
- (I) Golf carts are not allowed to be driven on any sidewalks in Town.
- (J) Golf carts are only allowed to park in handicapped parking spaces if the driver or at least one passenger has a valid handicap parking sticker.
- (K) Golf carts must be equipped with a rear vision mirror and at least one side reflector per side and two rear reflectors.

- (L) Golf carts must have the basic equipment supplied by the manufacturer, including a vehicle identification number. Such equipment must include all safety devices as installed by said manufacturer.
- (M) No cart may be operated on Town roadways between one half hour before sunset and sunrise.
- (N) Any golf cart operated on Town roadways must be equipped with two operating headlamps (one on each side of the front of the golf cart) or one multi-light bar, and two operating tail lamps with brake lights (one on each side of the rear of the cart) which are visible from a distance of 500 feet and with a horn in good working order capable of emitting sound audible under normal conditions from a distance of not less than 200 feet. The headlamps shall be lighted at all times while the golf cart is in operation on a public street, road, or highway.
- (O) The operator must possess proof of liability insurance in an amount not less than required by North Carolina law for motor vehicles operated on a public highway in the State of North Carolina.
- (P) The Chief of Police, or his designee, may prohibit the operation of golf carts on any street, road or highway if the Chief determines that the prohibition is necessary in the interest of safety.

Ordinance 2010-4-1, adopted April 5, 2010

Section 7-144 Registration required.

No golf cart may be operated on any public street, road or highway within the Town or on property owned or leased by the Town unless the golf cart has first been registered with the Town of Pembroke Police Department as required herein. The registration shall be renewed thereafter in accordance with the provisions of this section. To evidence the registration, the owner shall be issued a permit which shall be displayed in a prominent, visible place on the rear fender of the golf cart or at such other place as may be approved by the Police Department. The permit may contain a registration number assigned for the particular golf cart and may contain an expiration date. The permit shall be valid for no more than one (1) year, except for those issued in the first year which will expire June 30, 2011. Registrations may be issued at any time during the calendar year, but all registrations will expire on June 30 of the year issued. Starting on May 1 of each year, the Town can begin issuing registrations for the following registration year, which will take effect on July 1.

Ordinance 2010-4-1, adopted April 5, 2010

Section 7-145 Registration Fee.

A registration fee in the amount of \$25.00, or such other amount as may be established and published in the Schedule of Fees and Charges adopted by the Town Council from time to time, as amended, shall be paid to the Town at the time the application for registration is filed with the Police Department or for any renewal of the application.

Ordinance 2010-4-1, adopted April 5, 2010

Section 7-146 Application for registration.

The application for registration shall be made to the Chief of Police, or to some other person designated by him, on forms provided by the Town. The application may, among other things, require the owner's name, street address, mailing address, a phone number, the make, model and identification or serial number of the golf cart, proof of insurance and such other information as may be reasonably required as well as a release or disclaimer of liability to the Town for accidents involving the registered golf cart.

Ordinance 2010-4-1, adopted April 5, 2010

Section 7-147 Procedure for application and registration.

The Chief of Police may establish written procedures, consistent with this article, setting out the process and the procedure, including the form of the application, the check list for items to be inspected and the type of sticker, plate or tag evidencing the issuance of the registration permit.

Ordinance 2010-4-1, adopted April 5, 2010

Section 7-148 Inspections required.

Prior to issuing the initial registration permit or any renewal thereof, the golf cart shall be inspected to determine that:

- (A) the golf cart is equipped with a rear vision mirror and at least two (2) red rear reflectors at least 3 inches in height and width; and
- (B) the golf cart is equipped with a reflective "slow moving sign" on the rear of the cart, and
- (C) the brakes provided by the manufacturer of the golf cart are in proper working order; and
- (D) the golf cart has all of the standard safety features provided by the manufacturer and has not been modified to exceed a speed of 20 miles per hour nor otherwise modified in any way that creates a hazard; and
- (E) the golf cart is equipped with all mechanical systems and safety equipment required by this article.

Ordinance 2010-4-1, adopted April 5, 2010

Section 7-149 Denial and Revocation.

The initial registration of a golf cart may be denied or subsequently revoked by the Chief of Police if it is determined that:

- (A) the application contains any material misrepresentation; or
- (B) the financial responsibility requirements of the State of North Carolina (liability insurance) has not been met; or
- (C) the golf cart is not in compliance with the requirements set out above; or
- (D) the golf cart has been altered or customized and no longer meets the definition of a golf cart; or
- (E) equipment supplied by the manufacturer, especially safety equipment, has been removed from the golf cart or the vehicle identification or serial number removed; or
- (F) other good cause shown including repeated violations of this article.

Ordinance 2010-4-1, adopted April 5, 2010

Section 7-150 Re-inspection fee.

If a golf cart fails the initial inspection or permit is lost there is re-inspection fee by the Police Department of \$10.00 or such amount established in the Schedule of Rates and Fees.

Ordinance 2010-4-1, adopted April 5, 2010

Section 7-151 Lost or stolen permits.

Lost or stolen permits are the responsibility of the owner. A Police report must be filed in the event of a lost or stolen permit. The Chief of Police will have the discretion in determining whether a permit may be re-issued in this instance. If no record can be found of a previous registration, or the receipt of a permit, the Chief of Police may direct the applicant to reapply, and also resubmit any and all fees necessary, before a replacement permit is issued.

Ordinance 2010-4-1, adopted April 5, 2010

Section 7-152 Special Occasion clause

The Town Council can waive registration and allow golf cart operation in the Town of Pembroke for special occasions, events, celebrations, etc. However all NC traffic laws remain in effect and violations will be cited.

Ordinance 2010-4-1, adopted April 5, 2010

Section 7-153 Violations constitute an infraction.

Violation of the provisions of this Ordinance shall constitute an infraction in accordance with Chapter 20 of the North Carolina General Statutes. Notwithstanding the foregoing, persons who, while driving golf carts on public streets, roads or highways within the Town, violate the "Rules of the Road" applicable to motor vehicles generally (as set forth in Part 10 of Article 3 of Chapter 20 of the North Carolina General Statutes) shall be subject to the same penalties applicable to the operators of other motor vehicles.

Ordinance 2010-4-1, adopted April 5, 2010

Section 7-154 Penalty.

Any act constituting a violation of this Ordinance shall subject the offender to a civil penalty of fifty dollars (\$50.00), plus the court costs. If the offender fails to pay the penalty as assessed by the Court, the penalty may be recovered by the Town in a civil action in the nature of debt. Three violations of this Ordinance within a twelve month period will be cause for revocation of the existing registration for six (6) consecutive months.

Ordinance 2010-4-1, adopted April 5, 2010

Section 7-155 Special Event Golf Cart Permits.

- (A) SPECIAL EVENT GOLF CART PERMITS are required to be purchased and properly displayed on all golf carts operating within the Town of Pembroke during the yearly seven (7) day celebration of Lumbee Homecoming, excluding however, any and all golf carts currently registered within the Town of Pembroke and displaying a current yearly permit and/or sticker as previously required by the Town of Pembroke's Golf Cart Ordinance No. 2010-04-01.
- (B) The fee for the SPECIAL EVENT GOLF CART PERMIT is \$15.00 or the amount established in the Schedule of Rates and Fees and the permit must be purchased at the Town of Pembroke Municipal Building located at 100 South Union Chapel Road, Pembroke, North Carolina during normal business hours.
- (C) Operators of golf carts during the celebration of Lumbee Homecoming within the Town of Pembroke under the terms of a SPECIAL EVENT GOLF CART PERMIT are subject to and bound by

the same rules and regulations as set out in the Town's Golf Cart Ordinance No. 2010-04-01 as adopted on April 5, 2010, as well as the newly adopted modifications as set out below:

- (D) Owners of golf carts operating during this special event are encouraged to have any and all appropriate safety devices installed on said golf carts as well as appropriate liability insurance coverage, however during this special event, owners operating under the terms of the special event golf cart permit are exempt from the Town regulations that require certain additional safety equipment and liability insurance, thus said special event permit holders' golf carts are encouraged to have but are **not** required to have the following:
- (1) Rear vision mirror or mirrors, side and rear reflectors;
 - (2) Vehicle identification number;
 - (3) Working head lights and tail lights with brake lights, and an operating horn, but may only be operated during daylight hours between sunrise and sunset; however, properly registered golf carts that have working head lights and tail lights with working brake lights and an operating horn may also operate between the hours of sunset and sunrise during this special event;
 - (4) Liability insurance as otherwise required by North Carolina for motor vehicles;
- (E) Operators of golf carts within the Town of Pembroke under SPECIAL EVENT GOLF CART PERMITS are bound by and must obey any and all traffic rules and regulations and all other requirements set forth by both the State of North Carolina and the Town of Pembroke.

Ordinance Amended May 4, 2013

Section 7-156 through 7-160: Reserved.

CHAPTER 8: MUNICIPAL WATER AND SEWER

ARTICLE I: IN GENERAL

Section 8-1 Purpose.

The purpose of this chapter is to provide a set of standard procedures for the normal operation of the Town's drinking water treatment/distribution system and wastewater collection/treatment system.

Section 8-2 Authority.

The Town has the authority to own and operate a drinking water and/or a wastewater (sewer) system under the North Carolina General Statutes.

Statutory Reference: Public Enterprises, G.S. § 160A – 311.

Section 8-3 Definitions.

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

Improved Property: Property on which a structure is located.

Improved Street: Any street having a wearing surface of concrete, asphalt, brick, stone brick, or tar treatment of similar hard material.

Lateral: A pipe connecting a sanitary sewer, water main or other utility main with the line of adjacent property of extending from the main to the inside of the curb.

Multi-User: Any use where there is more than one structure on a single meter or where there is one structure containing multiple residential (dwelling) units such as hotels, motels and condominiums.

Person: Any person, firm or corporation.

Sewer: Sanitary sewer.

Single-User: Any use on a single meter not included in the multi-user definition above.

Structure: By way of illustration and not by way of limitation, any dwelling cottage, dwelling house, apartment house, hotel, motel, house trailer, mobile home, commercial building, office building, rooming house, or any unit in a group housing development, planned unit development, townhouse, condominium development, motorized home, self-contained travel trailer, travel trailer, or other structure.

Sub divider: Any person, firm or corporation who subdivides or develops any land within the Town's designated zoning jurisdiction, including the extraterritorial jurisdiction. For the purposes of this chapter,

a sub divider may or may not be the owner of the property in question, but is responsible for its development in accordance with the other regulations of the Town.

Unimproved Street: Any street having a dirt surface.

Utility System or Utility: Any water, sewer or other utility system owned or operated by the Town.

(1992 Code, Section 51.001)

Section 8-4 When common meters permitted.

- (A) Except as hereinafter provided in this Chapter, each separate structure within the Town shall be required to have an individual water meter and sewer service connection. A common water connection, sewer connection and/or meter will be permitted to serve more than one building of the following categories:
 - (1) Unit ownership (condominium developments); and
 - (2) Hotels and motels.
- (B) Provided, when real property is or becomes separately owned within any of the categories listed above, a common meter shall be permitted only when the separate owners of the real estate designate in writing a single person or entity to be responsible for payment of all water and sewer charges. This designation must be on file with the Town.

Section 8-5 Application for service required.

Any person desiring water or sewer utility service furnished by the Town shall make application to the Town. Such application shall contain the applicant's name, owner's name if different from the applicant, applicant and owner contact information, physical location of the unit to be served, the uses for which the utility is desired and any other information deemed necessary by the Town. This requirement shall apply to all new accounts established after the date of adoption of this ordinance.

Section 8-6 Connection and use of Town water required.

- (A) When improved property is located within the Town limits and upon or within a distance of 200 feet from any water line or sewer collection line deemed adequate and appropriate by the Town to provide such service, the owner or owners of the improved property are required to connect to Town service within six (6) months of notice given. The owners shall be charged for the connection and shall pay for the connection in full at the time of application.
- (B) If any provision of this section conflicts with previous ordinances included in this chapter, this section shall be paramount.
- (C) Provided further that:
 - 1. Any residential dwelling or business abandoning use of a septic tank within the Town of Pembroke and requesting connection to the Town's sewer system shall be required, within six (6) months of connection, to remove all matter from the tank, collapse the tank (or remove in its entirety), fill the area with soil and compact. A sewer tap fee and any other applicable fee must be paid before said connection is made.

2. Any residential dwelling or business abandoning use of a well within the Town of Pembroke and requesting connection to the Town's water system will be required to pay a water tap fee before said connection is made.

(1992 Code, Section 5.015)

Statutory Reference: Power to require connections, NC GENERAL STATUTES § 160A-317.

Section 8-7 Tampering, damage and unlawful connections.

It shall be unlawful for any person, except authorized persons, to:

- (A) Cut, break, obstruct, damage, change, alter or otherwise interfere or tamper with in any manner, any buildings, wells, reservoirs, pipes, main, hydrant, water tank or connections or any other thing being a part of the waterworks, sewer or other utility system of the Town;
- (B) Make any connection to the Town's utility systems, except as provided for, or to knowingly permit same to be done on their premises or premises in their possession or control as agent to knowingly use water from such unauthorized connection;
- (C) As an authorized consumer, supply water to other persons or to carry water from any authorized connection, or from any hydrant, watering trough or public fountain without the consent of the Town.

Section 8-8 Connections and sales by Town only.

No person, other than employees of the Town, shall be authorized to connect, turn on, turn off or disconnect water or sewer service provided by the Town or remove, replace or repair any equipment connected to these utility services. It shall be unlawful for any person to resell to others water or wastewater services except by express authorization by the Town.

Statutory Reference: Injury to water supply misdemeanor, G.S. 143-152.

Section 8-9 Penalty for damaging or tampering.

If a water meter or line is found to have been damaged or tampered with, service will be disconnected and will not be reinstated until all damage and tampering charges, which shall be established by the Town Council as part of the *Schedule of Rates and Fees* each year, have been paid in full along with any delinquent bill. Repeated instances of damage to meters or lines will be referred to the Town Attorney and legal action pursued by the Town.

Statutory Reference. Interfering with gas, electric or water meters – G.S. § 14.151.1

Section 8-10 Right of entry onto private property.

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

Section 8-11 Maintenance of lines and fixtures on private property.

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

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

Section 8-12 Taking water from public hydrants, fountains, etc.

No person, except the Town Manager, the Director of Public Works, the Chief of the Fire Department or someone authorized by one or more of them, shall take water from any public hydrant, pipe or fountain, plug, street washer, or hose, except for firefighting purposes or for the use of the fire department.

Section 8-13 Water and sewer service to private developer.

- (A) It shall be the practice of the Town to charge developers for water and sewer connections.
- (B) The cost for such service shall run concurrent with the cost of materials and labor at the time that such services are being provided.
- (C) It shall be the duty of the Town Manager and the Public Works Director to arrive at the appropriate cost for such service for the job.

(1992 Code, Section 51.002)

Sections 8-14 through 8-20: Reserved.

ARTICLE II. – EXTENSION OF WATER OR SEWER OUTSIDE OF TOWN

Section 8-21 General.

The policy of the Town regarding furnishing water and sewer outside the corporate limits of the Town is as follows.

- (A) The Town will extend its water and sewer lines in appropriate size to its corporate limits.
- (B) The person desiring extension of the Town's water and sewer lines outside of the Town shall be known as the "Extender". The Extender shall cause to be prepared plans and specifications for the extension of the Town's water and sewer mains to and within the Extender's property and same shall be approved by the Town, its engineer and the appropriate state regulatory agencies. The work shall be performed to the approval of a NC Licensed Professional Engineer paid by the Extender and overseeing the Extender's project, who shall present to the Town of Pembroke and the appropriate state regulatory agencies a Certificate of Completion along with "as-built" plans and specifications of the work.
- (C) The Extender shall furnish all materials and fittings and shall perform all labor to construct water and sanitary sewer mains, service laterals and meter setters on portions of his or her property in accordance with the approved locations, plans and specifications. All meters shall be approved by the Town.
- (D) Water and sewer tapping fees and service lateral charges shall be collected by the Town in accordance with its standard charges for service connections between water and sanitary sewer mains and structures along the utility mains for each structure served.
- (E) Water and sewer services will be supplied to structures in accordance with the Town's rules, regulations, and rate schedules applicable to its out-of-Town service and in effect at the time of application for service, subject to charges as may be made by the Town Council. The plumbing code,

- and other applicable codes in effect in the Town from time to time, shall apply to all plumbing installed in structures on the Extender's property and between meters and the structures.
- (F) Commencement of water and sewer service by the Town through any water or sewer mains and any extensions made thereto shall result in all mains and meters becoming the sole property of the Town who will repair, maintain, and service all facilities.
 - (G) The Extender shall agree for himself or herself and all his or her heirs, personal representatives, and assigns, that the Town shall have the right, in its discretion, to extend its corporate limits to include any portion or all of the land in which the Town is furnishing water and sanitary sewer to the extent and in a manner provided by law.
 - (H) It shall be understood with the Extender and his or her heirs, personal representatives, and assigns, or, in the event the Extender is a corporation, with its successors and assigns, that in no event shall the Town be subject to any liability whatsoever as a result of the water and sewer services rendered or the failure for any reason to render the services.
 - (I) The Town reserves the right to refuse to extend its water and sewer lines beyond its corporate limits.

Sections 8-22 through 8-30: Reserved.

ARTICLE III. – RATES AND CHARGES

Section 8-31 General.

The following shall be the policies and rules of the Town of Pembroke regarding rates and charges for water and sewer services provided by the Town.

Statutory Reference – Authority to fix and enforce rates, G.S. § 160A-314.

Section 8-32 Schedule of rates and fees.

From time to time, the Town Council shall adopt and place into effect a *Schedule of Rates and Fees* covering the water and wastewater utilities of the Town. Such schedule may be included as part of the annual budget ordinance.

Section 8-33 Deposit required.

A deposit shall be required for all accounts established with the Town of Pembroke for water or sewer service. Deposits are required to ensure the payment of water and sewer bills due and to secure the Town against loss. The policy for deposits shall be as follows:

- (A) A separate deposit shall be required for each meter installed.
- (B) The deposit amount for residential customers will be established as part of the Schedule of Rates and Fees.
- (C) The deposit amount for non-residential customers will be established as part of the Schedule of Rates and Fees.

- (D) The amount shall remain on deposit with the Town of Pembroke as a guarantee for payment of water and sewer usage. When separating from the Town, the Town shall apply the deposit against the amount due on the customer's final bill.
- (E) The deposit shall be made in the name of the account holder.
- (F) The monthly statement for water and sewer service shall be mailed to the account holder and that person shall be responsible for payment of all water and/or sewer statements in accordance with G.S. 160A-314(c).
- (G) The Town reserves the right to hold any deposit until all bills and penalties have been paid. When closing an account, the Town reserves the right to hold any deposit until the account has been audited.
- (H) All such deposits are non-interest bearing.

Statutory Reference: Enforcement of utility charges, see G.S. § 160A-314.

Section 8-34 Water and sewer tap-on fees.

Water and sewer tap-on fees, unless exempted by this Chapter, shall be paid prior to using the Town's services. These fees, as established from time to time by the Town Council, shall be based on the number of structures served by the connection.

Statutory Reference: Connection charges, see G.S. § 160A-317

Section 8-35 No transfer of accounts permitted.

No transfer of accounts shall be permitted. The current account holder must closeout the account and the new account holder must open a new account for service.

Sections 8-36 through 8-40: Reserved.

ARTICLE IV: BILLING AND PAYMENTS

Section 8-41 General.

When a water meter is installed by the Town, the customer will, from the date of the installation of the meter, be billed for water and sewer in accordance with the Town's current rates. All customers shall be billed monthly by the Town for water and sewer services according to the *Schedule of Rates and Fees* fixed from time to time by the Town Council.

Statutory reference: Authority to fix and enforce rates, see NC General Statutes. § 160A-314.

Section 8-42 Billing cycle and fees.

The Town of Pembroke has established a cycle for reading of meters, preparation and mailing of the bills and times at which the billing is due and payable to the Town, and at which late charges and penalties shall be assessed.

- (A) All bills for water and sewer utility service furnished by the Town shall be due and payable by the 25th of every month. If payment is not received at the Town Hall by 5:00 P.M. on the 5th of the following month then the water will be disconnected and a disconnection and reconnection fee will be charged.

- (B) Water cut-offs begin on the 6th day of the month are made between 8:30 A.M. on Monday through 5:00 P.M.. No cutoffs are made on Fridays.
- (C) Failure to receive bills or notices does not prevent such bills from becoming delinquent, nor relieve the account holder from payment.
- (D) Any account holder with a delinquent account may not open a new account at another location until the delinquent account has been satisfied. If the amount in arrears is significant, a payment plan may be established. Failure to honor the terms of the payment plan and/or failure to keep the new account current will result in termination of service.

Section 8-43 Adjustment of charges.

The Town Manager shall, in his/her discretion, adjust water and sewer bills.

Section 8-44 Advance payments.

A water and/or sewer customer may pay his or her water and sewer bill in advance by making a deposit with the Town, to be applied against his or her bills until the deposit is exhausted or by the Town drafting on the customer's account.

Section 8-45 Form of payment.

The Town of Pembroke will accept payment for utility services at Town Hall in the form of cash, check, money order or credit card. Payment may also be made online with an accepted credit card.

Section 8-46 Penalty for worthless checks.

The following provisions apply for worthless checks:

- (A) In the case where a water and/or sewer customer gives the Town two checks which cannot be honored upon presentation (Non-Sufficient Funds – NSF), the Town will not accept any further personal checks from the customer and will require the customer to pay with cash, certified check, cashier's check or money order;

Section 8-47 Allowance for Property Tax liens for delinquent sewer service charges.

- (A) Any fee imposed under this subsection may be billed with property taxes, may be payable in the same manner as property taxes, and, in the case of nonpayment, may be collected in any manner by which delinquent personal or real property taxes can be collected.
 - (1) A fee charged by the Town for sewer services and remaining unpaid for a period of 90 days shall become a lien on the real property described on the bill that includes the fee.
 - (2) Any lien placed on real property as described in **Section 8-47(A)(1)** shall be valid from the time of filing in the office of the Clerk of Superior Court of the county in which the service was provided and shall include a statement containing the name and address of the person against whom the lien is claimed, the name of the Town claiming the lien, the specific service that was provided, the amount of the unpaid charge for that service, and the date and place of furnishing that service.

- (3) The county or Town tax office, once notified of the Town's lien, shall include the lien amount on any tax bills printed subsequent to the notification.
 - (4) A lien on real property as described in **Sections 8-47(A)(1) and (2)** is not effective against an interest in real property conveyed after the fees become delinquent if the interest is recorded in the office of the register of deeds prior to the filing of the lien for delinquent water or sewer services.
 - (5) No lien under this section shall be valid unless filed in accordance with this section after 90 days of the date of the failure to pay for the service or availability fees and within 180 days of the date of the failure to pay for the service or fees.
 - (6) The lien may be discharged as provided in G.S. 44-48.
- (B) Pursuant to the notification of a lien filed on the real property, the owner(s) of the property may appeal the lien through a two part process as follows:
- (1) Part One: Administrative Review.
 - i. A Request to Appeal the application of the lien must be received within twenty-one (21) days of the date of filing.
 - ii. The request shall be filed on the appropriate form available from the Town/Town and shall include:
 - 1. A description of the real property including the tax identification number and physical address of the property.
 - 2. The name, address and telephone number of the property owner making the appeal.
 - 3. A copy of the lien.
 - 4. A statement of the grounds for appeal.
 - iii. The appeal form shall be hand delivered or mailed via certified mail to the Town Clerk. No appeals sent by fax, email, or regular mail will be accepted.
 - iv. Once received, the appeals shall be reviewed by the Appeal Review Committee.
 - v. The property owner(s) will be advised of the decision of the Committee by certified mail through an administrative review disposition notice.
 - vi. The Town/Town will not accept the following as grounds for appeal:
 - 1. Lack of knowledge of the Town/Town's sewer billing process.

2. Claim of failure to receive a billing for sewer services.

(2) Part Two: Adjudication Hearing.

- i. A request for an adjudication hearing must be received within twenty one (21) days from the date of the Administrative Review disposition notice.
- ii. In order to file the request for an adjudication hearing with the Town, the property owner is required to pay the outstanding balance of sewer charges due as the deposit.
- iii. Should the decision of the adjudicator be in favor of the property owner, said fees shall be refunded.
- iv. The property owner shall be notified of the date and time of the Adjudication Hearing.
- v. The property owner's personal appearance at the hearing is mandatory.
- vi. During the hearing, the property owner is provided an opportunity to state the circumstances of the appeal and present any supporting evidence.
- vii. The property owner shall be informed of the adjudicator's decision within 72 hours of the hearing via certified mail.
- viii. Should the adjudication hearing be in favor of the property owner(s), the county tax office shall be notified by the Town of a decision to cancel the lien.

Statutory Reference - House Bill 184/ Session Law 2017-44 entitled Certain Towns/Sewer Fee Collections during the 2017-2018 Session

Sections 8-48 through 8-55: Reserved.

ARTICLE V. – DISCONNECTION AND RECONNECTION OF UTILITY SERVICE

Section 8-56 General.

It is the policy of the Town of Pembroke, before disconnecting a utility service, to give the customer a fair opportunity to avoid disconnection either by paying charges due or showing that the charges are in error. Under this policy, the customer has the right to request adjustments to his or her billing only with acceptable proof.

- (A) Service disconnections will be made between the hours of 8:30 a.m. and 5:00 p.m. on business days from Monday through Thursday. No disconnections will be made on Fridays unless with approval of the Town Manager. Customers will be subject to a service fee for disconnection and reconnection of the water service as soon as a Town employee is dispatched to make the disconnection.

- (B) Customers who have paid in full the past amounts due are eligible to have the water service reconnected. Customers will be subject to a reconnection fee which shall be established in the *Schedule of Rates and Fees*. The Town shall reestablish water service as soon as possible after receipt of the payment.

Statutory Reference: - NC General Statutes Section 160A-314(b).

Section 8-57 Customer request to turn water on or off.

There will be a service charge for turning the water on or off at the request of the customer. Such charge shall be included in the *Schedule of Rates and Fees*.

Sections 8-58 through 8-65: Reserved.

ARTICLE VI. – IRRIGATION WATER METERS

Sections 8-66 General.

The following policies shall apply to irrigation meters.

- (A) Any water and sewer customer of the Town may request and have an irrigation water meter installed.
- (B) The connection fee shall be the same charge applicable to water customers of the Town.
- (C) A back-flow prevention device shall be installed and the customer shall be charged the cost of purchasing and installing the device.
- (D) Irrigation water meter customers shall be billed monthly in accordance with the *Schedule of Rates and Fees*.
- (E) The Town reserves the right to draw water from faucets located inside and outside any structure located on property utilizing an irrigation water meter to facilitate usage checks and to ensure that no water is allowed to drain into the Town's sewer system.
- (F) No customer utilizing an irrigation water meter shall intentionally allow water pumped through the meter to enter the Town's sewer system.

Sections 8-67 through 8-75: Reserved.

ARTICLE VII. – RIGHT TO SUSPEND SERVICE

Section 8-76 General.

The Town of Pembroke reserves the right to discontinue its service without notice for the following additional reasons:

- (A) To prevent fraud or abuse;
- (B) Owner/customer's willful disregard of the Town's rules and regulations;

- (C) Making of connection to the system or emergency repairs to municipal property;
- (D) Circumstances beyond the Town's control;
- (E) Legal process;
- (F) Direction of public authorities having jurisdiction over such matters; and
- (G) Strike, riot, fire, flood, accident or any unavoidable cause.

Sections 8-77 through 8-80: Reserved.

ARTICLE VIII. – WATER SHORTAGE RESPONSE PLAN

Section 8-81 Scope and intent.

- (A) The following measures in this water response plan (WSRP) shall be enforced by the Town Director of Public Works or his designee upon the determination of a water shortage. All municipalities, water corporations, or water authorities purchasing water from the Town will adopt and enforce this WSRP as a condition of water sales agreements. Upon the declaration of a water shortage, all such entities will enforce the appropriate water use restrictions or percent reduction goals for each phase of response to a water shortage.
- (B) Generally, the Director of Public Works shall issue a water shortage advisory (initiating voluntary phase of reductions of water usage), water shortage alert (initiating mandatory phase of restrictions of water usage), or water shortage emergency declaration (initiating emergency phase of restrictions, bans, or rationing of water usage). Depending on the specific water shortage occurrence, the issuance of advisories, alerts, or emergency declarations may be system-wide or limited to portions of the water system affected by the specific occurrence.
- (C) Water shortage advisories, alerts, or emergency declarations may be issued for a variety of reasons. They include, but are not limited to, the following:
 - (1) Contamination of well(s), raw water main(s), or potable water main(s);
 - (2) Drought conditions;
 - (3) Break in a potable water main that supplies a significant portion of the water system;
 - (4) Removal of elevated or other storage tanks for extended maintenance;
 - (5) Equipment malfunction or failure, removal of wells from service, or other occurrences significantly affecting the Town's capability of delivering raw water or adequately treating the raw water;
 - (6) Power failure significantly affecting the Town's capability of delivering raw water or adequately treating the raw water.
- (D) Guidelines to be used to assess the need for advisories, alerts, or emergency declarations include, but are not limited to, the following:

(1) *Voluntary phase:*

- a) Wells are operating in excess of twelve (12) hours daily to supply the system demand;
- b) One (1) of the wells has been removed from service for any reason, or the pumping capacity of a majority of the wells has been significantly diminished for an extended period;
- c) Power failure, affecting the water treatment plant or a significant portion of the wells, which Director of Public Works has estimated will last more than 24 hours;
- d) Contamination of or breaks in potable water mains, extended maintenance or repair, or other occurrences requiring more than a few days or extraordinary means to satisfactorily resolve.

(2) *Mandatory phase:*

- a) Voluntary phase measures and reductions have not achieved the desired goals, drawdown levels continue to increase, and pumping capacity continues to diminish;
- b) One (1) of the wells have been removed from service for any reason, or the pumping capacity of a majority of the wells has been significantly diminished for an extended period.

(3) *Emergency phase:*

- a) Voluntary or mandatory phase measures and reductions have not achieved the desired goals, drawdown levels continue to increase, and well capacity continues to diminish;
- b) All of the wells have been removed from service for any reason, or the pumping capacity of a majority of the wells has been significantly diminished for an extended period, or the Town has had to purchase water from an alternate source;
- c) Extended power failure that cannot be adequately addressed with available stationary or portable standby generators.

- (E) For the purposes of this section, "extended period" shall mean thirty (30) days. The Director of Public Works shall make the determination of whether or not pumping capacity has been "significantly diminished" based on available pump or well design information, flow monitoring data, and operating drawdown levels.

Section 8-82 Education and outreach program.

The Town shall encourage year-round efficient use of potable water by all customers. The Director of Public Works shall carefully monitor demand and supply and determine average daily demand as a percent of available supply, keeping an eye on regional water supply by checking on the North Carolina Drought Monitor.

Section 8-83 Water use classifications.

- (A) *Class 1: Essential Water Uses.* The following water uses have been determined to be essential uses of potable water provided by the Town of Pembroke in the event of a water shortage:
- (1) Domestic use for drinking, personal hygiene, and sanitation;
 - (2) Patient care/rehabilitative services;

- (3) Uses to sustain human life and the lives of domestic pets;
 - (4) Firefighting, fire department drills and testing;
 - (5) Flushing fire hydrants and public sewers as necessary to ensure public health and safety.
- (B) *Class 2: Socially/economically important water uses.* The following water uses have been determined to be socially or economically important uses of potable water provided by the Town in the event of a water shortage:
- (1) Domestic use for laundry, cooking, and house cleaning;
 - (2) Industrial use to maintain jobs;
 - (3) Outdoor commercial watering (public or private) using conservation measures;
 - (4) Irrigation for commercial vegetable gardens and fruit orchards or the maintenance of livestock;
 - (5) Watering of trees where necessary for preservation;
 - (6) Watering by commercial nurseries at a minimum level necessary to maintain stock;
 - (7) Use of fresh water at a minimum rate necessary to establish vegetation following earth-moving, where such vegetation is required by law or regulation;
 - (8) Commercial car and truck washes;
 - (9) Commercial laundromats;
 - (10) Restaurants and clubs;
 - (11) Home vegetable gardens;
 - (12) Convenience stores, gas stations, and other commercial establishments;
 - (13) Schools and churches;
 - (14) Hotels, motels, and inns;
 - (15) Commercial air conditioning.
- (C) *Class 3: Non-essential water uses.* The following water uses have been determined to be non-essential uses of potable water provided by the Town in the event of a water shortage.
- (1) Fountains, reflecting pools, and artificial waterfalls;
 - (2) Gardens, lawns, parks, golf courses (except greens), playing fields and other recreational areas;
 - (3) Water hoses or sprinklers for recreational purposes;
 - (4) Non-commercial washing of motor vehicles;
 - (5) Serving water in restaurants, clubs, or eating places except by specific request;
 - (6) Watering of inedible plants except as specified in Class 2;
 - (7) Filling and operation of residential swimming pools.

Section 8-84 Conservation measures and water use restrictions.

- (A) *Voluntary phase: water use reduction:*
- (1) Review WSRP and modify as necessary;
 - (2) Issue water shortage advisory and increase conservation educational campaign;
 - (3) Ten (10) percent potable water use reduction goal (system-wide);
 - (4) Encourage continued voluntary conservation;
 - (5) Monitor compliance with voluntary water use;
 - (6) Explore alternatives for supplementing water supply.

(B) *Mandatory phase: water use restrictions:*

- (1) Issue a water shortage alert.
- (2) Twenty (20) percent potable water use reduction goal (system-wide);
- (3) Encourage water use reduction for Class 2 and 3 uses;
- (4) Restrict irrigation of outdoor landscaping, including grass, shrubbery, trees, and flowers:
 - i. Irrigation shall be limited to the hours of 7:00 p.m. to 7:00 a.m.;
 - ii. For customers whose address numbers end in an even digit, such watering shall be restricted to watering on Tuesday, Thursday, and Saturday;
 - iii. For customers whose address numbers end in an odd digit, such watering shall be restricted to watering on Wednesday, Friday, or Sunday;
 - iv. No irrigation shall take place on Monday or in the daylight hours of any day between 7:00 a.m. and 7:00 p.m.;
 - v. Exceptions to these restrictions may be granted temporarily to persons engaged in the business of landscaping on a site by site basis for one (1) to three (3) days, by permit issued by the Town Manager.
- (5) Monitor compliance with water use restrictions and increase restrictions as necessary;
- (6) Fine enforcement.

(C) *Emergency phase: water use restrictions, bans, or rationing:*

- (1) Issue a water shortage emergency declaration;
- (2) Thirty (30) percent potable water use reduction goal (system-wide);
- (3) Ban all Class 3 uses;
- (4) Ban or restrict Class 2 uses;
- (5) Aggressive compliance monitoring and enforcement;
- (6) Implement specific restrictions, bans, or rationing measures on industrial water customers.

Section 8-85 Enforcement.

- (A) For violations of the restrictions implemented during the mandatory or emergency phases of a water shortage, the following civil penalties are imposed:

First offense	\$50.00 fine
Second offense	\$100.00 fine
Third and succeeding offenses	\$350.00

- (B) The Town may disconnect the water service of any user determined to be responsible for persistent violations.

Sections 8-86 through 8-90: Reserved.

ARTICLE IX. – SEWER USE ORDINANCE

Section 8-91 General Provisions

SECTION I - GENERAL PROVISIONS

1.1 Purpose and Policy

This ordinance sets forth uniform requirements for direct and indirect contributors into the wastewater collection and treatment system for the Town of Pembroke, hereafter referred to as the Town, and enables the Town to comply with all applicable State and Federal laws, including the Clean Water Act (33 United States Code §1251 *et seq.*) and the General Pretreatment Regulations (40 CFR, Part 403).

The objectives of this ordinance are:

- (a) To prevent the introduction of pollutants and wastewater discharges into the municipal wastewater system which will interfere with the operation of the system or contaminate the resulting sludge;
- (b) To prevent the introduction of pollutants and wastewater discharges into the municipal wastewater system which will pass through the system, inadequately treated, into any waters of the State or otherwise be incompatible with the system;
- (c) To promote reuse and recycling of industrial wastewater and sludges from the municipal system;
- (d) To protect both municipal personnel who may be affected by sewage, sludge, and effluent in the course of their employment as well as protecting the general public;
- (e) To provide for equitable distribution of the cost of operation, maintenance and improvement of the municipal wastewater system; and
- (f) To ensure that the municipality complies with its NPDES or Non-discharge Permit conditions, sludge use and disposal requirements and any other Federal or State laws to which the municipal wastewater system is subject.

This ordinance provides for the regulation of direct and indirect contributors to the municipal wastewater system, through the issuance of permits to certain non-domestic users and through enforcement of general requirements for the other users, authorizes monitoring and enforcement activities, requires user reporting and provides for the setting of fees for the equitable distribution of costs resulting from the program established herein.

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

Section 8-92 Definitions

1.2 Definitions and Abbreviations

- (a) Unless the context specifically indicates otherwise, the following terms and phrases, as used in this ordinance, shall have the meanings hereinafter designated:
- (1) Act or "the Act". The Federal Water Pollution Control Act, also known as the Clean Water Act, as amended, 33 U.S.C. §1251, et seq.
 - (2) Approval Authority. The Director of the Division of Water Quality of the North Carolina Department of Environment and Natural Resources or his designee.
 - (3) Authorized Representative of the Industrial User.
 - (i) If the industrial user is a corporation, authorized representative shall mean:
 - (A) the president, secretary, or a vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or
 - (B) the manager of one or more manufacturing, production, or operation facilities, provided, the manager is authorized to make management decisions which govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiate and direct comprehensive measures to assure long-term environmental compliance with environmental laws and regulations; can ensure that the necessary systems are established or actions taken to gather complete and accurate information for control mechanism requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.
 - (ii) If the industrial user is a partnership or sole proprietorship, an authorized representative shall mean a general partner or the proprietor, respectively.
 - (iii) If the industrial user is a Federal, State or local government facility, an authorized representative shall mean a director or highest official appointed or designated to oversee the operation and performance of the activities of the government facility, or their designee.
 - (iv) The individuals described in paragraphs i-iii above may designate another authorized representative if the authorization is in writing, the authorization specifies the individual or position responsible for the overall operation of the facility from which the discharge originates or having overall responsibility for environmental matters for the company, and the written authorization is submitted to the Town.
 - (v) If the designation of an authorized representative is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, or overall responsibility for environmental matters for the company, a new authorization satisfying the requirements of this section must be submitted to the POTW Director prior to or together with any reports to be signed by an authorized representative.
 - (4) Biochemical Oxygen Demand (BOD). The quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedures for five (5) days at 20° centigrade, usually expressed as a concentration (e.g. mg/l).
 - (5) Building Sewer. A sewer conveying wastewater from the premises of a user to the POTW.
 - (6) Bypass. The intentional diversion of wastestreams from any portion of a user's treatment facility
 - (7) Categorical Standards. National Categorical Pretreatment Standards or Pretreatment Standard.
 - (8) Control Authority. Refers to the POTW organization if the POTW organization's Pretreatment Program approval has not been withdrawn.
 - (9) Environmental Protection Agency; or EPA. The U.S. Environmental Protection Agency, or where appropriate the term may also be used as a designation for the Administrator or other duly authorized official of said agency.
 - (10) Grab Sample. A sample which is taken from a waste stream on a one-time basis without regard to the flow in the waste stream and over a period of time not to exceed 15 minutes.

- (11) Holding Tank Waste. Any waste from holding tanks, including but not limited to such holding tanks as vessels, chemical toilets, campers, trailers, septic tanks, and vacuum-pump tank trucks.
- (12) Indirect Discharge or Discharge. The discharge or the introduction from any nondomestic source regulated under section 307(6), (c), or (d) of the Act, (33 U.S.C. 1317), into the POTW (including holding tank waste discharged into the system).
- (13) Industrial User or User. Any person which is a source of indirect discharge.
- (14) Interference. The inhibition, or disruption of the POTW's collection system, treatment processes, operations, or its sludge process, use, or disposal, which causes or contributes to a violation of any requirement of the Control Authority's (and/or POTW's if different from the Control Authority) NPDES, Collection System Permit or Non- discharge Permit or prevents sewage sludge use or disposal in compliance with specified applicable State and Federal statutes, regulations, or permits. The term includes prevention of sewage sludge use or disposal by the POTW in accordance with section 405 of the Act, (33 U.S.C. 1345) or any criteria, guidelines, or regulations developed pursuant to the Solid Waste Disposal Act (SWDA)(42 U.S.C. §6901, *et seq.*), the Clean Air Act, the Toxic Substances Control Act, the Marine Protection Research and Sanctuary Act (MPRSA) or more stringent state criteria (including those contained in any State sludge management plan prepared pursuant to Title IV of SWDA) applicable to the method of disposal or use employed by the POTW.
- (15) Medical Waste. Isolation wastes, infectious agents, human blood and blood products, pathological wastes, sharps, body parts, contaminated bedding, surgical wastes, potentially contaminated laboratory wastes, and dialysis wastes.
- (16) National Categorical Pretreatment Standard or Categorical Standard. Any regulation containing pollutant discharge limits promulgated by EPA in accordance with sections 307(b) and (c) of the Act (33 U.S.C. § 1317) which applies to a specific category of industrial users, and which appears in 40 C.F.R. Chapter 1, Subchapter N, Parts 405-471.
- (17) National Prohibitive Discharge Standard or Prohibitive Discharge Standard. Absolute prohibitions against the discharge of certain substances; these prohibitions appear in section [2.1] of this ordinance and are developed under the authority of 307(b) of the Act and 40 CFR, section 403.5.
- (18) New Source. As defined in 40 CFR 403.3 (m), including any subsequent amendments or additions.
 - (1) Any building, structure, facility, or installation from which there may be a discharge of pollutants, the construction of which commenced after the publication of proposed categorical pretreatment standards under section 307(c) of the Act which will be applicable to such source if such standards are thereafter promulgated in accordance with section 307(c), provided that:
 - (A) the building, structure, facility, or installation is constructed at a site at which no other source is located; or
 - (B) the building, structure, facility, or installation totally replaces the process or production equipment that causes the discharge of pollutants at an existing source; or
 - (C) the production or wastewater generating processes of the building, structure, facility, or installation are substantially independent of an existing source at the same site. In determining whether these are substantially independent, factors such as the extent to which the new facility is integrated with the existing plant, and the extent to which the new facility is engaged in the same general type of activity as the existing source, should be considered.

- (2) Construction on a site at which an existing source is located results in a modification rather than a new source if the construction does not create a new building, structure, facility, or installation meeting the criteria of section [(i)(B)] or I(C)] above but otherwise alters, replaces, or adds to existing process or production equipment.
- (3) For purposes of this definition, construction of a new source has commenced if the owner or operator has:
 - (A) Begun, or caused to begin, as part of a continuous on-site construction program:
 1. Any placement, assembly, or installation of facilities or equipment; or
 2. Significant site preparation work including clearing, excavation, or removal of existing buildings, structures or facilities which is necessary for the placement, assembly, or installation of new source facilities or equipment; or
 - (B) Entered into a binding contractual obligation for the purchase of facilities or equipment which are intended to be used in its operation within a reasonable time. Options to purchase or contracts which can be terminated or modified without substantial loss, and contracts for feasibility, engineering, and design studies do not constitute a contractual obligation under this definition.
- (19) Noncontact Cooling Water. Water used for cooling which does not come into direct contact with any raw material, intermediate product, waste product, or finished product.
- (20) National Pollution Discharge Elimination System, or NPDES, Permit. A permit issued pursuant to section 402 of the Act (33 U.S.C. §1342), or pursuant to N.C.G.S. 143-215.1 by the State under delegation from EPA.
- (21) Non-discharge Permit. A disposal system permit issued by the State pursuant to N.C.G.S. 143-215.1.
- (22) Pass Through. A discharge which exits the POTW into waters of the State in quantities or concentrations which, alone or with discharges from other sources, causes a violation, including an increase in the magnitude or duration of a violation, of the Control Authority's (and/or POTW's if different from the Control Authority) NPDES, Collection System or Non-discharge Permit.
- (23) Person. Any individual, partnership, co-partnership, firm, company, corporation, association, joint stock company, trust, estate, governmental entity or any other legal entity, or their legal representatives, agents or assigns. This definition includes all Federal, State, and local government entities.
- (24) pH. A measure of the acidity or alkalinity of a substance, expressed as standard units, and calculated as the logarithm (base 10) of the reciprocal of the concentration of hydrogen ions expressed in grams per liter of solution.
- (25) Pollutant. Any "waste" as defined in N.C.G.S. 143-213(18); dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, medical wastes, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste and certain characteristics of wastewater (e.g., pH, temperature, TSS, turbidity, color, metals, BOD, COD, toxicity, and odor).
- (26) POTW Director. The Town administrator designated with the responsibility for the pretreatment program and enforcement of this Sewer Use Ordinance.
- (27) POTW Treatment Plant. That portion of the POTW designed to provide treatment to wastewater.
- (28) Pretreatment or Treatment. The reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater prior to or in lieu of discharging or otherwise introducing such pollution into a POTW. The reduction or alteration can be obtained by physical, chemical or biological processes, or process changes or other means, except by diluting the concentration of the pollutants unless allowed by an applicable pretreatment standard.
- (29) Pretreatment Program. The program for the control of pollutants introduced into the POTW from non-domestic sources which was developed by the Town in compliance with 40 CFR 403.8 and approved by the approval authority as authorized by N.C.G.S. 143-215.3(a)(14) in accordance with 40 CFR 403.11.

- (30) Pretreatment Requirements. Any substantive or procedural requirement related to pretreatment, other than a pretreatment standard.
- (31) Pretreatment Standards. Any prohibited discharge standards, categorical standards, or local limits which applies to an industrial user.
- (32) Publicly Owned Treatment Works (POTW) or Municipal Wastewater System. A treatment works as defined by section 212 of the Act, (33 U.S.C. §1292) which is owned in this instance by the Town. This definition includes any devices or systems used in the collection, storage, treatment, recycling, and reclamation of municipal sewage or industrial wastes of a liquid nature. It also includes sewers, pipes, and other conveyances only if they convey wastewater to the POTW treatment plant. For the purposes of this ordinance, "POTW" shall also include any sewers that convey wastewaters to the POTW from persons outside the Town who are, by contract or agreement with the Town, or in any other way, users of the POTW of the Town.
- (33) Severe Property Damage. Substantial physical damage to property, damage to the user's treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.
- (34) Significant Industrial User. An industrial user that discharges wastewater into a publicly owned treatment works and that
 - (A) has an average daily process wastewater flow of 25,000 gallons or more, or
 - (B) contributes process wastewater which makes up five percent (5%) or more of the NPDES or Non-Discharge permitted flow limit or organic capacity of the POTW treatment plant. In this context, organic capacity refers to BOD, TSS, and Ammonia, or
 - (C) is required to meet a National categorical pretreatment standard, or
 - (D) is found by the Town, the Division Of Water Resources or the U.S. Environmental Protection Agency (EPA) to have the potential for impact, either singly or in combination with other contributing industrial users, on the wastewater treatment system, the quality of sludge, the system's effluent quality, or compliance with any pretreatment standards or requirements.
 - (E) Subject to Division approval under 15A NCAC 02H .0907(b), the Control Authority may determine that an Industrial User meeting the criteria in paragraphs (A) and (B) above has no reasonable potential for adversely affecting the POTW's operation or for violating any Pretreatment Standards or requirement, or for contributing to violations of the POTW's effluent limitations and conditions in its NPDES or non- discharge permit, or for limiting the POTW's sludge disposal options, and thus is not a Significant Industrial User.
 - (F) Subject to Division approval under 15A NCAC 02H .0907(b), the Control Authority may determine that an Industrial User meeting the criteria in paragraph (C) above meets the requirements of 40 CFR Part 403.3(v)(2) and thus is a Non-Significant Categorical Industrial User.
 - (G) Subject to Division approval under 15A NCAC 02H .0907(b), the Control Authority may determine that an Industrial User meeting the criteria in paragraph (C) above meets the requirements of 40 CFR Part 403.12(e)(3) and thus is a Middle Tier Significant Industrial User. Sampling and inspection requirements may be cut in half as per 40 CFR Parts 403.8 (f)(2)(v)(C) and 403.12 (e)(3).
- (35) Significant Noncompliance or SNC. The status of noncompliance of a Significant Industrial User when one or more of the following criteria are met. Additionally, any Industrial User which meets the criteria in Subparagraph (b)(35), Parts (C), (D) or (H) shall also be SNC.
 - (A) Chronic Violations of wastewater discharge limits, defined here as those in which sixty-six (66) percent or more of all the measurements taken for the same pollutant parameter (not including flow) during a six month period exceed (by any magnitude) a numeric Pretreatment

- Standard or Requirement including instantaneous limits, as defined by 40 CFR Part 403.3 (I);
- (B) Technical Review Criteria (TRC) violations, defined here as those in which thirty-three (33) percent or more of all the measurements for the same pollutant parameter during a six month period equal or exceed the product of the numeric Pretreatment Standard or Requirement including instantaneous limits, as defined by 40 CFR Part 403.3 (I) multiplied by the applicable TRC; [For the conventional pollutants: BOD, TSS, fats, oil and grease: TRC = 1.4 For all other pollutants (except flow and Ph): TRC = 1.2];
 - (C) Any other violation of a Pretreatment Standard or Requirement as defined by 40 CFR Part 403.3 (I) (daily maximum, long-term average, instantaneous limit, or narrative standard) that the Control Authority and/or POTW determines has caused, alone or in combination with other discharges, interference or pass-through (including endangering the health of POTW personnel or the general public);
 - (D) Any discharge of a pollutant that has caused imminent endangerment to human health, welfare or to the environment or has resulted in the Control Authority's or POTW's (if different from the Control Authority) exercise of its emergency authority under 40 CFR Part 403.8 (f)(1)(vi)(B) and Section 8.1 (e) of this SUO to halt or prevent such a discharge.
 - (E) Violations of compliance schedule milestones, contained in a pretreatment permit or enforcement order, for starting construction, completing construction, and attaining final compliance by 90 days or more after the schedule date.
 - (F) Failure to provide reports for compliance schedule, self-monitoring data, baseline monitoring reports, 90-day compliance reports, and compliance reports within 45 days from the due date.
 - (G) Failure to accurately report noncompliance.
 - (H) Any other violation or group of violations that the Control Authority and/or POTW determines will adversely affect the operation or implementation of the local pretreatment program.
- (36) Slug Load or Discharge. Any discharge at a flow rate or concentration which has a reasonable potential to cause Interference or Pass-Through, or in any other way violates the POTW's regulations, local limits, or Industrial User Permit conditions. This can include but is not limited to spills and other accidental discharges; discharges of a non-routine, episodic nature; a non-customary batch discharge; or any other discharges that can cause a violation of the prohibited discharge standards in section [2.1] of this ordinance.
 - (37) Standard Industrial Classification (SIC). A classification pursuant to the Standard Industrial Classification Manual issued by the Executive Office of the President, Office of Management and Budget, 1987.
 - (38) Storm Water. Any flow occurring during or following any form of natural precipitation and resulting therefrom.
 - (39) Suspended Solids. The total suspended matter that floats on the surface of, or is suspended in, water, wastewater or other liquids, and which is removable by laboratory filtering.
 - (40) Upset. An exceptional incident in which there is unintentional and temporary noncompliance with categorical pretreatment standards because of factors beyond the reasonable control of the user. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.
 - (41) Wastewater. The liquid and water-carried industrial or domestic wastes from dwellings, commercial buildings, industrial facilities, mobile sources, treatment facilities and institutions, together with any groundwater, surface water, and storm water that may be present, whether treated or untreated, which are contributed into or permitted to enter the POTW.
 - (42) Wastewater Permit. As set forth in section [4.2] of this ordinance.
 - (43) Waters of the State. All streams, rivers, brooks, swamps, sounds, tidal estuaries, bays, creeks, lakes, waterways, reservoirs, and all other bodies or accumulations of water, surface or underground, natural or artificial, public or private, which are contained within, flow through, or border upon the State or any portion thereof.

- (b) This ordinance is gender neutral and the masculine gender shall include the feminine and vice-versa.
- (c) Shall is mandatory; may is permissive or discretionary.
- (d) The use of the singular shall be construed to include the plural and the plural shall include the singular as indicated by the context of its use.
- (e) The following abbreviations when used in this ordinance, shall have the designated meanings:

(1)	BOD	Biochemical Oxygen Demand
(2)	CFR	Code of Federal Regulations
(3)	COD	Chemical Oxygen Demand
(4)	EPA	Environmental Protection Agency
(5)	gpd	Gallons per day
(6)	l	Liter
(7)	mg	Milligrams
(8)	mg/l	Milligrams per liter
(9)	N.C.G.S.	North Carolina General Statutes
(10)	NPDES	National Pollution Discharge Elimination System
(11)	O & M	Operations and Maintenance
(12)	POTW	Publicly-owned Treatment Works
(13)	RCRA	Resource Conservation and Recovery Act

(14)	SIC	Standard Industrial Classification
(15)	SWDA	Solid Waste Disposal Act
(16)	TSS	Total Suspended Solids
(17)	TKN	Total Kjeldahl Nitrogen
(18)	U.S.C.	United States Code

Sections 8-93 through 8-100 General Sewer Use Requirements

SECTION 2 - GENERAL SEWER USE REQUIREMENTS

2.1 Prohibited Discharge Standards

- (a) General Prohibitions. No user shall contribute or cause to be contributed into the POTW, directly or indirectly, any pollutant or wastewater which causes interference or pass through. These general prohibitions apply to all users of a POTW whether or not the user is a significant industrial user or subject to any National, State, or local pretreatment standards or requirements.
- (b) Specific Prohibitions. No user shall contribute or cause to be contributed into the POTW the following pollutants, substances, or wastewater:
 - (1) Pollutants which create a fire or explosive hazard in the POTW, including, but not limited to, wastestreams with a closed cup flashpoint of less than 140°F (60°C) using the test methods specified in 40 CFR 261.21.
 - (2) Solid or viscous substances in amounts which will cause obstruction of the flow in the POTW resulting in interference but in no case solids greater than one half inch (1/2) in any dimension.
 - (3) Petroleum oil, nonbiodegradable cutting oil, or products of mineral oil origin, in amounts that will cause interference or pass through.
 - (4) Any wastewater having a pH less than 5.0 or more than 10.5 or wastewater having any other corrosive property capable of causing damage to the POTW or equipment.
 - (5) Any wastewater containing pollutants, including oxygen-demanding pollutants, (BOD, etc) in sufficient quantity, (flow or concentration) either singly or by interaction with other pollutants, to cause interference with the POTW.
 - (6) Any wastewater having a temperature greater than 150° F (66° C), or which will inhibit biological activity in the POTW treatment plant resulting in interference, but in no case wastewater which causes the temperature at the introduction into the treatment plant to exceed 104° F (40° C).
 - (7) Any pollutants which result in the presence of toxic gases, vapors or fumes within the POTW in a quantity that may cause acute worker health and safety problems.
 - (8) Any trucked or hauled pollutants, except at discharge points designated by the POTW Director in accordance with section [2.9] of this ordinance.
 - (9) Any noxious or malodorous liquids, gases, or solids or other wastewater which, either singly or by interaction with other wastes, are sufficient to create a public nuisance or hazard to life or are sufficient to prevent entry into the sewers for maintenance and repair.
 - (10) Any substance which may cause the POTW's effluent or any other product of the POTW such as residues, sludges, or scums, to be unsuitable for reclamation and reuse or to interfere with the reclamation process. In no case, shall a substance discharged to the POTW cause the POTW to be in noncompliance with sludge use or disposal regulations or permits issued under section 405 of the Act; the Solid Waste Disposal Act, the Clean Air Act, the Toxic Substances Control Act, or State criteria applicable to the sludge management method being used.
 - (11) Any wastewater which imparts color which cannot be removed by the treatment process, including, but not limited to, dye wastes and vegetable tanning solutions, which consequently imparts sufficient color to the treatment plant's effluent to render the waters injurious to public health or secondary recreation or to aquatic life and wildlife or to adversely affect the palatability of fish or aesthetic quality or impair the receiving waters for any designated uses.
 - (12) Any wastewater containing any radioactive wastes or isotopes except as specifically approved by the POTW Director in compliance with applicable State or Federal regulations.
 - (13) Storm water, surface water, ground water, artesian well water, roof runoff, subsurface drainage, swimming pool drainage, condensate, deionized water, non-contact cooling water and unpolluted industrial wastewater, unless specifically authorized by the POTW Director.

- (14) Fats, oils, or greases of animal or vegetable origin in concentrations as to cause an interference in the collection system. (discussed further in the Fat, Oil and Grease Ordinance)
- (15) Any sludges, screenings or other residues from the pretreatment of industrial wastes.
- (16) Any medical wastes, except as specifically authorized by the POTW Director in a wastewater discharge permit.
- (17) Any material containing ammonia, ammonia salts, or other chelating agents which will produce metallic complexes that interfere with the municipal wastewater system.
- (18) Any material that would be identified as hazardous waste according to 40 CFR Part 261 if not disposed of in a sewer except as may be specifically authorized by the POTW Director.
- (19) Any wastewater causing the treatment plant effluent to violate State Water Quality Standards for toxic substances as described in 15A NCAC 2B .0200.
- (20) Wastewater causing, alone or in conjunction with other sources, the treatment plant's effluent to fail a toxicity test.
- (21) Recognizable portions of the human or animal anatomy.
- (22) Any wastes containing detergents, surface active agents, or other substances which may cause excessive foaming in the municipal wastewater system.
- (23) At no time, shall two successive readings on an explosion hazard meter, at the point of discharge into the system (or at any point in the system) be more than five percent (5%) nor any single reading over ten percent (10%) of the lower explosive limit (LEL) of the meter.

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

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

- 1) advise the user(s) of the potential impact of the contribution on the POTW in accordance with section **[8.1]**; and
- 2) take appropriate actions in accordance with section **[4]** for such user to protect the POTW from interference or pass through.

2.2 National Categorical Pretreatment Standards

Users subject to categorical pretreatment standards are required to comply with applicable standards as set out in 40 CFR Chapter 1, Subchapter N, Parts 405-471 and incorporated herein.

- (c) Where a categorical pretreatment standard is expressed only in terms of either the mass or the concentration of a pollutant in wastewater, the [POTW Director] may impose equivalent concentration or mass limits in accordance with 40 CFR 403.6(c).
- (d) When wastewater subject to a categorical pretreatment standard is mixed with wastewater not regulated by the same standard, the POTW Director shall impose an alternate limit using the combined wastestream formula in 40 CFR 403.6(e).
- (e) A user may obtain a variance from a categorical pretreatment standard if the user can prove, pursuant to the procedural and substantive provisions in 40 CFR 403.13, that factors relating to its discharge are fundamentally different from the factors considered by EPA when developing the categorical pretreatment standard.

- (f) A user may obtain a net gross adjustment to a categorical standard in accordance with 40 CFR 403.15.
- (g) A user may request a removal credit adjustment to a categorical standard in accordance with 40 CFR 403.7.

2.3 Local Limits

An industrial waste survey is required prior to a User discharging wastewater containing in excess of the following average discharge limits:

BOD	250	mg/l	
TSS	250	mg/l	
NH3	25	mg/l	
Arsenic	.003	mg/l	
Cadmium	.003	mg/l	
Copper	.061	mg/l	
Cyanide	.015	mg/l	
Lead	.049	mg/l	
Mercury	.0003	mg/l	
Nickel	.021	mg/l	
Silver	.0005	mg/l	
Chromium	.05	mg/l	(Total Chromium)
Zinc	.175	mg/l	

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

2.4 State Requirements

State requirements and limitations on discharges shall apply in any case where they are more stringent than Federal requirements and limitations or those in this ordinance.

2.5 Right of Revision

The Town reserves the right to establish limitations and requirements which are more stringent than those required by either State or Federal regulation if deemed necessary to comply with the objectives presented in section [1.1] of this ordinance or the general and specific prohibitions in section [2.1 J] of this ordinance, as is allowed by 40 CFR 403.4.

2.6 Dilution

No user shall ever increase the use of process water or, in any way, attempt to dilute a discharge as a partial or complete substitute for adequate treatment to achieve compliance with the limitations contained in the National categorical pretreatment standards, unless expressly authorized by an applicable pretreatment standard, or in any other pollutant-specific limitation developed by the Town or State.

2.7 Pretreatment of Wastewater

(h) Pretreatment Facilities

Users shall provide wastewater treatment as necessary to comply with this ordinance and wastewater permits issued under section [4.2] of this ordinance and shall achieve compliance with all National categorical pretreatment standards, local limits, and the prohibitions set out in section [2.1] of this ordinance within the time limitations as specified by EPA, the State, or the POTW Director, whichever is more stringent. Any facilities necessary for compliance shall be provided, operated, and maintained at the user's expense. Detailed plans showing the pretreatment facilities and operating procedures shall be submitted to the Town for review, and shall be approved by the POTW Director before construction of the facility. The review of such plans and operating procedures shall in no way relieve the user from the responsibility of modifying the facility as necessary to produce an effluent acceptable to the Town under the provisions of this ordinance. Any subsequent changes in the pretreatment facilities or method of operation shall be reported to and be approved by the POTW Director prior to the user's initiation of the changes.

(i) Additional Pretreatment Measures

1. Whenever deemed necessary, the POTW Director may require users to restrict their discharge during peak flow periods, designate that certain wastewater be discharged only into specific sewers, relocate and/or consolidate points of discharge, separate sewage wastestreams from industrial wastestreams, and such other conditions as may be necessary to protect the POTW and determine the user's compliance with the requirements of this ordinance.
2. The POTW Director may require any person discharging into the POTW to install and maintain, on their property and at their expense, a suitable storage and flow-control facility to ensure equalization of flow. A wastewater discharge permit may be issued solely for flow equalization.
3. Grease, oil, and sand interceptors shall be provided when, in the opinion of the POTW Director, they are necessary for the proper handling of wastewater containing excessive amounts of grease and oil, or sand; except that such interceptors shall not be required for residential users. All interception units shall be of type and capacity approved by the POTW Director and shall be so located to be easily accessible for cleaning and inspection. Such interceptors shall be inspected, cleaned, and repaired regularly, as needed, by the user at their expense.
4. Users with the potential to discharge flammable substances may be required to install and maintain an approved combustible gas detection meter.
- 5.

2.8 Accidental Discharge/Slug Control Plans

(a) The POTW Director shall evaluate whether each significant industrial user needs a plan or other action to control and prevent slug discharges and accidental discharges as defined in Section [1.2(a)(36)]. All SIUs must be evaluated within one year of being designated an SIU. The POTW Director may require any user to develop, submit for approval, and implement such a plan or other specific action. Alternatively, the POTW Director may develop such a plan for any user.

(b) All SIUs are required to notify the POTW immediately of any changes at its facility affecting the potential for spills and other accidental discharge, discharge of a non-routine, episodic nature, a non-customary batch discharge, or a slug load. Also see Sections [5.5 and 5.6].

(c) An accidental discharge/slug control plan shall address, at a minimum, the following:

- (1) Description of discharge practices, including non-routine batch discharges;
- (2) Description of stored chemicals;
- (3) Procedures for immediately notifying the POTW Director of any accidental or slug discharge, as required by section [5.6] of this ordinance; and
- (4) Procedures to prevent adverse impact from any accidental or slug discharge. Such procedures include, but are not limited to, inspection and maintenance of storage areas, handling and transfer of materials, loading and unloading operations, control of plant site runoff, worker training, building of containment structures or equipment, measures for containing toxic organic pollutants, including solvents, and/or measures and equipment for emergency response.

2.9 Hauled Wastewater

- (j) Septic tank waste may be introduced into the POTW only at locations designated by the POTW Director, and at such times as are established by the POTW Director. Such waste shall not violate section I2] of this ordinance or any other requirements established by the Town. The POTW Director may require septic tank waste haulers to obtain wastewater discharge permits.
- (k) The POTW Director shall require haulers of industrial waste to obtain wastewater discharge permits. The POTW Director may require generators of hauled industrial waste to obtain wastewater discharge permits. The POTW Director also may prohibit the disposal of hauled industrial waste. The discharge of hauled industrial waste is subject to all other
- (l) requirements of this ordinance.
- (m) Industrial waste haulers may discharge loads only at locations designated by the POTW Director. No load may be discharged without prior consent of the POTW Director. The POTW Director may collect samples of each hauled load to
- (n) ensure compliance with applicable standards. The POTW Director may require the industrial waste hauler to provide a waste analysis of any load prior to discharge.
- (o) Industrial waste haulers must provide a waste-tracking form for every load. This form shall include, at a minimum, the name and address of the industrial waste hauler, permit number, truck identification, names and addresses of sources of waste, and volume and characteristics of waste. The form shall identify the type of industry, known or suspected waste constituents, and whether any wastes are RCRA hazardous wastes.

Section 8-101 Fees

SECTION 3 - FEES

3.1 Purpose

It is the purpose of this chapter to provide for the recovery of costs from users of the wastewater disposal system of the Town for the implementation of the program established herein. The applicable charges or fees shall be set forth in a schedule of sewer use charges and fees by the POTW Director and approved by the Town or Pembroke Board or Commissioners. A copy of these charges and fees will be made available from the POTW Director.

3.2 User Charges

A user charge shall be levied on all users including, but not limited to, persons, firms, corporations or governmental entities that discharge, cause or permit the discharge of sewage into the POTW.

- (a) The user charge shall reflect, at least, the cost of debt service, operation and maintenance (including replacement) of the POTW.
- (b) Each user shall pay its proportionate cost based on volume of flow.
- (c) The Director of the Town of Pembroke Public Utilities shall review annually the sewage contributions of users, the total costs of debt service, operation and maintenance of the POTW and will make recommendations to the Town of Pembroke Board Of Commissioners for adjustments in the schedule of charges and fees as necessary.
- (d) Charges for flow to the POTW not directly attributable to the users shall be distributed among all users of the POTW based upon the volume of flow of the users.

Surcharges:

The amount of the surcharges will be based upon the volume of flow and the character and concentration of the constituents of the wastewater:

- (e) The volume of flow used in determining the total discharge of wastewater for payment of user charges and surcharges shall be based on the following:
 - (1) Metered water consumption as shown in the records of meter readings maintained by the Town; or
 - (2) If required by the Town or at the individual discharger's option, other flow monitoring devices which measure the actual volume of wastewater discharged to the sewer. Such devices shall be accessible and safely located, and the measuring system shall be installed in accordance with plans approved by the Town. The metering system shall be installed and maintained at the users expense according to arrangements that may be made with the Town.
 - (3) Where any user procures all or part of his water supply from sources other than the Town, the user shall install and maintain at his own expense a flow measuring device of a type approved by the Town.
- (f) The character and concentration of the constituents of the wastewater used in determining surcharges shall be determined by samples collected and analyzed by the Town. Samples shall be collected in such a manner as to be representative of the actual discharge and shall be analyzed using procedures set forth in 40 CFR Part 136.
- (g) The determination of the character and concentration of the constituents of the wastewater discharge by the POTW Director or his duly appointed representatives shall be binding as a basis for charges.

3.2 Pretreatment Program Administration Charges

The schedule of charges and fees adopted by the Town may include charges and fees for:

- (h) reimbursement of costs of setting up and operating the Pretreatment Program;
- (i) monitoring, inspections and surveillance procedures;
- (j) reviewing slug control plans, including accidental and/or slug load discharge procedures and construction plans and specifications;
- (k) permitting;
- (l) other fees as the Town may deem necessary to carry out the requirements of the Pretreatment Program.

Section 8-102 through 8-115 Wastewater Discharge Permit Application and Issuance

SECTION 4 - WASTEWATER DISCHARGE PERMIT APPLICATION AND ISSUANCE

4.1 Wastewater Dischargers

It shall be unlawful for any person to connect or discharge to the POTW without first obtaining the permission of the Town. When requested by the POTW Director, a user must submit information on the nature and characteristics of its wastewater within thirty (30) days of the request. The POTW Director is authorized to prepare a form for this purpose and may periodically require users to update this information.

4.2 Wastewater Permits

All significant industrial users shall obtain a significant industrial user permit prior to the commencement of discharge to the POTW. Existing industrial users who are determined by the POTW Director to be significant industrial users shall obtain a significant industrial user permit within 180 days of receiving notification of the POTW Director's determination. Industrial users who do not fit the significant industrial user criteria may at the discretion of the POTW Director be required to obtain a wastewater discharge permit for non-significant industrial users.

(a) Significant Industrial User Determination

All persons proposing to discharge non-domestic wastewater, or proposing to change the volume or characteristics of an existing discharge of non-domestic wastewater shall request from the POTW Director a significant industrial user determination. If the POTW Director determines or suspects that the proposed discharge fits the significant industrial user criteria he will require that a significant industrial user permit application be filed.

(b) Significant Industrial User Permit Application

Users required to obtain a significant industrial user permit shall complete and file with the Town, an application in the form prescribed by the POTW Director, and accompanied by an application fee in the amount prescribed in the schedule of charges and fees. Significant industrial users shall apply for a significant industrial user permit within 90 days after notification of the POTW Director's determination in f4.2(a)] above. The application should include at a minimum:

- (1) name of the industrial user
- (2) address of industrial user
- (3) standard industrial classification (SIC) code(s) or expected classification and industrial user category
- (4) wastewater flow
- (5) types and concentrations (or mass) of pollutants contained in the discharge
- (6) major products manufactured or services supplied
- (7) description of existing on-site pretreatment facilities and practices
- (8) locations of discharge points
- (9) raw materials used or stored at the site
- (10) flow diagram or sewer map for the industrial user
- (11) number of employees
- (12) operation and production schedules, and
- (13) description of current and projected waste reduction activities in accordance with G.S.143-215.1 (g)
- (14) any other information as may be deemed by the POTW Director to be necessary to evaluate the permit application

(c) Application Signatories and Certification

All wastewater discharge permit applications and user reports must be signed by the current authorized representative of the user on file with the Control Authority and/or Town as defined in Section [1.2(a)(3)] and contain the following certification statement:

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

(d) Application Review And Evaluation

The POTW Director will evaluate the data furnished by the user and may require additional information.

- (1) The POTW Director is authorized to accept applications for the Town and shall refer all applications to the POTW staff for review and evaluation.
- (2) Within 30 days of receipt the POTW Director shall acknowledge and accept the complete application; or if not complete, shall return the application to the applicant with a statement of what additional information is required.

(e) Tentative Determination and Draft Permit

The POTW staff shall conduct a review of the application and an on-site inspection of the significant industrial user, including any pretreatment facilities, and shall prepare a written evaluation and tentative determination to issue or deny the significant industrial user permit.

(f) If the staff's tentative determination in Paragraph (1) above is to issue the permit, the following additional determinations shall be made in writing:

- a. proposed discharge limitations for those pollutants proposed to be limited;
- b. a proposed schedule of compliance, including interim dates and requirements, for meeting the proposed limitations; and
- c. a brief description of any other proposed special conditions which will have significant impact upon the discharge described in the application.

(g) The staff shall organize the determinations made pursuant to Paragraphs (1) and (2) above and the general permit conditions of the Town into a significant industrial user permit.

Permit supporting documentation. The Control Authority staff shall prepare the following documents for all Significant Industrial User Permits:

- (1) An Allocation Table (AT) listing permit information for all Significant Industrial Users, including, but not limited to permit limits, permit effective and expiration dates, and a comparison of total permitted flows and loads with Division approved maximum allowable loadings of the POTW, including flow, on forms or in a format approved by the Division. The AT shall be updated as permits are issued or renewed, and as permits are modified where the permitted limits or other AT information is revised.
- (2) The basis, or rationale for the Pretreatment Limitations, including the following:
 - (A) documentation of categorical determination, including documentation of any calculations used in applying categorical pretreatment standards; and
 - (B) documentation of the rationale of any parameters for which monitoring has been waived under 40 CFR Part 403.12 (e)(2).

Final Action On Significant Industrial User Permit Applications

- (h) The POTW Director shall take final action on all applications not later than 90 days following receipt of a complete application.
- (i) The POTW Director is authorized to:
 - (A) issue a significant industrial user permit containing such conditions as are necessary to effectuate the purposes of this ordinance and N.C.G.S. 143-215.1;
 - (B) issue a significant industrial user permit containing time schedules for achieving compliance with applicable pretreatment standards and requirements;
 - (C) modify any permit upon not less than 60 days' notice and pursuant to section [4.2(i)] of this ordinance;
 - (D) revoke any permit pursuant to section [8.1] of this ordinance;
 - (E) suspend a permit pursuant to section [8.1] of this Ordinance;
 - (F) deny a permit application when in the opinion of the POTW Director such discharge may cause or contribute to pass-through or interference of the wastewater treatment plant or where necessary to effectuate the purposes of G.S. 143-215.1.

Permit Modification

- (j) Modifications of permits shall be subject to the same procedural requirements as the issuance of permits except as follows. Any changes or new conditions in the permit shall include a reasonable time schedule for compliance.
 - (A) changes in the ownership of the discharge when no other change in the permit is indicated,
 - (B) a single modification of any compliance schedule not in excess of four months,
 - (C) modification of compliance schedules (construction schedules) in permits for new sources where the

new source will not begin to discharge until control facilities are operational.

- (k) Within 9 months of the promulgation of a National categorical pretreatment standard, the wastewater discharge permit of users subject to such standards shall be revised to require compliance with such standard within the time frame prescribed by such standard. Where a user, subject to a National categorical pretreatment standard, has not previously submitted an application for a wastewater discharge permit as required by section [4.2(b)], the user shall apply for a wastewater discharge permit within 180 days after the promulgation of the applicable National categorical pretreatment standard.
 - (l) A request for a modification by the permittee shall constitute a waiver of the 60 day notice required by G.S. 143-215.1(b) for modifications.
- (i) Permit Conditions
- (1) The POTW Director shall have the authority to grant a permit with such conditions attached as he believes necessary to achieve the purpose of this ordinance and N.C.G.S. 143-215.1. Wastewater permits shall contain, but are not limited to, the following:
 - (A) a statement of duration (in no case more than five years);
 - (B) a statement of non-transferability;
 - (C) applicable effluent limits based on categorical standards or local limits or both;
 - (D) applicable monitoring, sampling, reporting, notification, and record keeping requirements. These requirements shall include an identification of pollutants to be monitored, sampling location, sampling frequency, and sample type based on Federal, State and local law;
 - (E) requirements for notifying the POTW in the event of an accidental discharge or slug load as defined in Section [1.2(a)(36)];
 - (F) requirements to implement a Plan or other controls for prevention of accidental discharges and/or slug loads as defined in Section [1.2(a)(36)], if determined by the **POTW Director** to be necessary for the User and,
 - (G) requirements for immediately notifying the POTW of any changes at its facility affecting the potential for spills and other accidental discharges, or slug load as defined in [1.2(a)(36)J. Also see Sections [5.5 and 5.6];
 - (H) a statement of applicable civil and/or criminal penalties for violation of pretreatment standards and requirements and any applicable compliance schedule.

(3) In addition, permits may contain, but are not limited to, the following:

- (A) Limits on the average and/or maximum rate of discharge, and/or requirements for flow regulation and equalization.
- (B) Limits on the instantaneous, daily and/or monthly average and/or maximum concentration, mass, or other measure of identified wastewater pollutants or properties.
- (C) Requirements for the installation of pretreatment technology or construction of appropriate containment devices, etc., designed to reduce, eliminate, or prevent the introduction of pollutants into the treatment works.
- (D) Development and implementation of waste minimization plans to reduce the amount of pollutants discharged to the municipal wastewater system.
- (E) The unit charge or schedule of user charges and fees for the management of the wastewater discharged to the system.
- (F) Requirements for installation and maintenance of inspection and sampling facilities and equipment. Specifications for monitoring programs which may include sampling locations, frequency of sampling, number, types, and standards for tests, and reporting schedules. Specifications for monitoring programs which may include sampling locations, frequency of sampling, number, types, and standards for tests. And reporting schedules.
- (G) Requirements for immediate reporting of any instance of noncompliance and for automatic resampling and reporting within thirty (30) days where self-monitoring indicates a violation(s).
- (H) Compliance schedules for meeting pretreatment standards and requirements.
- (I) Requirements for submission of periodic self-monitoring or special notification reports.
- (J) Requirements for maintaining and retaining plans and records relating to wastewater discharges as specified in section **[5.13]** and affording the POTW Director, or his representatives, access thereto.
- (K) Requirements for prior notification and approval by the POTW Director of any new introduction of wastewater pollutants or of any significant change in the volume or character of the wastewater prior to introduction in the system.
- (L) Requirements for the prior notification and approval by the POTW Director of any change in the manufacturing and/or pretreatment process used by the permittee.
- (M) A statement that compliance with the permit does not relieve the permittee of responsibility for compliance with all applicable Federal and State pretreatment standards, including those which become effective during the terms of the permit
- (N) Other conditions as deemed appropriate by the POTW Director to ensure compliance with this ordinance, and State and Federal laws, rules, and regulations.

(j) Permit Duration

Permits shall be issued for a specified time period, not to exceed five (5) years. A permit may be issued for a period less than a year or may be stated to expire on a specific date.

(k) Permit Transfer

Wastewater permits are issued to a specific user for a specific operation. A wastewater discharge permit shall not be reassigned or transferred or sold to a new owner, new user, different premises, or a new or changed operation.

(l) Permit Reissuance

A significant industrial user shall apply for permit reissuance by submitting a complete permit application in accordance with section **[4.2]** a minimum of 180 days prior to the expiration of the existing permit.

Section 8-111 through 8-120 Reporting Requirements

SECTION 5 - REPORTING REQUIREMENTS

5.1 Baseline Monitoring Reports

- (a) Within either one hundred eighty (180) days after the effective date of a categorical pretreatment standard, or the final administrative decision on a category determination under 40 CFR 403.6(a)(4), whichever is later, existing categorical users currently discharging to or scheduled to discharge to the POTW shall submit to the POTW Director a report which contains the information listed in paragraph [(b)], below. At least ninety (90) days prior to commencement of their discharge, new sources, and sources that become categorical users subsequent to the promulgation of an applicable categorical standard, shall submit to the POTW Director a report which contains the information listed in paragraph [(b)], below. A new source shall report the method of pretreatment it intends to use to meet applicable categorical standards. A new source also shall give estimates of its anticipated flow and quantity of pollutants to be discharged.
- (b) Users described above shall submit the information set forth below.
 - (1) Identifying Information. The name and address of the facility, including the name of the operator and owner.
 - (2) Environmental Permits. A list of any environmental control permits held by or for the facility.
 - (3) Description of Operations. A brief description of the nature, average rate of production, and standard industrial classifications of the operation(s) carried out by such user. This description should include a schematic process diagram which indicates points of discharge to the POTW from the regulated processes.
 - (4) Flow Measurement Information showing the measured average daily and maximum daily flow, in gallons per day, to the POTW from regulated process streams and other streams, as necessary, to allow use of the combined wastestream formula set out in 40 CFR 403.6(e).
 - (5) Measurement of Pollutants.
 - (A) The categorical pretreatment standards applicable to each regulated process.
 - (B) The results of sampling and analysis identifying the nature and concentration, and/or mass, where required by the standard or by the POTW Director/ Manager, of regulated pollutants in the discharge from each regulated process. Instantaneous, daily maximum, and long-term average concentrations, or mass, where required, shall be reported. The sample shall be representative of daily operations and shall be analyzed in accordance with procedures set out in section [5.10] of this ordinance.
 - (C) Sampling must be performed in accordance with procedures set out in section [5.11] of this ordinance and 40 CFR 403.12(b) and (g), including 40 CFR 403.12(g)(4).
 - (6) Certification. A statement, reviewed by the user's current authorized representative as defined in Section [1.2(a)(3)] and certified by a qualified professional, indicating whether pretreatment standards are being met on a consistent basis, and, if not, whether additional operation and maintenance (O&M) and/or additional pretreatment is required to meet the pretreatment standards and requirements.
 - (7) Compliance Schedule. If additional pretreatment and/or O&M will be required to meet the pretreatment standards, the shortest schedule by which the user will provide such additional pretreatment and/or O&M. The completion date in this schedule shall not be later than the compliance date established for the applicable pretreatment standard. A compliance schedule pursuant to this section must meet the requirements set out in section [5.2] of this ordinance.
 - (8) Signature and Certification. All baseline monitoring reports must be signed and certified in accordance with section (4.2(c)) of this ordinance.

5.2 Compliance Schedule Progress Reports

The following conditions shall apply to the compliance schedule required by section **(5.1(b)(7))** of this ordinance:

- (c) The schedule shall contain progress increments in the form of dates for the commencement and completion of major events leading to the construction and operation of additional pretreatment required for the user to meet the applicable pretreatment standards (such events include, but are not limited to , hiring an engineer, completing preliminary and final plans, executing contracts for major components, commencing and completing construction, and beginning and conducting routine operation);
- (d) No increment referred to above shall exceed nine (9) months;
- (e) The user shall submit a progress report to the POTW Director no later than fourteen (14) days following each date in the schedule and the final date of compliance including, as a minimum, whether or not it complied with the increment of progress, the reason for any delay, and, if appropriate, the steps being taken by the user to return to the established schedule;and
- (f) In no event shall more than nine (9) months elapse between such progress report is to the [POTW Director].

5.3 Reports on Compliance with Categorical Pretreatment Standard, Deadline

Within ninety (90) days following the date for final compliance with applicable categorical pretreatment standards, or in the case of a new source following commencement of the introduction of wastewater into the POTW, any user subject to such pretreatment standards and requirements shall submit to the POTW Director a report containing the information described in section **[5.1(b)(4-6)]** of this ordinance. For users subject to equivalent mass or concentration limits established in accordance with the procedures in 40 CFR 403.6(c), this report shall contain a reasonable measure of the user's long-term production rate. For all other users subject to categorical pretreatment standards expressed in terms of allowable pollutant discharge per unit of production (or other measure of operation), this report shall include the user's actual production during the appropriate sampling period. All compliance reports must be signed and certified in accordance with section **[4.2(c)]** of this ordinance.

5.4 Periodic Compliance Reports

Town of Pembroke may sample and analyze user discharges in lieu of requiring the users to conduct sampling and analysis.

- (g) All significant industrial users shall, at a frequency determined by the POTW Director but in no case less than once every six months, submit a report indicating the nature and concentration of pollutants in the discharge which are limited by pretreatment standards and the applicable flows for the reporting period. Sampling and analysis must be performed in accordance with procedures set out in section **[5.10 and 5.11]** of this ordinance. All periodic compliance reports must be signed and certified in accordance with section **[4.2(c)]** of this ordinance.
- (h) If a user subject to the reporting requirement in this section monitors any pollutant more frequently than required by the POTW Director, using the procedures prescribed in section **[5.10 and 5.11]** of this ordinance, the results of this monitoring shall be included in the report.

5.5 Reports of Changed Conditions

Each user must notify the POTW Director of any planned significant changes to the user's operations or system which might alter the nature, quality, or volume of its wastewater at least [thirty (30)] days before the change. The permittee shall not begin the changes until receiving written approval from the Control Authority and/or Municipality. See Section 5.6(d) for other reporting requirements.

- (a) The POTW Director may require the user to submit such information as may be deemed necessary to evaluate the changed condition, including the submission of a wastewater discharge permit application

under section [4.2] of this ordinance.

- (b) The POTW Director may issue a wastewater discharge permit under section [4.2] of this ordinance or modify an existing wastewater discharge permit under section [4.2] of this ordinance in response to changed conditions or anticipated changed conditions.
- (c) For purposes of this requirement, significant changes include, but are not limited to, flow or pollutant increases of twenty percent (20 %) or greater, and the discharge of any previously unreported pollutants. [increases or decreases to production; increases in discharge of previously reported pollutants; discharge of pollutants not previously reported to the Control Authority and/or Municipality; new or changed product lines; new or changed manufacturing processes and/or chemicals; or new or changed customers]

5.6 Reports of Potential Problems

- (i) In the case of any discharge, including, but not limited to, accidental discharges, discharges of a non-routine, episodic nature, a non-customary batch discharge, or a slug load as defined in Section [1.2(a)(36)], that may cause potential problems for the POTW, the user shall immediately telephone and notify the POTW Director/ Superintendent of the incident. This notification shall include the location of the discharge, type of waste, concentration and volume, if known, and corrective actions taken by the user.
- (j) Within five (5) days following such discharge, the user shall, unless waived by the POTW Director, submit a detailed written report describing the cause(s) of the discharge and the measures to be taken by the user to prevent similar future occurrences. Such notification shall not relieve the user of any expense, loss, damage, or other liability which may be incurred as a result of damage to the POTW, natural resources, or any other damage to person or property; nor shall such notification relieve the user of any fines, penalties, or other liability which may be imposed pursuant to this ordinance.
- (k) A notice shall be permanently posted on the user's bulletin board or other prominent place advising employees whom to call in the event of a discharge described in paragraph (a), above. Employers shall ensure that all employees, who may cause such a discharge to occur, are advised of the emergency notification procedure.
- (l) All SIUs are required to notify the POTW immediately of any changes at its facility affecting the potential for spills and other accidental discharge, discharge of a non-routine, episodic nature, a non-customary batch discharge, or a slug load as defined in Section [1.2(a)(36)].

5.7 Reports from Unpermitted Users

- (m) All users not required to obtain a wastewater discharge permit shall provide appropriate reports to the POTW Director as the POTW Director may require.
- (n) All users classified as Non-Significant Categorical Industrial Users under Section 1.2(a)(34)(F) shall provide appropriate reports to the POTW Director as the POTW Director may require. At a minimum, this shall include the Annual Certification of continuing to meet the Non-Significant Categorical Industrial User criteria as required under 40 CFR Part 403.12(q).

5.8 Notice of Violation/Repeat Sampling and Reporting

- (o) If sampling performed by a user indicates a violation, the user must notify the POTW Director within twenty-four (24) hours of becoming aware of the violation. The user shall also repeat the sampling and analysis and submit the results of the repeat analysis to the POTW Director within thirty (30) days after becoming aware of the violation. If allowed by the POTW Director, the user is not required to resample:

- (1) if the POTW Director monitors at the user's facility at least once a month; or
 - (2) if the POTW Director samples between the user's initial sampling and when the user receives the results of this sampling.
- (p) If the POTW Director has performed sampling and analysis in lieu of the industrial user and the POTW sampling of the user indicates a violation, the POTW Director shall repeat the sampling and obtain the results of the repeat analysis within thirty (30) days after becoming aware of the violations, unless one of the following occurs:
- (1) the POTW Director monitors at the user's facility at least once a month; or
 - (2) the POTW Director samples the user between their initial sampling and when the POTW receives the results of this initial sampling; or
 - (3) the POTW Director requires the user to perform sampling and submit the results to the POTW Director within the 30 day deadline of the POTW becoming aware of the violation.

5.9 Notification of the Discharge of Hazardous Waste

The Town prohibits the discharge of any hazardous wastes without notification and approval of the POTW Director.

- (q) Any user who commences the discharge of hazardous waste shall notify the POTW, the EPA Regional Waste Management Division Director, and State hazardous waste authorities, in writing, of any discharge into the POTW of a substance which, if otherwise disposed of, would be a hazardous waste under 40 CFR Part 261. Such notification must include the name of the hazardous waste as set forth in 40 CFR Part 261, the EPA hazardous waste number, and the type of discharge (continuous, batch, or other). If the user discharges more than one hundred (100) kilograms of such waste per calendar month to the POTW, the notification also shall contain the following information to the extent such information is known and readily available to the user: an identification of the hazardous constituents contained in the wastes, an estimation of the mass and concentration of such constituents in the wastestream discharge during the calendar month, and an estimation of the mass of constituents in the wastestream expected to be discharged during the following twelve (12) months. All notifications must take place no later than one hundred and eighty (180) days **before** the discharge commences. The user shall not begin the discharge until receiving written approval from the Control Authority. Any notification under this paragraph need be submitted only once for each hazardous waste discharge. However, notifications of changed conditions must be submitted under section [5.5] of this ordinance. The notification requirement in this section does not apply to pollutants already reported by users **subject to categorical pretreatment standards** under the self-monitoring requirements of sections **15.1, 5.3, and 5.4** of this ordinance.
- (r) Dischargers are exempt from the requirements of paragraph [(a)], above, during a calendar month in which they discharge no more than fifteen (15) kilograms of hazardous wastes, unless the wastes are acute hazardous wastes as specific in 40 CFR 261.30(d) and 261.33(e). Discharge of more than fifteen (15) kilograms of nonacute hazardous wastes in a calendar month, or of any quantity of acute hazardous wastes as specified in 40 CFR 261.30(d) and 261.33(e), requires a one-time notification. Subsequent months during which the user discharges more than such quantities of any hazardous waste do not require additional notification.
- (s) In the case of any new regulation under section 3001 of RCRA identifying additional characteristics of hazardous waste or listing any additional substance as a hazardous waste, the user must notify the POTW Director, the EPA Regional Waste Management Waste Division Director, and State hazardous waste authorities of the discharge of such substance within ninety (90) days of the effective date of such regulations.
- (t) In the case of any notification made under this section, the user shall certify that It has a program in place to reduce the volume and toxicity of hazardous wastes generated to the degree it has detemlined to be economically practical.
- (u) This provision does not create a right to discharge any substance not otherwise permitted to be discharged by this ordinance, a permit issued thereunder, or any applicable Federal or State law.

5.10 Analytical Requirements

All pollutant analyses, including sampling techniques, to be submitted as part of a wastewater discharge permit application or report shall be performed by a laboratory certified by the State to perform the wastewater analyses in accordance with the techniques prescribed in 40 CFR Part 136, unless otherwise specified in an applicable categorical pretreatment standard or unless otherwise performed in accordance with procedure approved by EPA or the Town. If 40 CFR Part 136 does not contain sampling or analytical techniques for the pollutant in question, sampling and analyses must be performed in accordance with procedures approved by EPA and the Town.

5.11 Grab and Composite Sample Collection

- (a) All wastewater samples must be representative of the user's discharge. Wastewater monitoring and flow measurement facilities shall be properly operated, kept clean, and maintained in good working order at all times. The failure of a user to keep its monitoring facility in good working order shall not be grounds for the user to claim that sample results are unrepresentative of its discharge.
- (b) Grab Samples must be used for pH, cyanide, total phenols, oil and grease, sulfide, volatile organic compounds, and any other pollutants as required by 40 CFR 136. The POTW shall determine the number of grabs necessary to be representative of the User's discharge. See 40 CFR 403.12(g)(5) for additional grab sample number requirements for BMR and 90 Day Compliance Reports. Additionally, the POTW Director may allow collection of multiple grabs during a 24 hour period which are composited prior to analysis as allowed under 40 CFR 136.
- (c) Composite Samples: All wastewater composite samples shall be collected with a minimum of hourly aliquots or grabs for each hour that there is a discharge. All wastewater composite samples shall be collected using flow proportional composite collection techniques, unless time-proportional composite sampling or grab sampling is authorized by the POTW Director. When authorizing time-proportional composites or grabs, the samples must be representative and the decision to allow the alternative sampling must be documented.

5.12 Timing

Written reports will be deemed to have been submitted on the date postmarked. For reports which are not mailed, postage prepaid, into a mail facility serviced by the United States Postal Service, the date of receipt of the receipt shall govern.

5.13 Record Keeping

Users subject to the reporting requirements of this ordinance shall retain, and make available for inspection and copying, all records of information obtained pursuant to any monitoring activities required by this ordinance and any additional records of information obtained pursuant to monitoring activities undertaken by the user independent of such requirements. Records shall include the date, exact place, method, and time of sampling, and the name of the person(s) taking the samples; the dates analyses were performed; who performed the analyses; the analytical techniques or methods used; and the results of such analyses. These records shall remain available for a period of at least three (3) years. This period shall be automatically extended for the duration of any litigation concerning the user or the Town, or where the user has been specifically notified of a longer retention period by the POTW Director.

5.14 Electronic Reporting

The POTW Director may develop procedures for receipt of electronic reports for any reporting requirements of this Ordinance. Such procedures shall comply with 40 CFR Part 3. These procedures shall be enforceable under Section 8 of this Ordinance.

5.15 Special Reporting Requirements for IU's in Satellite POTW's

In the case of an industrial user located in a Satellite POTW organization's jurisdiction, all information required to be reported to the Industrial User's Pretreatment Control Authority by the Section shall also be reported to the POTW treatment plant organization.

Sections 8-121 through 8-125 Compliance Monitoring

SECTION 6 - COMPLIANCE MONITORING

6.1 Monitoring Facilities

The Town requires the user to provide and operate at the user's own expense, monitoring facilities to allow inspection, sampling, and flow measurement of the building sewer and/or internal drainage systems. The monitoring facility should normally be situated on the user's premises, but the Town may, when such a location would be impractical or cause undue hardship on the user, allow the facility to be constructed in the public street or sidewalk area and located so that *it* will not be obstructed by landscaping or parked vehicles.

There shall be ample room in or near such sampling manhole or facility to allow accurate sampling and preparation of samples for analysis. The facility, sampling, and measuring equipment shall be maintained at all times in a safe and proper operating condition at the expense of the user.

Whether constructed on public or private property, the sampling and monitoring facilities shall be provided in accordance with the requirements of the Town and all applicable local construction standards and specifications. Construction shall be completed within 90 days following written notification by the Town.

6.2 Inspection and Sampling

The Town will inspect the facilities of any user to ascertain whether the purpose of this ordinance is being met and all requirements are being complied with. Persons or occupants of premises where wastewater is created or discharged shall allow the Town, approval authority and EPA or their representative ready access at all reasonable times to all parts of the premises for the purposes of inspection, sampling, records examination and copying or in the performance of any of their duties. The Town, approval authority and EPA shall have the right to set up on the user's property such devices as are necessary to conduct sampling, inspection, compliance monitoring and/or metering operations. Where a user has security measures in force which would require proper identification and clearance before entry into their premises, the user shall make necessary arrangements with their security guards so that upon presentation of suitable identification, personnel from the Town, approval authority and EPA will be permitted to enter, without delay, for the purposes of performing their specific responsibilities. Denial of the Town's, approval authority's, or EPA's access to the user's premises shall be a violation of this ordinance. Unreasonable delays may constitute denial of access.

6.3 Search Warrants

If the Town, approval authority, or EPA has been refused access to a building, structure, or property, or any part thereof, and is able to demonstrate probable cause to believe that there may be a violation of this ordinance, or that there is a need to inspect and/or sample as part of a routine inspection and sampling program of the Town designed to verify compliance with this ordinance or any permit or order issued hereunder, or to protect the overall public health, safety and welfare of the community, then the Town, approval authority, or EPA may seek issuance of a search warrant from the court having jurisdiction within the Town.

Sections 8-125 through 8-127 Confidential Information

SECTION 7 - CONFIDENTIAL INFORMATION

Information and data on a user obtained from reports, questionnaires, permit applications, permits and monitoring programs and from inspections shall be available to the public or other governmental agency without restriction unless the user specifically requests and is able to demonstrate to the satisfaction of the POTW Director/ Superintendent that the release of such information would divulge information, processes or methods of production entitled to protection as trade secrets of the user. Any such request must be asserted at the time of submission of the information or data.

When requested by the person furnishing a report, the portions of a report which might disclose trade secrets or secret processes shall not be made available for inspection by the public, but shall be made available upon written request to governmental agencies for uses related to this ordinance, the National Pollutant Discharge Elimination System (NPDES) Permit, Non-discharge permit and/or the pretreatment programs; provided, however, that such portions of a report shall be available for use by the State or any state agency in judicial review or enforcement proceedings involving the person furnishing the report. Wastewater constituents and characteristics will not be recognized as confidential information.

All records relating to compliance with Pretreatment Standards shall be made available to officials of the approval authority and EPA upon request.

Sections 8-128-8-130 Enforcement

SECTION 8 - ENFORCEMENT

8.1 Administrative Remedies

(a) Notification Of Violation

Whenever the POTW Director finds that any industrial user has violated or is violating this Ordinance, wastewater permit, or any prohibition, limitation or requirements contained therein or any other pretreatment requirement the POTW Director may serve upon such a person a written notice stating the nature of the violation. Within 30 days from the date of this notice, an explanation for the violation and a plan for the satisfactory correction thereof shall be submitted to the Town by the user. Submission of this plan does not relieve the discharger of liability for any violations occurring before or after receipt of the notice of violation.

(b) Consent Orders

The POTW Director is hereby empowered to enter into consent orders, assurances of voluntary compliance, or other similar documents establishing an agreement with the person responsible for the noncompliance. Such orders will include specific action to be taken by the discharger to correct the noncompliance within a time period also specified by the order. Consent orders shall have the same force and effect as an administrative order issued pursuant to section [8.1(d)], below.

(c) Show Cause Hearing

The POTW Director may order any industrial user who causes or is responsible for an unauthorized discharge, has violated this ordinance or is in noncompliance with a wastewater discharge permit to show cause why a proposed enforcement action should not be taken. In the event the POTW Director determines that a show cause order should be issued, a notice shall be served on the user specifying the time and place for the hearing, the proposed enforcement action, the reasons for such action, and a request that the user show cause why this proposed enforcement action should not be taken. The notice of the hearing shall be served personally or by registered or certified mail (return receipt requested) at least ten (10) days before the hearing. Service may be made on any agent or officer of a corporation.

The POTW Director shall review the evidence presented at the hearing and determine whether the proposed

enforcement action is appropriate.

A show cause hearing under this section is not a prerequisite to the assessment of a civil penalty under section **[8.2]** nor is any action or inaction taken by the POTW Director/ Manager under this section subject to an administrative appeal under **section 10** of this ordinance.

(d) Administrative Orders

When the POTW Director finds that an industrial user has violated or continues to violate this ordinance, permits or orders issued hereunder, or any other pretreatment requirement the POTW Director may issue an order to cease and desist all such violations and direct those persons in noncompliance to do any of the following:

- (1) Immediately comply with all requirements;
- (2) Comply in accordance with a compliance time schedule set forth in the order;
- (3) Take appropriate remedial or preventive action in the event of a continuing or threatened violation
- (4) Disconnect unless adequate treatment facilities, devices or other related appurtenances are installed and properly operated within a specified time period.

(e) Emergency Suspensions

The POTW Director may suspend the wastewater treatment service and/or wastewater permit when such suspension is necessary in order to stop an actual or threatened discharge which presents or may present an imminent or substantial endangerment to the health or welfare of persons or the environment, interferes with the POTW or causes the POTW to violate any condition of its NPDES or Non-discharge permit.

Any user notified of a suspension of the wastewater treatment service and/or the wastewater permit shall immediately stop or eliminate the contribution. A hearing will be held within 15 days of the notice of suspension to determine whether the suspension may be lifted or the user's waste discharge permit terminated. In the event of a failure to comply voluntarily with the suspension order, the POTW Director shall take such steps as deemed necessary including immediate severance of the sewer connection, to prevent or minimize damage to the POTW system or endangerment to any individuals. The POTW Director shall reinstate the wastewater permit and the wastewater treatment service upon proof of the elimination of the noncompliant discharge. The industrial user shall submit a detailed written statement describing the causes of the harmful contribution and the measures taken to prevent any future occurrence to the POTW Director prior to the date of the above-described hearing.

(f) Termination Of Permit or Permission to Discharge

The POTW Director may revoke a wastewater discharge permit or permission to discharge for good cause, including, but not limited to, the following reasons:

- (1) Failure to accurately report the wastewater constituents and characteristics of his discharge;
- (2) Failure to report significant changes in operations, or wastewater constituents and characteristics;
- (3) Refusal of reasonable access to the user's premises for the purpose of inspection or monitoring; or,
- (4) Violation of conditions of the permit or permission to discharge, conditions of this ordinance, or any applicable State and Federal regulations.

Noncompliant industrial users will be notified of the proposed termination of their wastewater permit and will be offered an opportunity to show cause under section **[8.1]** of this ordinance why the proposed action should not be taken.

8.2 Civil Penalties

(g) Any user who is found to have failed to comply with any provision of this ordinance, or the orders, rules, regulations and permits issued hereunder, may be assessed a civil penalty of up to twenty-five thousand dollars (\$25,000) per day per violation.

- (1) Penalties between \$10,000 and \$25,000 per day per violation may be assessed against a violator only if:

(A) for any class violation, only if a civil penalty has been imposed against the violator within five years

preceding the violation, or

(B) in the case of failure to file, submit, or make available, as the case may be, any documents, data, or reports required by this ordinance, or the orders, rules regulations and permits issued hereunder, only if the POTW director determines that the violation was intentional and a civil penalty has been imposed against the violator within the five years preceding the violation.

- (h) In determining the amount of the civil penalty, the POTW Director shall consider the following:
 - (1) The degree and extent of the harm to the natural resources, to the public health, or to public or private property resulting from the violation;
 - (2) The duration and gravity of the violation;
 - (3) The effect on ground or surface water: quantity or quality or on air quality;
 - (4) The cost of rectifying the damage;
 - (5) The amount of money saved by noncompliance;
 - (6) Whether the violation was committed willfully or intentionally;
 - (7) The prior record of the violator in complying or failing to comply with the pretreatment program;
 - (8) The costs of enforcement to the Town.
- (i) Appeals of civil penalties assessed in accordance with this section shall be as provided in **section 10** of this ordinance.

8.3 Other Available Remedies

Remedies, in addition to those previously mentioned in this ordinance, are available to the POTW Director who may use any single one or combination against a noncompliant user. Additional available remedies include, but are not limited to:

- (a) Criminal Violations.
- (b) The District Attorney for Robeson County may, at the request of the Town, prosecute noncompliant users who violate the provisions of N.C.G.S. 143-215.6B. [Note: Under North Carolina law, it is a crime to negligently violate any term, condition, or requirement of a pretreatment permit, or negligently fail to apply for a pretreatment permit, issued by local governments (G.S. 143-215.6B(f)), to knowingly and willfully violate any term, condition, or requirement of a pretreatment permit, or knowingly and willfully fail to apply for a pretreatment permit, issued by local governments (G.S. 143-215.6B(g)), to knowingly violate any term, condition, or requirement of a pretreatment permit issued by local governments, or knowingly fail to apply for a pretreatment permit, knowing at the time that a person is placed in imminent danger of death or serious bodily injury, (G.S. 143-215.6B(h)), and to falsify information required under Article 21 of Chapter 143 of the General Statutes (G.S. 143-215.6B(i)).]
- (c) Injunctive Relief. Whenever a user is in violation of the provisions of this ordinance or an order or permit issued hereunder, the POTW Director, through the City Attorney, may petition the Superior Court of Justice for the issuance of a restraining order or a preliminary and permanent injunction which restrains or compels the activities in question.
- (d) Water Supply Severance. Whenever an industrial user is in violation of the provisions of this ordinance or an order or permit issued hereunder, water service to the industrial user may be severed and service will only recommence, at the user's expense, after it has satisfactorily demonstrated ability to comply .
- (e) Public Nuisances
Any violation of the prohibitions or effluent limitations of this ordinance or of a permit or order issued hereunder, is hereby declared a public nuisance and shall be corrected or abated as directed by the POTW Director. Any person(s) creating a public nuisance shall be subject to the provisions of the appropriate ordinances of the Town governing such nuisances, including reimbursing the POTW for any costs incurred in removing, abating or remedying said nuisance.

8.4 Remedies Nonexclusive

The remedies provided for in this ordinance are not exclusive. The POTW Director may take any, all, or any combination of these actions against a noncompliant user. Enforcement of pretreatment violations will generally be in accordance with enforcement response plan of the Town. However, the POTW Director may take other action against any user when the circumstances warrant. Further, the POTW Director is empowered to take more than one enforcement action against any noncompliant user.

Sections 8-130 through 8-135 Annual Publication of Significant Noncompliance

SECTION 9-ANNUAL PUBLICATION OF SIGNIFICANT NONCOMPLIANCE

At least annually, the POTW Director shall publish in the largest daily newspaper circulated in the service area, a list of those industrial users which were found to be in significant noncompliance, also referred to as repoliable noncompliance in 15A NCAC 2H .0903(b)(10), with applicable pretreatment standards and requirements, during the previous 12 months.

Section 8-136 through 8-140 Adjudicatory Hearings

SECTION 10 -ADJUDICATORY HEARINGS

Hearings: The local government may conduct hearings in accordance with its regular hearing procedure.

- (a) Adjudicatory Hearing. An applicant whose permit is denied, or is granted subject to conditions he deems unacceptable, a permittee/user assessed a civil penalty under section [8.2], or one issued an administrative order under section [18.1] shall have the right to an adjudicatory hearing before the POTW Director or other hearing officer appointed by the POTW Director upon making written demand, identifying the specific issues to be contested, to the POTW Director within **30** days following receipt of the significant industrial user permit, civil penalty assessment, or administrative order. Unless such written demand is made within the time specified herein, the action shall be final and binding and further appeal is barred. For modified permits, only those parts of the permits being modified may be adjudicated.
- (b) The hearing officer shall make a final decision on the contested permit, penalty, or order within 45 days of the receipt of the written demand for a hearing. The POTW Director shall transmit a copy of the hearing officer's decision by registered or certified mail as described in paragraph (b) below. The decision is a final decision for the purposes of seeking judicial review. The terms and conditions of a permit under appeal shall be as follows:
 - (1) New Permits. Upon appeal, including judicial review in the General Courts of Justice, of the terms or conditions of a newly issued permit, the terms and conditions of the entire permit are stayed and the permit is not in effect until either the conclusion of judicial review or until the parties reach a mutual resolution.
 - (2) Renewed Permits. Upon appeal, including judicial review in the General Courts of Justice, of the terms or conditions of a renewed permit, the terms and conditions of the existing permit remain in effect until either the conclusion of judicial review or until the parties reach a mutual resolution.
 - (3) Terminated Permits. Upon appeal, including judicial review in the General Courts of Justice, of a terminated permit, no permit is in effect until either the conclusion of judicial review or until the parties reach a mutual resolution.
- (c) Official record. When a final decision is issued under paragraph (a) above, the Hearing Officer shall prepare an official record of the case that includes:
 - (1) All notices, motions, and other like pleadings;
 - (2) A copy of all documentary evidence introduced;

- (3) A certified transcript of all testimony taken, if testimony is transcribed. If testimony is taken and not transcribed, then a narrative summary of any testimony taken;
 - (4) A copy of the final decision of the Hearing Officer.
- (d) Judicial Review. Any person against whom a final order or decision of the Hearing Officer is entered, pursuant to the hearing conducted under paragraph (a) above, may seek judicial review of the order or decision by filing a written request for review by the Superior Court of Robeson County within-30 days after receipt of notice by registered or certified mail of the order or decision, but not thereafter, along with a copy to the Town of Pembroke Department of Public Utilities. Within 30 days after receipt of the copy of the written request for review by the Court, the Hearing Officer shall transmit to the reviewing court the original or a certified copy of the official record.

Sections 8-141 through 8-145 Affirmative Defenses to Discharge Violations

SECTION 11 -AFFIRMATIVE DEFENSES TO DISCHARGE VIOLATIONS

11.1 Upset

- (a) An upset shall constitute an affirmative defense to an action brought for noncompliance with categorical pretreatment standards if the requirements of paragraph (b), below, are met.
- (b) A user who wishes to establish the affirmative defense or upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:
 - (1) An upset occurred and the user can identify the cause(s) of the upset;
 - (2) The facility was at the time being operated in a prudent and workman-like manner and in compliance with applicable operation and maintenance procedures; and
 - (3) The user has submitted the following information to the POTW Director within twenty-four (24) hours of becoming aware of the upset [if this information is provided orally, a written submission must be provided within five (5) days]:
 - (i) A description of the indirect discharge and cause of noncompliance;
 - (ii) The period of noncompliance, including exact dates and times or, if not corrected, the anticipated time the noncompliance is expected to continue; and
 - (iii) Steps being taken and/or planned to reduce, eliminate, and prevent recurrence of the noncompliance.
- (c) In any enforcement proceeding, the user seeking to establish the occurrence of an upset shall have the burden of proof
- (d) Users will have the opportunity for a judicial determination on any claim of upset only in an enforcement action brought for noncompliance with categorical pretreatment standards.
- (e) Users shall control production of all discharges to the extent necessary to maintain compliance with categorical pretreatment standards upon reduction, loss, or failure of its treatment facility until the facility is restored or an alternative method of treatment is provided. This requirement applies in the situation where, among other things, the primary source of power of the treatment facility is reduced, lost, or fails.

11.2 Prohibited Discharge Standards Defense

A user shall have an affirmative defense to an enforcement action brought against it for noncompliance with the general prohibitions in section [2.1 (a)] of this ordinance or the specific prohibitions in sections [2.1(b)(2), (3), (5 - 7), and (9 - 23)] of this ordinance if it can prove that it did not know, or have reason to know, that its discharge, alone or in conjunction with discharges from other sources, would cause pass through or interference and that either:

- (f) A local limit exists for each pollutant discharged and the user was in compliance with each limit directly prior to, and during, the pass through or interference; or
- (g) No local limit exists, but the discharge did not change substantially in nature or constituents from the user's

Pursuant to 40 CFR Section 403.5(a)(2), the affirmative defense outlined in Section 11.2 cannot apply to the specific prohibitions in Sections 2.1(b)(1) and (4), and (8).J

11.3 Bypass

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

Sections 8-146 through 8-149 Severability

SECTION 12 - SEVERABILITY

If any provision, paragraph, word, section or article of this ordinance is invalidated by any court of competent jurisdiction, the remaining provisions, paragraphs, words, sections, and chapters shall not be affected and shall continue in full force and effect.

Section 8-150 Conflict

SECTION 13 - CONFLICT

All other ordinances and parts of other ordinances inconsistent or conflicting with any part of this ordinance are hereby repealed to the extent of such inconsistency or conflict.

ARTICLE X. – FATS, OILS, AND GREASE (FOG) CONTROL.

Section 8-151 Scope and Purpose.

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

When not disposed of properly, FOG forms thick layers inside sewers constricting flow, similar to the way cholesterol affects blood flow in our arteries. Clogged sewers result in sewage spills and overflows, which creates environmental and public health concerns. Improper cleanup practices allow food particles, oil and grease, and cleaning products to flow to the wastewater collection system.

The Town of Pembroke Public Works Department devotes equipment and man hours to unstopping and cleaning the sewer (wastewater) collection system which includes, but not limited to manholes, lift stations, gravity lines, and service lines clogged with oil and grease.

(1992 Code, Section 52.001)

Ordinance adopted April 10, 2010.

Section 8-152 Authority

By the adoption of the Sewer Use Ordinance (SUO) of the Town of Pembroke, the Town requires that all wastewater will comply with said ordinance and this policy. The SUO states the requirement of grease removal.

Also in conjunction with Chapter 10, Traps, Interceptors, and Separators of the North Carolina State Building Code, Volume II – Plumbing Code or latest version.

Pursuant to requirements of the Town of Pembroke Wastewater Collection System Permit (WQCS00114) Article I, Section 4.

The intent of this policy is to also ensure compliance with rules and regulations of the United States Environmental Protection Agency and the North Carolina Department of Environment and Natural Resources.

(1992 Code, Section 52.002)

Ordinance adopted April 10, 2010.

Section 8-153 Definitions.

- (A) Fats, Oils, and Greases (FOG). Organic polar compounds derived from animal and/or plant sources that contain multiple carbon chain triglyceride molecules. These substances are detectable and measurable using analytical test procedures established in 40CFR 136 as “grease or “greases”.
- (B) Greases. Rendered animal fat, vegetable shortening, and other such oily matter used for the purposes of and resulting from cooking and/or preparing foods. This includes the accumulation of oils, fats, cellulose, starch, proteins, and wax.
- (C) Grease Trap and Grease Interceptor. An approved device for separating and retaining waterborne greases and grease complexes prior to the wastewater exiting the trap and entering the sanitary sewer collection and treatment system. Traps are in the floor grease retention units, which are normally 100 gallons or less capacity. Some older existing traps may be an “under-the-counter” or “above-floor” design. Interceptors are grease retention units, of the “outdoor” or “underground” type and normally consist of a 1,000 gallon or more capacity. Grease traps and interceptors are sometimes referred to herein as “grease interceptors.”
- (D) Food Service Establishments (FSE). Those establishments engaged in activities of preparing, serving, or otherwise making available for consumption foodstuffs and that use one or more of the following preparation activities:
 - (1) frying (all methods)
 - (2) grilling
 - (3) sautéing
 - (4) rotisserie cooking
 - (5) broiling(all methods)
 - (6) blanching
 - (7) roasting, toasting, or poaching

Also including are infrared heating, searing, barbecuing, and any other food preparation activity that produces a hot, non-drinkable food product in or on a receptacle that requires washing.

Some establishments include, but are not limited to, the following:

- (1) restaurants
 - (2) cafeterias
 - (3) extended care facilities
 - (4) school facilities (public or private)
 - (5) Daycare facilities where meals for more than six (6) children are served, prepared, or otherwise made available for human consumption.
- (E) Non Cooking Food Service Establishments. Those establishments primarily engaged in the preparation of precooked foodstuffs that do not include any form of cooking. These include cold dairy and frozen foodstuffs preparation and serving establishments.
- (F) Publicly Owned Treatment Works (POTW). A treatment works as defined by section 212 of the Act, (33 U.S.C. §1292). This definition includes any devices or systems used in the collection, storage, treatment, recycling, and reclamation of municipal sewage (wastewater) or industrial wastes of a liquid or solid nature. It also includes sewers, pipes, and other conveyances of wastewater to the treatment plant.

- (G) Sewer Use Ordinance (SUO). A Town legal document stating the requirements of all facilities (including restaurants) discharging to the local POTW.
- (H) User. Any person including those located outside the jurisdictional limits of the Town, who contributes, caused or permits the contribution or discharge of wastewater into the POTW, including persons who contribute such wastewater from mobile sources such as those who discharge hauled wastewater.
- (I) Sanitary Sewer Overflow (SSO). Overflow or discharge of raw sewage from municipal wastewater systems often due to a blockage in a line.
- (J) Best Management Practices (BMPs). Fats, oils and grease can be managed effectively in the food service industry to minimize the discharge to the sewer system and decrease the required maintenance of grease retention units. Best Management Practices are kitchen cleaning and grease-handling techniques used throughout the industry, and have proven effective when implemented properly and consistently.
- (K) Minimum Design Capacity . The design features of a grease interceptor and its ability or volume required to effectively intercept and retain greases and grease-laden wastewaters discharged into the public wastewater system.
- (L) Maintenance. The complete removal of all grease interceptor contents including: floatable materials, wastewater, sludge and solids. The interceptor must be thoroughly cleaned to remove grease and scum from inner walls and baffles.

(1992 Code, Section 52.003)

Ordinance adopted April 10, 2010.

Section 8-154 General Requirements.

All food service establishments discharging wastewater into the Town of Pembroke wastewater collection system are subject to the following requirements:

- (A) No grease laden sources are allowed to be connected to the Town's sewer collection system unless connected through an approved grease trap or interceptor.
- (B) All Food Service Establishments shall have grease handling facilities installed and maintained, at the User's expense. Non-Cooking Food Service Establishments and other commercial, institutional and/or industrial establishments may also require grease- handling facilities to be installed when deemed necessary by the Public Works Director or his designee.
- (C) An administrative fee of \$100.00 per year to be paid to the Town is required of all Food Service Establishments. This fee is to be used to offset the cost associated with inspections, testing, and equipment.
- (D) Any Food Service Establishments without any grease handling facilities will be allowed a compliance deadline not to exceed (1) year from the date of adoption of this ordinance to have approved grease-handling equipment installed.
- (E) The following shall not be discharged into the Fat, Oil, Grease Removal System:
 - (1) Waste that does not contain fat, oil, grease, and that does not require treatment;
 - (2) Wastewater from dish washing machines or wastewater with temperature exceeding 150°F;
 - (3) Ground residue from food waste grinders and garbage disposals;
 - (4) Sanitary waste;

- (5) Emulsifiers, chemicals, and enzymes; and
 - (6) Used cooking oil.
-
- (F) Food Service Establishments whose grease handling facilities or methods are either under-designed or substandard, or not adequately maintained to prevent floatable fats, oils or greases from entering the wastewater system shall be required to provide a schedule whereby corrections will be accomplished.
 - (G) This Policy maintains the discharge limitation from users of the Town's wastewater collection system for oil and grease at 100 mg/l (milligrams per liter), as identified by EPA Method 1664A. The discharge should have no visible grease or oil. Additionally the Policy requires the user to install and keep maintained, at his expense, a grease trap/interceptor at his establishment.
 - (H) All Food Service Establishments shall have receptacles for the collection of used cooking oil. The receptacle must be leak proof. Disposal frequency shall be maintained to prevent overflow. Disposal shall meet all federal, state, and local laws. Disposal records shall be kept on site for 3 years. The premises shall be clean and attractive.
 - (I) All Food Service Establishments shall maintain a copy of the "Best Management Practices" and shall implement the BMPs through the proper training of all employees. Documentation of employee training on BMP's shall be maintained on-site and readily available upon request. Appendix A is a *Fact Sheet for BMPs* prepared by the North Carolina Pretreatment Coordinators.

(1992 Code, Section 52.004)

Ordinance adopted April 10, 2010.

Section 8-155 New Establishments.

All new Food Service Establishments shall be required to install grease interceptor(s) approved by the Public Works Director or his designee and designed according to minimum standards of the North Carolina Plumbing Code. Grease interceptor(s) shall be adequately sized, with no interceptor less than 1,000 gallons total capacity, unless approved by the Public Works Director. All interceptors shall be of a type, design, and capacity approved by the Public Works Director or his designee and shall be readily and easily accessible for user cleaning and Town inspection and meet the following minimum design specifications:

- (A) Interceptors shall provide for a minimum hydraulic retention time of twenty-four minutes at actual peak flow or 12 minutes at the calculated theoretical peak flow rate as predicted by the uniform plumbing code fixture criteria between the influent and allowed for sludge to settle and accumulate, identified hereafter as a "sludge pocket".
- (B) The minimum requirement for the sampling point shall be four inch (4") vertical cleanout.
- (C) An accessible entry into each chamber of the grease trap or interceptor.
- (D) Access manholes, with a minimum diameter of twenty-four inches (24") shall be provided over each chamber and sanitary tee. The access manholes shall extend at least to finish grade and be designed and maintained to prevent water inflow and infiltration.
- (E) The manholes shall also have readily removable covers to facilitate inspection, grease removal, and wastewater sampling activities.

All new housing complexes with two inch (2") water meters shall have a grease interceptor of a design and capacity approved by the Public Works Director or his designee.

No new Food Service Establishment will be allowed to initiate operations until grease handling facilities are installed and approved by the Public Works Director.

(1992 Code, Section 52.005)

Ordinance adopted April 10, 2010.

Section 8-156 Existing Establishments and/or New Establishments Locating in Existing Buildings

All existing food service establishments and new food service establishments locating in existing buildings shall have grease handling facilities, meeting the same requirements for installation and design as for new establishments.

Where it is determined by the Public Works Director that the installation of an approved “outdoor” grease interceptor is not feasible or physically impossible to install, then an adequate and approved “under-the-counter” grease trap, may be allowed for use on individual fixtures, including sinks, dishwashers, and other potentially grease containing drains. The location of these units must be located as near as possible to the source of the wastewater and approved by the Public Works Director.

(1992 Code, Section 52.006)

Ordinance adopted April 10, 2010.

Section 8-157 Exemption from Installation Requirements

A food service establishment determined to have no immediate adverse impact on the Town’s wastewater collection system because of the business type may be granted an exemption from the grease trap/interceptor installation requirements.

The Public Works Director may, at any time, revoke an exemption and require that a grease trap/interceptor be installed.

To obtain an exemption, a food service establishment must provide written request to the Public Works Director stating grounds for the exemption and request an inspection. Approval may only be by the Public Works Director or his designee.

Exemption for grease trap/interceptor requirements by virtue of the business type:

- (1) An establishment serving beverages only;
- (2) An establishment serving beverages and/or ready to eat, packaged or unpackaged food items (with or without warming);
- (3) A snack bar with no food preparations other than food warming;
- (4) A produce stand that only offers whole, uncut fresh fruits and vegetables;
- (5) A bed-and-breakfast that prepares and serves breakfast only to guests, with no more than six (6) guestrooms and no more than twelve (12) guests;
- (6) Other establishments serving only ready to eat foods with or without food warming.

(1992 Code, Section 52.007)

Ordinance adopted April 10, 2010.

Section 8-158 Maintenance and Inspections

The user is solely responsible for maintaining the grease handling facilities at a capacity capable of intercepting fat, oil and grease, at a capacity to operate efficiently at all times, and at a capacity to achieve compliance with the 100 mg/l grease and oil limit.

The exclusive use of enzymes, grease solvents, emulsifiers, etc. is not considered acceptable grease trap maintenance practice.

To ensure continuous and adequate operation of grease-handling facilities, regularly scheduled maintenance of grease-handling facilities is required.

Users shall empty and service grease interceptors to achieve compliance with the discharge limits as often as necessary, but in any event no longer than every 30 days. Under no circumstances shall the sludge or scum be reintroduced or discharged into the Town's wastewater collection system or POTW. The Town may require a specific schedule if deemed necessary by the Public Works Director.

Grease traps shall be serviced and documented daily or according to the manufacturer's recommended frequency. If the grease trap is not serviced daily, the user must demonstrate compliance with grease and oil limitations.

The user shall be responsible for the proper removal and disposal of captured material in a manner that complies with all federal, state, and local statutes, rules, regulations, policies and ordinances. All organic and inorganic solids, such as grit, rocks, gravel, sand, eating utensils, cigarettes, shells, towels, rags, etc., which settle into the sludge pocket and thereby reduce the effective volume of the grease trap/interceptor, are required to be removed and all floating material is required to be skimmed from trap or basin tank.

(1992 Code, Section 52.008)
Ordinance adopted April 10, 2010.

Section 8-159 Record Keeping.

The user shall maintain written record of grease trap maintenance on-site for a period of three (3) years. These records will be reviewed by the Town of Pembroke during their inspection of your establishment.

A copy of each interceptor service record as well as daily trap service shall be faxed to the Public Works Director at 910-521-8071 or mailed to the Public Works Department, Town of Pembroke, PO Box 866, Pembroke, North Carolina 28372, no later than 15 days after the end of the month during which the maintenance occurred.

A complete report shall include:

- (1) A receipt signed by the person responsible for performing the work. The date on the receipt must indicate the actual date the work was performed, not a billing date.
- (2) The receipt shall bear the name, address, phone number, and a contact name of the business performing the work.
- (3) The disposal method and destination of material removed.
- (4) Indicate the interceptor was refilled with clean water.
- (5) The size (in gallons) and location (above or below ground, in or outside of building, etc...) of the interceptor in relation to the food service establishment.

It is highly recommended that the user be present during any cleaning or pumping performed by a contractor, in order to appropriately respond to any questions the Town may have about the services performed.

(1992 Code, Section 52.009)

Ordinance adopted April 10, 2010.

Section 8-160 Inspections.

All food service establishments and grease-handling facilities shall be subject to review, evaluation, and inspection by authorized representative(s) of the Town of Pembroke during normal working hours.

Results of inspections will be made available to user. The Town may make recommendations for correction and improvement.

The Town will inspect each food service establishment to ensure compliance with this policy. This may include sink and trap set-up, quality of grease in the trap, clarity of the effluent, grease recycling bin, employee training, and vendor hauling records. However, the Town will initiate additional inspections, sampling, and pursue enforcement if the required hauling vendor paperwork is not in order or if the facility is located in the area where a blockage occurs.

(1992 Code, Section 52.010)

Ordinance adopted April 10, 2010.

Section 8-161 Sampling.

The Town may require that any user monitor and test their discharge for fat, oil and grease in such a manner and with such methods as are specified by the Director of Public Works. All monitoring results shall be reported to the Town of Pembroke within 5 days of receipt by the user. In addition, as a condition of discharging to the system, all users may be monitored by the Town without prior notice.

Those food service establishments whose effluent discharge is determined to cause interference in the conveyance or operation of the Town's wastewater collection system will be required to sample its grease trap discharge and have it analyzed for fat, oil and grease, at the expense of the user. Results of such analyses shall be reported to the Town.

Samples for fats, oils and grease must be obtained using grab collection techniques. Sampling shall be done from a point near the effluent tee or nearest manhole to get an indication of the effluent flowing from the interceptor. The sample must be collected and analyzed by a laboratory certified by the North Carolina Division of Water Quality.

The reports shall include the date, exact place, method, and time of sampling, the name of the person(s) taking the samples, the dates analyses were performed, lab performing the analyses, the techniques or methods used, and the results of such analyses.

(1992 Code, Section 52.011)

Ordinance adopted April 10, 2010.

Section 8-162 Enforcement.

Enforcement actions against Food Service Establishments will be taken in accordance with this policy. However, the Town of Pembroke reserves the right to implement other enforcement responses available under the Town of Pembroke Sewer Use Ordinance, and North Carolina Law, separately or in combination with this policy.

No later than one (1) year after adoption of this ordinance, all users shall install grease traps or interceptors designed to limit the introduction, contribution and discharge of greases into the Town's wastewater collection system. Grease traps and interceptors with appropriate sampling points shall be installed at the user's expense whenever any user operates a commercial establishment, industrial establishment, or cooking establishment, or when required by the Town's public works director or his designee. Grease interceptors must have a minimum capacity of one thousand (1000) gallons or more as required to obtain a grease and oil maximum concentration of 100 mg/l.

Except as provided herein, for a period of one (1) year following adoption of this ordinance, although installation of grease interceptors will be required to be installed, no enforcement action will be taken under this ordinance for the failure to achieve limits on grease discharges from grease interceptors.

If an obstruction or sanitary sewer overflow occurs and the obstruction or overflow can be attributed in part or in whole to an accumulation of grease in the Town's sewer system, the Town will take appropriate enforcement actions, as stipulated in the Town's ordinance, against the generator or contributor of such grease.

Food service establishments whose operations cause or allow excessive grease to discharge or accumulate in the Town's wastewater collection system may be liable to the Town for costs related to service calls for line blockages, line cleanings, line and pump repairs, and other repairs including labor, materials, and equipment.

The User will be liable for any fines and legal services dispensed from the State of North Carolina or the United States of America.

The Failure to pay all service-related charges may be considered grounds for discontinuance of services.

(1992 Code, Section 52.012)
Ordinance adopted April 10, 2010.

Section 8-163 Violations.

If it is determined the food service establishment is in violation of the Sewer Use Ordinance, Code of Ordinance, and/or this policy, the Town will notify and advise the establishment of what action is required to correct the violation.

Primary reasons for violations are, but not limited to, the following:

- (1) Failure to complete and return survey questionnaire by the due dates, as required by written notification;
- (2) Failure to install a grease trap/ interceptor by the due date;
- (3) Failure to provide a collection drum or container for segregating oils, grease and/or greasy solids by an assigned date;

- (4) Failure to properly maintain, clean/pump out, the grease trap/interceptor at a frequency that ensures efficient operation;
- (5) Failure to repair grease trap/interceptor by an assigned date;
- (6) Failure to maintain grease trap/interceptor maintenance records on site;
- (7) Failure to provide grease trap/interceptor maintenance records to the Public Works Department within specified time;
- (8) Failure to maintain a copy of the Best Management Practices and documentation supporting employee training on BMPs;
- (9) Failure to pay appropriate fee(s) and/or fine(s);
- (10) Denied authorized inspector access to your facility to observe conditions, obtain information, and/or perform sampling related to discharges to the Town's wastewater collection system on a given date.

Once a violation is found to exist, all cost associated with the follow-up sampling and testing will be at the User's expense.

If the concentration of grease and oil exceeds the discharge limit, the food service establishment will be routinely inspected and the discharge will be considered in violation until laboratory analysis confirms compliance.

(1992 Code, Section 52.013)
Ordinance adopted April 10, 2010.

Section 8-164 Penalty.

- (A) Any person, firm, or corporation violating any of the provisions of the Fats, Oils and Greases Control Ordinance shall be subject to a civil penalty not to exceed \$1000 per day plus costs outlined in this ordinance.
 - (1) A citation for said violation shall be issued by the Town Manager.
 - (2) Each citation for a civil penalty must be paid within thirty (30) days after issuance.
 - (3) Each and every day that the violation continues shall be a separate and distinct offense.
- (B) In addition to the enforcement provisions above, the violator shall be responsible for the reimbursement of costs for the following:
 - (1) Legal fees.
 - (2) Personnel and equipment expenses.
 - (3) Cost associated with the clean up or decontamination of a site after the discharge of substances into the Town wastewater collection system, storm water, and or the environment that cause interference, pass-through or a sanitary sewer blockage. This includes clean up and decontamination of all structures/areas including residential, commercial, and the environment.
 - (4) Sampling and monitoring.
 - (5) All costs associated with a public or private penalty against the Town due to Fats, Oils, and Grease Ordinance violations.

(1992 Code, Section 52.014)
Ordinance adopted April 10, 2010.

Sections 8-165 through 8-185: Reserved.

ARTICLE XI. – BACKFLOW AND CROSS CONNECTIONS

Section 8-186 Unregulated cross connections prohibited; backflow prevention program established.

No cross connection shall be made between the public water system of the Town and any other source of water, private water system or plumbing located on private property except in conformity with the requirements of this division and the currently adopted plumbing code of the Town. The Town Council hereby creates a "backflow prevention program" to protect the potable water supply of the Town of Pembroke. Appropriate backflow protection methods are adopted in this division, primarily in **Sections 8-186 through 8-196.** The goals of this division are listed below. No service connection shall be made to the public water system except in conformity with this division.

- a. To protect the public potable water supply of the Town of Pembroke from the possibility of contamination or pollution by isolating within the consumer's water system such contaminants, waterborne health hazards and other significant pollutants which could backflow into the public water systems.
- b. To eliminate or control existing cross-connections, actual or potential, between the consumer's potable water system(s) and nonpotable water system(s), plumbing fixtures and industrial piping systems.
- c. To provide a continuing inspection program of cross-connection control which will systematically and effectively control all actual or potential cross-connections which may be installed in the future.

(Town Ordinance No. 2005-2)

Section 8-187 Health Agency's Responsibility

The North Carolina Department of Environmental Quality has the responsibility for promulgating and enforcing laws, rules, regulations, and policies applicable to all water purveyors in the State of North Carolina in carrying out an effective Cross-Connection Control Program.

The Department also has the primary responsibility of ensuring that the water purveyor operates a public potable water system free of actual or potential sanitary hazards including unprotected cross-connections. The Department also has the responsibility of ensuring that the water purveyor provides an approved water supply at the service connection to the consumer's water system and, further, that the purveyor requires the installation, testing, and maintenance of an approved backflow prevention assembly on the service connection when required.

Section 8-188 Town of Pembroke's Responsibility

Except as otherwise provided herein, the Town of Pembroke is the water purveyor and is responsible for ensuring a safe water supply begins at the source and includes all of the public water distribution system, including the service connection, and ends at the point of delivery to the consumer's water systems. In addition, the Town of Pembroke shall exercise reasonable vigilance to ensure that the consumer has taken the proper steps to protect the public potable water system. The Town of Pembroke will determine the degree of hazard or potential hazard to the public potable water system, the degree of protection required, and will ensure proper containment protection through an ongoing inspection program. The Town of Pembroke will identify all facilities where approved backflow prevention assemblies are required to be installed.

When it is determined that a backflow prevention assembly is required for the protection of the public system, the Town of Pembroke shall require the consumer, at the consumer's expense, to install an approved backflow prevention assembly at service connection, to test immediately upon installation and thereafter at frequency as determined by the Town of Pembroke, to properly repair and maintain assembly or assemblies and to keep adequate records of each test and subsequent maintenance and repair, including materials and/or replacement parts.

Section 8-189 Plumbing Inspector's Responsibility

The plumbing inspection departments of the Town of Pembroke have the responsibility to not only review building plans and inspect plumbing as it is installed but, they have the explicit responsibility of preventing cross-connections from being designed and built into the plumbing system within its jurisdiction. Where the review of building plans suggests or detects the potential for cross-connections being made an integral part of the plumbing system, the plumbing inspector has the responsibility, under the North Carolina Building Code, for requiring that such cross-connections be either eliminated or provided with backflow prevention equipment approved by the North Carolina State Building Code.

The plumbing inspector's responsibility begins at the point of delivery downstream of the first installed backflow prevention assembly and continues throughout the entire length of the consumer's water system. The inspector should inquire about the intended use of water at any point where it is suspected that a cross-connection might be made or where one is actually called for by the plans. When such is discovered it shall be mandatory that a suitable, approved backflow prevention assembly approved by the North Carolina Building Code, North Carolina Department of Environmental Quality and the Town of Pembroke be required by the plans and be properly installed.

Section 8-190 Consumer's Responsibility

The consumer has the primary responsibility of preventing pollutants and contaminants from entering his/her potable water system or the public potable water system. The consumer's responsibility starts at the point of delivery from the public potable water system and includes all of his/her water system. The consumer, at his/her expense, shall install, operate, test, and maintain approved backflow prevention assemblies as directed by the Town of Pembroke. The consumer shall maintain accurate records of tests and repairs made to backflow prevention assemblies and shall maintain such records for a minimum period of three (3) years. The records shall be on forms approved by the Town of Pembroke and shall include the list of materials or replacement parts used. Following any repair, overhaul, re-piping, or relocation of an assembly, the consumer shall have it tested to ensure that it is in good operating condition and will prevent backflow. Tests, maintenance and repairs of backflow prevention assemblies shall be made by a Certified Backflow Prevention Assembly Tester.

Section 8-191 Certified Backflow Prevention Assembly Tester Responsibility

When employed by the consumer to test, repair, overhaul, or maintain backflow prevention assemblies, a Certified Backflow Prevention Assembly Tester (Tester) will have the following responsibilities:

The Tester will be responsible for making competent inspections and for repairing, or overhauling backflow prevention assemblies and making reports of such repair to the consumer and the Town of Pembroke on forms approved by the Town of Pembroke. The Tester shall include the list of materials or replacement parts used. The Tester shall be equipped with and be competent to use all the necessary tools, gauges, manometers and

other equipment necessary to properly test, repair, and maintain backflow prevention assemblies. It will be the Tester's responsibility to ensure that original manufactured parts are used in the repair of or replacement of parts in a backflow prevention assembly. It will be the Tester's further responsibility not to change the design, material or operational characteristics of an assembly during repair or maintenance without prior approval of the Town of Pembroke. A Tester shall perform the work and be responsible for the competency and accuracy of all tests and reports. The Tester shall provide a copy of all test and repair reports to the consumer and to the Town of Pembroke within ten (10) business days of any completed test or repair work. A Tester shall maintain such records for a minimum period of three (3) years.

All Certified Backflow Prevention Assembly Testers must obtain and employ backflow prevention assembly test equipment which has been evaluated and/or approved by the Town of Pembroke. All test equipment shall be registered with the Town of Pembroke. All test equipment shall be checked for accuracy annually (at a minimum), calibrated, if necessary, and certified to the Town of Pembroke as to such calibration, employing an accuracy/calibration method acceptable to the Town of Pembroke.

Section 8-192 Definitions.

Unless otherwise specifically provided, or unless clearly required by the context, the words and phrases defined in this section shall have the meaning indicated when used in this article.

Air gap separation means the unobstructed vertical distance through the atmosphere between the lowest point opening from any pipe or faucet supplying water to a tank, plumbing fixture or other device and the flood level rim of the receptacle. An "approved air-gap separation" shall be at least double the diameter of the supply pipe. In no case shall the air gap separation be less than one inch.

Approved means as herein used in reference to a water supply shall mean a water supply that has been approved by the North Carolina Department of Environmental Quality.

Atmospheric Type Vacuum Breaker. The term "atmospheric type vacuum breaker" (also known as the "non-pressure type vacuum breaker") shall mean a device containing a float-check, a check seat, and an air inlet port. The flow of water into the body causes the float to close the air inlet port. When the flow of water stops the float falls and forms a check valve against back-siphonage and at the same time opens the air inlet port to allow air to enter and satisfy the vacuum. A shutoff valve immediately upstream may be an integral part of the device. An atmospheric vacuum breaker is designed to protect against a non-health hazard (isolation protection only) under a back-siphonage condition only.

Auxiliary Water Supply. Any water supply on or available to the premises other than the purveyor's approved public water supply **will** be considered as an auxiliary water supply. These waters may be contaminated or polluted or they may be objectionable and constitute an unacceptable water source over which the water purveyor does not have sanitary control.

Backflow means any flow of water, liquid, gas or other substance, or any combination thereof, into the distribution piping of a potable water supply from any source or sources.

Backflow prevention assembly means an approved assembly or method used to prevent backflow from occurring in the potable water supply.

Back-pressure backflow means a backflow caused by a pump, elevated tank, boiler or other means that could create greater pressure within the consumer's water system greater than the supply pressure of the public water system.

Backsiphonage. The term "backsiphonage" shall mean a form of backflow due to a reduction in system pressure which causes a sub atmospheric pressure to exist at a site in the water system.

Certified tester means a person or persons trained and certified in the installation and testing of backflow prevention assemblies. Testers shall provide a current certificate from an approved school before allowed to test assemblies.

Check Valve. The term "approved check valve" shall mean a check valve that is drip-tight in the normal direction of flow when the inlet pressure is at least one (1) psi and the outlet pressure is zero. The check valve shall permit no leakage in a direction reversed to the normal flow. The closure element (e.g. clapper, poppet, or other design) shall be internally loaded to promote rapid and positive closure. An approved check valve is only one component of an approved backflow prevention assembly - i.e., pressure vacuum breaker, double-check valve assembly, double-check detector assembly, reduced pressure principle assembly, or reduced pressure detector assembly.

Consumer. The term "consumer" shall mean any person, firm, or corporation using or receiving water from the Town of Pembroke.

Consumer's Water System. The term "consumer's water system" shall include any water system commencing at the point of delivery and continuing throughout the consumer's plumbing system located on the consumer's premises, whether supplied by public potable water or an auxiliary water supply. The systems may be either a potable water system or an industrial piping system.

Consumer's Potable Water System. The term "consumer's potable water system" shall mean that portion of the privately owned potable water system lying between the point of delivery and point of use and/or isolation protection. This system will include all pipes, conduits, tanks, receptacles, fixtures, equipment, and appurtenances used to produce, convey, store, or use potable water.

Containment. The term "containment" shall mean preventing the impairment of the public potable water supply by installing an approved backflow prevention assembly at the service connection.

Contamination. The term "contamination" shall mean an impairment of the quality of the water which creates a potential or actual hazard to the public health through the introduction of hazardous or toxic substances or waterborne health hazards in the form of physical or chemical contaminants or biological organisms and pathogens.

Cross connection means any physical connection between a potable water supply system and any other piping system, sewer fixture, container or device, whereby water or other liquids, mixtures or substances may flow into or enter the potable water supply system and; any potable water supply outlet which is

submerged or is designed or intended to be submerged in non-potable water or in any source of contamination, or; an air gap, providing a space between the potable water pipe outlet and the flood level rim of a receiving vessel of less than twice the diameter of the potable water pipe.

State Regulation - 15A N.C. Administrative Code 18C.0102 (5)

Double check valve assembly means an assembly composed of two independently acting, approved check valves, including tightly closing shut-off valves attached at each end of the assembly and fitted with properly located test cocks.

Double check-Detector assembly means a specially designed assembly composed of a line-size approved double check valve assembly with a specific bypass water meter and a meter-sized approved double check valve assembly. The meter shall register in U.S. gallons accurately for only very low rates of flow and shall show a registration for all rates of flow. This assembly shall only be used to protect against contamination from non-health hazard facilities.

Degree of Hazard. The term "degree of hazard" shall be derived from the evaluation of conditions within a system which can be classified as either a "pollutional" (non-health) or a contaminations (health) hazard.

Health Agency. The term "health agency" shall mean the North Carolina Department of Environmental Quality.

Health hazard facilities include, but are not limited to: Any private water system used or designed for use with a booster pump or which may become pressurized for any reason to the extent that back pressure may occur; any private water system which contains water which has been or is being re-circulated; a building with five or more stories above ground level; brewery; car wash facilities; bottling plant; chemical plant; dentist's office; dry cleaning plant; fertilizer plant; film laboratory; fire sprinkler or standpipe system with chemical additives; hospital, clinic, medical building; irrigation system with chemical additives; laboratory; commercial laundry (except self-service laundry); concrete/asphalt plants; metal processing plant; morgue or mortuary; nursing home; pharmaceutical plant; power plant; swimming pool; sewage treatment plant; tire manufacturer; veterinary hospital or clinic; restaurants; battery manufacturers; exterminators and lawn care companies; dairies; canneries; dye works.

State Regulation— 15A N.C. Administrative Code 18C.0406.

Industrial Fluids. The term "industrial fluids" shall mean any fluid or solution which may be chemically, biologically, or otherwise contaminated or polluted in a form or concentration such as would constitute a health, or non-health hazard if introduced into a public or consumer potable water system. Such fluids may include, but are not limited to: process waters; chemicals in fluid form; acids and alkalis; oils, gases; etc.

Industrial Piping System. The term "industrial piping system" shall mean a system used by the consumer for transmission, conveyance or storage of any fluid, solid or gaseous substance other than an approved water supply. Such a system would include all pipes, conduits, tanks, receptacles, fixtures, equipment, and appurtenances used to produce, convey, or store substances which are or may be polluted or contaminated.

Isolation. "Isolation" is the act of confining a localized hazard within a consumer's water system by installing approved backflow prevention assemblies. Disclaimer: the Town of Pembroke may make recommendations, upon facility inspection, as to the usage's of isolation devices/assemblies, but does not assume or have responsibility whatsoever for such installations.

Non-health hazard facilities include, but are not limited to: Fire sprinkler systems without booster pump facilities or chemical additives; connections to tanks, lines and vessels that handle nontoxic substances; lawn sprinkler systems without chemical injection or booster pumps; all industrial and most commercial facilities not identified as high hazard facilities.

State Regulation— *15A N.C. Administrative Code 18C.0406.*

Pollution. The term "pollution" shall mean an impairment of the quality of the water to a degree which does not create an actual hazard to the public health but which does adversely and unreasonably affect the aesthetic qualities of such waters for domestic use.

Potable water means water from any source, which has been approved for human consumption by the appropriate agency of the State of North Carolina.

Pressure Type Vacuum Breaker. The term "pressure type vacuum breaker" shall mean an assembly containing an independently operating internally loaded check valve and an independently operating loaded air inlet valve located on the discharge side of the check valve. The assembly is to be equipped with properly located test cocks and tightly closing shutoff valves attached at each end of the assembly. This assembly is designed to protect against a health hazard (i.e., contaminant) under a back-siphonage condition only.

Private water system means a system of pipes or other associated facilities that is not part of the Town's public water system and is used to move or receive water, regardless of the source of water in such system.

Public water system means a system for the provision to the public of water for human consumption through pipes or other constructed conveyances if the system serves 15 or more service connections or which regularly serves 25 or more individuals. This term includes: Any collection, treatment, storage or distribution facility under control of the operator of the system and used primarily in connection with the system; and any collection or pretreatment storage facility not under the control of the operator of the system that is used primarily in connection with the system.

Statutory Reference— *N.C. Gen. Stat. § 130A-313 (10).*

Reduced pressure principle assembly means an assembly containing within its structure a minimum of two independently acting, approved check valves, together with an automatically operating pressure differential relief valve located between the check valves. The first check valve reduces the supply pressure a predetermined amount so that during normal flow and at cessation of normal flow, the pressure between the checks shall be less than the supply pressure. In case of leakage of either check valve, the pressure differential relief valve, by discharge to the atmosphere, shall operate to maintain the pressure between the checks less than the supply pressure. The assembly must include properly located test cocks and tightly closing shut-off valves at each end of the assembly.

Reduced pressure principle-detector assembly means an assembly composed of an approved reduced pressure principle backflow prevention assembly with a bypass water meter and a meter-sized approved Reduced pressure principle assembly. The meter shall register accurately for very low flow rates and shall register in U.S. gallons at all flow rates.

Service connection means a piped connection from a water main for the purpose of conveying water to a building or onto any premises for human use.

State Regulation— 15A N.C. Admin. Code 18C.0102 (15).

Unapproved Water Supply. The term "unapproved water supply" shall mean a water supply which has not been approved for human consumption by the NCDENR.

Used Water. The term "used water" shall mean any water supplied by a water purveyor from a public water system to a consumer's water system after it has passed through the point of delivery and is no longer under the control of the water purveyor.

Water Purveyor. The term "water purveyor" shall mean the consumer or operator of a public potable water system providing an approved water supply to the public.

Water supply (approved) means any public potable water supply, which has been investigated and approved by the appropriate agency of the State of North Carolina. The system must be operating under a valid health permit.

Section 8-193 Right of Entry

Upon presentation of proper credentials and identification, authorized representatives from the Town of Pembroke System shall have the right to enter any building, structure, or premises during normal business hours, or at any time during the event of an emergency to perform any duty imposed by this Ordinance. Those duties may include sampling and testing of water, or inspections and observations of all piping systems connected to the public water supply. Where a consumer has security measures in force which would require proper identification and clearance before entry into their premises, the consumer shall make necessary arrangements with the security guards so that upon presentation of suitable identification, the Town of Pembroke personnel will be permitted to enter without delay for the purpose of performing their specific responsibilities. Refusal to allow entry for these purposes may result in discontinuance of water service.

On request, the consumer shall furnish to the Town of Pembroke any pertinent information regarding the water supply system on such property where cross-connections and backflow are deemed possible.

Section 8-194 Elimination of cross connections: Degree of Hazard.

When cross-connections are found to exist, the owner, his/her agent, occupant, or tenant will be notified in writing to disconnect the same within the time limit established by the Town of Pembroke. The degree of protection required and maximum time allowed for compliance will be based upon the potential degree of hazard to the public water supply system. If, in the judgment of the Town of Pembroke, an imminent health hazard exists water service to the building or premises where a cross-connection exists may be terminated unless an air gap is immediately provided, or the cross-connection is immediately eliminated. The maximum time limits are as follows:

Cross-connections with private wells or other auxiliary water supplies require immediate disconnection.

All facilities which pose a potential health hazard to the potable water system must have a reduced pressure principle backflow prevention assembly within 60 days of notification by the Town of Pembroke.

All industrial and commercial facilities not identified as a "health hazard" shall be considered non-health hazard facilities. All non-health hazard facilities must install a double-check valve assembly within 90 days of notification by the Town of Pembroke.

Water mains served by the Town of Pembroke but not maintained by the Town of Pembroke shall be considered cross-connections, with degree of hazard to be determined by the Town of Pembroke. Degree of protection shall be based upon the degrees of hazard, as determined by the Town of Pembroke.

In the event that the Town of Pembroke personnel do not have sufficient access to every portion of a private water system (i.e., classified research and development facilities; Federal government property) to allow a complete evaluation of the degree of hazard associated with such private water systems, an approved reduced pressure principle backflow prevention assembly shall be required as a minimum of

Section 8-195 Installation of Assemblies

- a. All backflow prevention assemblies shall be installed in accordance with the specifications furnished by Town of Pembroke and/or in the latest edition of the North Carolina Building Code, whichever is most restrictive.
- b. All new construction plans and specifications, when required by the North Carolina Building Code and the North Carolina Division of Environment Health, shall be made available to the Town of Pembroke for review and approval and to determine the degree of hazard.
- c. Ownership, testing, and maintenance of the assembly shall be the responsibility of the consumer.
- d. All double-check valve assemblies must be installed in drainable pits wherever below ground installation is necessary, in accordance with detailed specifications *provided* by the Town of Pembroke. Double-check valve assemblies may be installed in a vertical position with prior approval from the Town of Pembroke, provided the flow of water is in an upward direction.
- e. Reduced pressure principle backflow prevention assemblies must be installed in a horizontal position and in a location in which no portion of the assembly can become submerged in any substance under any circumstance. Pit and/or below grade installations are prohibited.
- f. The installation of any backflow prevention assembly which is not approved by the Town of Pembroke must be replaced by one which is approved by the Town of Pembroke.
- g. The consumer is responsible to make sure a backflow prevention assembly is working properly upon installation and is required to furnish the following information to the Town of Pembroke within fifteen (15) days after a reduced pressure principle backflow preventer (RP), double-check valve assembly (DCVA), pressure vacuum breaker (PVB), double-check-detector assembly (DCDA), or reduced pressure principle detector assembly (RPDA) is installed:

- (1) Service address where assembly is located
 - (2) Owner (and address, if different from service address)
 - (3) Description of assembly's location
 - (4) Date of installation
 - (5) Installer (include name, plumbing company represented, plumber's license number)
 - (6) Type of assembly and size of assembly
 - (7) Manufacturer, model number, serial number
 - (8) Test results/report
- h. When it is not possible to interrupt water service, provisions shall be made for a "parallel installation" of backflow prevention assemblies. The Town of Pembroke will not accept an unprotected bypass around a backflow preventer.
- i. Upon notification by Town of Pembroke, the consumer shall install the appropriate containment assembly not to exceed the following time frame:
- Health Hazard.....60 days
- Non-health Hazard.....90 days
- j. Following installation, all RP, DCVA, PVB, DCDA, and RPDA are required to be tested by a certified backflow prevention assembly tester within ten (10) days.

Section 8-196 Testing and repair of assemblies

Testing of backflow prevention assemblies shall be made by a certified backflow prevention assembly tester approved by the Town of Pembroke. Such tests are to be conducted upon installation and annually thereafter or at a frequency established by the Town of Pembroke. A record of all testing and repairs is to be retained by the consumer. Copies of the records must be provided to the Town of Pembroke within ten (10) business days after the completion of any testing, and/or repair work.

Any time that repairs to backflow prevention assemblies are deemed necessary, whether through annual or required testing, or routine inspection by the consumer or by the Town of Pembroke, these repairs must be completed within a specified time in accordance with the degree of hazard. In no case shall this time period exceed:

1. Health Hazard Facilities - 7 days
2. Non-Health Hazard Facilities - 21 days

All backflow prevention assemblies with test cocks are required to be tested annually or at a frequency established by the Town of Pembroke,

All certified backflow prevention assembly testers must obtain and employ backflow prevention assembly test equipment which has been evaluated and/or approved by the Town of Pembroke. All test equipment shall be registered with the Town of Pembroke and shall be checked for accuracy annually (at a minimum), calibrated if necessary, and certified to the Town of Pembroke as to such accuracy/calibration, employing a calibration method acceptable to the Town of Pembroke (See Section 1.3.5).

It shall be unlawful for any consumer or certified backflow prevention assembly tester to submit any record to the Town of Pembroke which is false or incomplete in any material respect. It shall be unlawful for any consumer or

certified tester to fail to submit to the Town of Pembroke any record which is required by this Ordinance. Such violations may result in any of the enforcement actions outlined in this Ordinance.

Section 8-197 Facilities requiring protection

Approved backflow prevention assemblies shall be installed on the service line to any facility that the Town of Pembroke has identified as having a potential for backflow.

The following types of facilities or services have been identified by the Town of Pembroke as having a potential for backflow of nonpotable water into the public water supply system. Therefore, an approved backflow prevention assembly may be required on all such services according to the degree of hazard present. Other types of facilities or services not listed below may also be required to install approved backflow prevention assemblies if determined necessary by the Town of Pembroke. As a minimum requirement, all commercial services will be required to install a double-check valve assembly, unless otherwise listed below.

Abbreviations:

DCVA = Double-Check Valve Assembly

RP = Reduced Pressure Principle Assembly DCDA = Double-Check Detector Assembly RPDA = Reduced Pressure Detector Assembly AG=AirGap

PVB = Pressure Vacuum Breaker

(1) Automotive Services Stations, Dealerships, etc.

- a. No Health Hazard: DCVA
- b. Health Hazard: RP

(2) Auxiliary Water Systems:

- a. Approved Public/Private Water Supply: DCVA
- b. Unapproved Public/Private Water Supply: AG
- c. Used Water and Industrial Fluids: RP

(3) Bakeries

- a. No Health Hazard: DCVA
- b. Health Hazard: RP

(4) Beauty Shops/Barber Shops

- a. No Health Hazard: DCVA
- b. Health Hazard: RP

- (5) Beverage Bottling Plants: RP
- (6) Breweries: RP
- (7) Buildings - Hotels, apartment houses, public and private buildings, or other structures having unprotected cross-connections.
 - a. (Under five stories) No Health Hazard: DCVA
 - b. (Under five stories) Health Hazard: RP
 - c. (Over five stories) All: RP
- (8) Canneries, packing houses, and rendering plants: RP
- (9) Commercial carwash facilities: RP
- (10) Commercial greenhouses: RP
- (11) Commercial sales establishments (department stores, malls, etc.)
 - a. No Health Hazard: DCVA
 - b. Health Hazard: RP
- (12) Concrete/asphalt plants: RP
- (13) Dairies and cold storage plants: RP
- (14) Dye works: RP
- (15) Film laboratories: RP
- (16) Fire Systems 3/4"(inch) to 2"(inch)
 - a. No Health Hazard: DCDA
 - b. Health Hazard: (Booster Pumps, Foam, Antifreeze Solution, etc.): RP
- (17) Fire Systems 2 1/2"(Inch) to 10"(inch) (or larger)
 - No Health Hazard: DCDA
 - Health Hazard: (Booster Pumps, Foam, Antifreeze Solution, etc.): RPDA
- (18) Fire Trucks: RP
- (19) Hospitals, medical buildings, sanitariums, morgues, mortuaries, autopsy facilities, nursing and convalescent homes, medical clinics, and veterinary hospitals: R
- (20) Laundries:
 - a. No Health Hazard: DCVA

b. Health Hazard: (i.e., Dry Cleaners): RP

(21) Lawn irrigation systems (split taps):

a. No Health Hazard: DCVA

b. Health Hazard: (Booster Pumps, Chemical Systems): RP

(22) Metal manufacturing, cleaning, processing, and fabricating- plants: RP

(23) Mobile home parks:

a. No Health Hazard: DCVA

b. Health Hazard: R-P

(24) Oil and gas production, storage or transmission properties: RP

(25) Pest control (exterminating and fumigating): RP

(26) Power plants: RP

(27) Restaurants:

a. No Health Hazard: DCVA

b. Health Hazard: RP

(28) Restricted, classified, or other closed facilities: RP

(29) Sand and gravel plants: RP

(30) Schools and colleges: RP

(31) Sewage and storm drain facilities: RP

(32) Swimming Pools: RP

(33) Waterfront facilities and industries: RP

All assemblies and installations shall be subject to inspection and approval by the Town of Pembroke.

Section 8-198 Connections with unapproved sources of supply.

No person shall connect or cause to be connected any supply of water not approved by the NCDENR to the water system supplied by the Town of Pembroke. Any connections allowed by the Town of Pembroke must be in conformance with the backflow prevention requirements of this Ordinance.

In the event of contamination or pollution of a public or consumer potable water system, the consumer shall notify the Town of Pembroke immediately in order that appropriate measures may be taken to overcome and eliminate the contamination or pollution.

Section 8-199 Fire Protection Systems

- All connections for fire protection systems connected with the public water system 2" and smaller shall be protected with an approved double-check valve assembly as a minimum requirement. All fire systems using toxic additives or booster pumps shall be protected by an approved reduced pressure principle detector assembly at the main service connection.
- All connections for fire protection systems connected with the public water system greater than two 2" shall be protected with an approved double-check detector assembly as a minimum requirement. All fire protection systems using toxic or hazardous additives or booster pumps shall be protected by an approved reduced pressure principle detector assembly at the main service connection.
- All existing backflow prevention assemblies 2-1/2" and larger installed on fire protection systems that were initially approved by the Town of Pembroke shall be allowed to remain on the premises, as long as they are being properly maintained, tested and repaired as required by this Ordinance. However, if the existing assembly must be replaced (once it can no longer be repaired), or in the event of proven water theft through an un-metered source, the consumer shall be required to install an approved double-check detector assembly or reduced pressure principle detector assembly as required by this provision.

Section 8-200 Enforcement

- a. The consumer or person in charge of any installation found not to be in compliance with the provisions of this Ordinance shall be notified in writing with regard to the corrective action(s) to be taken.
- b. Such notice must explain the violation and give the time period within which the violation must be corrected. The time period set to correct a violation shall not exceed 30-days after receiving notice unless otherwise specified by Section 4. If the violation has been determined by the Town of Pembroke to be an imminent hazard the consumer shall be required to correct the violation immediately.
- c. In the event a consumer is found in violation of this ordinance and fails to correct the violation in a timely manner or to pay any civil penalty or expense assessed under this section, water service may be terminated, and shall be reestablished when the violation is corrected and any applicable civil penalties are paid.
- d. The violation of any section of this ordinance may be punished by a civil penalty listed as followed:
 - (1) Unprotected cross-connection involving a private water system which creates an imminent hazard - \$1,000.00 per day not to exceed \$10,000.00.
 - (2) Unprotected cross-connection involving a private water system which is of a moderate or high hazard - \$500.00 per day not to exceed \$5,000.00.
 - (3) If in the judgment of the Town of Pembroke, any consumer, manager, supervisor, or person in charge of any installation is found to be in noncompliance with the provisions of this Ordinance and/or neglects their responsibility to correct a violation, water service may be discontinued until compliance is achieved.
 - (4) Failure of a consumer or certified tester to submit any record required by this Ordinance, or the submission of falsified reports/records may result in a civil penalty of

up to \$500.00 per violation. If a certified backflow prevention assembly tester submits falsified records to the Town of Pembroke, the Town of Pembroke shall permanently revoke that tester.

- (5) Failure to test or maintain backflow prevention assemblies as required - \$200.00 per day.
- e. Enforcement of this program shall be administered by the Director of Public Works for the Town of Pembroke or his/her authorized representative.

Sections 8-201 through 8-210: Reserved.

CHAPTER 9: OFFENSES, NUISANCES, AND MISCELLANEOUS PROVISIONS

ARTICLE I: ABANDONED AND JUNKED MOTOR VEHICLES

Section 9-1 Purpose.

North Carolina General Statutes Sections 160A-193, 160A-303 and 160A-303.2 authorize the Town to regulate, restrain or prohibit abandoned, junked and health or safety hazard vehicles on public and private property within the Town's ordinance-making jurisdiction. Pursuant to that authority, the Town Council finds that such regulation, restraint or prohibition is necessary and desirable to promote or enhance the Town.

(1992 Code, Chapter 90)

Section 9-2 Administration

The Police Department and the Enforcement Officer shall be responsible for the administration and enforcement of this article. The Police Department shall be responsible for administering the removal and disposition of vehicles determined to be "abandoned" on the public streets and highways within the Town and on property owned by the Town. The Enforcement Officer shall be responsible for administering the removal and disposition of "abandoned", "nuisance" or "junked" motor vehicles located on private property.

(1992 Code, Section 90.01)

Section 9-3 Definitions.

The following words and phrases shall have the meaning indicated when used in this article:

Abandoned motor vehicle: A motor vehicle that (1) is left upon a street or highway in violation of a law or ordinance prohibiting parking, or (2) is left for longer than twenty-four (24) hours on property owned or operated by the Town, or (3) is left for longer than two (2) hours on private property without the consent of the owner, occupant or lessee of the property, or (4) is left for longer than seven (7) days on any public street or highway.

Authorizing Town official: A police officer, Enforcement Officer or inspector designated by the Town Manager to carry out the duties described in this chapter.

Health or safety hazard vehicle: A vehicle that has, for a period of more than forty-eight (48) hours, been in a state of disrepair and is incapable of being moved under its own power and is found to be:

- (A) A breeding ground or harbor for mosquitos or other insects, snails, rats or vermin of any kind;
- (B) A point of heavy growth of weeds and grass over eight (8) inches in height;
- (C) A point of accumulation of stagnant water;
- (D) A point of concentration of gasoline, oil, or other flammable or explosive materials;
- (E) So located that there is danger of the vehicles falling or turning over;
- (F) A source of danger for children through entrapment in areas of confinement that cannot be opened from the inside or from exposed surfaces of metal, glass or other rigid materials; or

- (G) In any other condition detrimental to the public health or safety, as determined by the authorizing Town official.

Junked motor vehicle: A motor vehicle that does not display a current license plate when the motor vehicle is required by laws of this state to have such a license plate to operate on public roads, and that (1) is partially dismantled or wrecked, or (2) cannot be self-propelled or moved in the manner in which it was originally intended to move, or (3) is more than five (5) years old and appears to be worth less than one hundred dollars (\$100.00).

(1992 Code, Section 90.02)

Section 9-4 Abandoned vehicle unlawful; removal authorized.

- (A) It shall be unlawful for the registered owner or person entitled to possession of a motor vehicle to cause or allow such vehicle to be abandoned as the term is defined herein.
- (B) Upon investigation, the authorizing Town official may determine that a vehicle is an abandoned vehicle and order the vehicle removed.

(1992 Code, Section 90.03)

Section 9-5 Health or Safety hazard vehicle unlawful; removal authorized.

- (A) It shall be unlawful for the registered owner or person entitled to possession of a motor vehicle, or for the owner, lessee, or occupant of the real property upon which the vehicle is located to leave or allow the vehicle to remain on the property after it has been declared a health or safety hazard.
- (B) Upon investigation, the authorizing Town official may determine and declare that a vehicle is a health or safety hazard vehicle as defined above, and order the vehicle removed.

Section 9-6 Junked motor vehicle regulated; removal authorized.

- (A) It shall be unlawful for the registered owner or person entitled to the possession of a junked motor vehicle, or for the owner, lessee, or occupant of the real property upon which a junked motor vehicle is located to leave or allow the vehicle to remain on the property after the vehicle has been ordered removed.
- (B) It shall be unlawful to have more than one junked motor vehicle, as defined herein, on the premises of public or private property. The 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 (e), upon investigation, the authorized Town official may order the removal of a junked motor vehicle as defined in this chapter after finding in writing that the aesthetic benefits of removing the vehicle outweigh the burdens imposed on the private property owner. Such finding shall be based on a balancing of the monetary loss of the apparent owner against the corresponding gain to the public by promoting or enhancing community, neighborhood or area appearance. The following among other relevant factors may be considered:
- (1) Protection of property values;
 - (2) Promotion of tourism and other economic development opportunities;
 - (3) Indirect protection of public health and safety;
 - (4) Preservation of the character and integrity of the community; and

- (5) Promotion of the comfort, happiness and emotional stability of area residents.
- (6) Permitted concealment or enclosure of junked motor vehicles:
 - i. One junked motor vehicle, in its entirety, can be located in the rear yard of a lot or parcel 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 authorizing Town official has the authority to determine whether any junked motor vehicle is adequately concealed as required by this provision. The covering must remain in good repair and must not be allowed to deteriorate.

- ii. More than one junked motor vehicle. Any other junked motor vehicle(s) must be kept in a garage or building structure that provides a complete enclosure so that the junked motor vehicle(s) cannot be seen from a public street or abutting property. A garage or building structure means either a lawful, nonconforming use or a garage or building structure erected pursuant to the lawful issuance of a building permit and which has been constructed in accordance with all zoning and building code regulations.

(1992 Code, Section 90.05)

Section 9-7 Removal of abandoned, junked or health or safety hazard motor vehicles; pre-towing notice requirements.

Except as set forth in **Section 9-8** below, an abandoned, junked or health or safety hazard vehicle which is to be removed shall be towed only after notice to the registered owner or person entitled to possession of the vehicle. In the case of a health or safety hazard vehicle or 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, 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 names and addresses cannot be ascertained or if the vehicle to be removed is an abandoned motor vehicle, notice shall be given by affixing on the windshield or some other conspicuous place on the vehicle a notice indicating that the vehicle will be removed by the Town on a specified date no sooner than seven (7) days after the notice is affixed. The notice shall state that the vehicle will be removed by the Town on a specified date, no sooner than seven (7) days after the notice is affixed or mailed, unless the vehicle is moved by the owner or legal possessor prior to that time.

With respect to abandoned vehicles on private property, junked and health or safety hazard motor vehicles to which notice is required to be given, if the registered owner or person entitled to possession does not remove the vehicle but chooses to appeal the determination that the vehicle is abandoned, a health or safety hazard vehicle or in the case of a junked motor vehicle that the aesthetic benefits of removing the vehicle outweigh the burdens, such appeal shall be made to the Town manager in writing. The Town Manager shall fix a time for the hearing within thirty (30) days of the appeal and further proceedings to remove the vehicle shall be stayed until the appeal is heard and decided.

(1992 Code, Section 90.06)

Section 9-8 Exceptions to prior notice requirement.

The requirement that notice be given prior to the removal of an abandoned, junked or health or safety hazard vehicle may, as determined by the authorizing official, be omitted in those circumstances where there is a special need for prompt action to eliminate traffic obstructions or to otherwise maintain and protect the public safety and welfare. Such findings shall, in all cases, be entered by the authorizing official in the appropriate daily records. Circumstances justifying the removal of vehicles without prior notice include but are not limited to:

- (A) Vehicles abandoned on the streets. For vehicles left on the public streets and highways, the Town council hereby determines that immediate removal of such vehicles may be warranted when they are:
 - (1) Obstructing traffic,
 - (2) Parked in violation of an ordinance prohibiting or restricting parking,
 - (3) Parked in a no-stopping or standing zone,
 - (4) Parked in loading zones,
 - (5) Parked in bus zones,
 - (6) Parked in violation of temporary parking restrictions imposed under this code.
- (B) Other abandoned or health or safety hazard vehicles. With respect to abandoned or health or safety hazard vehicles left on Town -owned property other than the streets and highways, and on private property, such vehicles may be removed without giving prior notice only in those circumstances where the authorizing official finds a special need for prompt action to protect and maintain the public health, safety and welfare. By way of illustration and not of limitation, such circumstances include vehicles blocking or obstructing ingress or egress to businesses and residences, vehicles parked in such a location or manner as to pose a traffic hazard, and vehicles causing damage to public or private property.

(1992 Code, Section 90.07)

Section 9-9 Removal of vehicles; post-towing notice requirements.

Any abandoned, nuisance or junked motor vehicle which has been ordered removed may, as directed by the Town, be removed to a storage garage or area by the tow 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:

- (A) The description of the removed vehicle;
- (B) The location where the vehicle is stored;
- (C) The violation with which the owner is charged if any;
- (D) The procedure the owner must follow to redeem the vehicle; and
- (E) The procedure the owner must follow to request a probable cause hearing on the removal.
- (C) 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 subsection (a) of this section, 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.
- (D) If the vehicle is registered in the State of North Carolina, notice shall be given within 24 hours. If the vehicle is not registered in the state, notice shall be given to the registered owner within 72 hours from the removal of the vehicle.

- (E) Whenever an abandoned, nuisance or junked motor 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 subsection (a) of this section.

(1992 Code, Section 90.08)

Section 9-10 Right to probable cause hearing before sale or final disposition of vehicle.

After the removal of an abandoned vehicle, nuisance vehicle or junked motor vehicle, the owner or any 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 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. 20-222, as amended.

(1992 Code, Section 90.09)

Section 9-11 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 to the tow truck operator or towing business having custody of the removed vehicle. Upon regaining possession of a vehicle, the owner or person entitled to the possession of the vehicle shall not allow or engage in further violations of this section.

(1992 Code, Section 90.10)

Section 9-12 Sale and disposition of unclaimed vehicle.

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

(1992 Code, Section 90.11)

Section 9-13 Conditions on removal of vehicles from private property.

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

(1992 Code, Section 90.12)

Section 9-14 Protection against criminal or civil liability.

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

(1992 Code, Section 90.13)

Section 9-15 Exceptions.

Nothing in this chapter shall apply to any vehicle which is:

- (A) Located in a bona fide automobile graveyard or junkyard as defined in G.S. 136-143, in accordance with the Junkyard Control Act, G.S. 136-141 et seq.;
- (B) In an enclosed building;
- (C) On the premises of a business enterprise being operated in a lawful place and manner if the vehicle is necessary to the operation of the enterprise; or
- (D) In an appropriate storage place or depository maintained in a lawful place and manner by the Town.

(1992 Code, Section 90.14)

Section 9-16 Unlawful removal of impounded vehicle.

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

(1992 Code, Section 90.15)

Section 9-17 Towing; storage.

- (A) All towing and storage charges incurred in connection with impounded vehicles shall constitute a lien upon such vehicles as provided in G.S. section 44A-2, and no stored vehicle shall be released until all such charges have been paid to the owner of the garage where the impounded vehicle is stored or the lien has been extinguished as provided in G.S. section 20-222.
- (B) It shall be unlawful for any person to remove or attempt to remove from any storage facility qualified by the Town any vehicle which has been impounded pursuant to the provisions of this code unless and until all towing and impoundment fees which are due, or bond in lieu of such fees, have been paid.

Section 9-18 Towing and storage businesses.

- (A) *List of Eligible Businesses to be maintained.* The chief of police shall prepare and maintain an eligible list of those persons, firms or corporations (in this division called "garages") having businesses in the Town or within the radius of the one-mile limit thereof, who apply and qualify to tow and store automobiles and trucks from the streets and other public places in the Town at the request of the police department. The chief of police shall prepare rules in accordance with the provisions of this division for the qualification of garages for the eligible list.
- (B) Any garage on the eligible list that violates any provision of this division or the rules established in accordance herewith shall be subject to removal from the eligible list after written notice. Any garage removed from the eligible list may, within five (5) working days of the date of the notice of removal,

request a hearing before the chief of police to show cause why the garage should not be removed from the list.

(C) To qualify for the eligible list an applicant must:

- (1) Keep his garage either open or available, by one business telephone number, twenty-four (24) hours per day seven (7) days a week;
- (2) Have available at all times equipment in good condition capable of towing any automobile, pick-up truck or motorcycle from the streets and other public or private places in the Town when called upon to do so;
- (3) Have at, or in the immediate vicinity of the garage, sufficient fenced and enclosed storage space and facilities in compliance with the zoning ordinance to protect both damaged and undamaged vehicles from further damage by exposure to the elements.
- (4) Provide a zoning verification letter from the appropriate Town department that states the zoning district of the applicant's garage and storage facility and verifies that towing services are a permitted use in such district. The letter shall also verify that the proposed storage space and facilities comply with the zoning ordinance.

(D) The applicant must also agree to assume the obligation:

- (1) To promptly tow and store all vehicles to be removed from the public streets or other public places or private property upon the request of the police department;
- (2) To issue a receipt to the police department for each vehicle towed and stored and keep the vehicle until its release is authorized by the police department;
- (3) To store damaged automobiles in such manner as to secure their protection against further damage by the elements;
- (4) To collect towing and storage fees from the owner of the vehicle or by the sale of the vehicle without recourse to the Town, unless it is found that no probable cause existed for the towing pursuant to G.S. section 20-219.11;
- (5) To pay all damages to vehicles entrusted to his custody as the result of his negligence and to maintain, for the protection of the vehicle owners, garage liability insurance applicable to claims arising from tow truck operations, and garbage keepers legal liability insurance, applicable to loss or damage to vehicles within the care, custody or control of the towing service, resulting from collision, fire, vandalism, explosion, theft, wind-storm, hail or flood. Such insurance coverage shall be at least in the amount determined from time to time by the Town Manager after consulting with the Town's insurance advisor. To also maintain automobile liability insurance on vehicles operated by the tow truck operator and its employees for liability for bodily injury or property damage in an amount not less than the minimum amount set forth in the North Carolina General Statutes.
- (6) To remove from the scene of a motor vehicle accident, in which the vehicle to be towed was involved, all glass, metal or debris caused by the accident.
- (7) To comply with all applicable state, federal and local laws, regulations and ordinances and to refrain from towing vehicles from private parking lots unless such lots are posted as required by G.S. 20-219.2.

(1992 Code, Section 90.16)

Section 9-19 Contracts for towing.

The contract so made shall be in writing; shall specify the charges to be made for towing and storage and shall require the person entering into the contract for the towing and storage of such vehicles to perform the service in

a manner satisfactory to the Town Council and shall provide for the forfeiture of the contract in the event of a violation of any of the provisions of the contract or of any subsection of this section which may be incorporated in and made a part of the contract. The contract shall further provide that the Town shall not be obligated to the person undertaking the towing and storage of such vehicles for any damages or charges which may be incurred in the performance of the obligation assumed by him but that the charge shall be collected solely from the owner of the vehicle involved, unless it is found that no probable cause existed for the towing of any vehicle pursuant to G.S. § 20-219.11.

(1992 Code, Section 90.16)

Sections 9-20 through 9-30: Reserved.

ARTICLE II: BEGGING AND SOLICITING

Section 9-31 Definitions.

For the purpose of this article the following definitions shall apply:

Aggressive manner means and includes, without limitation, the following conduct:

- (1) Intentionally or recklessly making any physical contact with or touching another person in the course of the solicitation without the person's consent;
- (2) Following the person being solicited, if that conduct is intended to or is likely to cause a reasonable person to fear imminent bodily harm or the commission of a criminal act upon property in the person's possession; or is intended to or is reasonably likely to intimidate the person being solicited into responding affirmatively to the solicitation;
- (3) Continuing to solicit within five (5) feet of the person being solicited after the person has made a negative response, if continuing the solicitation is intended to or is likely to cause a reasonable person to fear imminent bodily harm or the commission of a criminal act upon property in the person's possession; or is intended to or is reasonably likely to intimidate the person being solicited into responding affirmatively to the solicitation;
- (4) Intentionally or recklessly blocking the safe or free passage of the person being solicited or requiring the person, or the driver of a vehicle, to take evasive action to avoid physical contact with the person asking the solicitation;
- (5) Intentionally or recklessly using obscene or abusive language or gestures intended to or is likely to cause a reasonable person to fear imminent bodily harm or the commission of a criminal act upon property in the person's possession; or using words or gestures intended to or reasonably likely to intimidate the person into responding affirmatively to the solicitation; or
- (6) Approaching the person being solicited in a manner that is intended to or is likely to cause a reasonable person to fear imminent bodily harm or the commission of a criminal act upon property in the person's possession; or is intended to or is reasonably likely to intimidate the person being solicited into responding affirmatively to the solicitation.

Automated teller machine means any device or machine, linked to a financial institution's account records, which is able to carry out transactions, including, but not limited to: account transfers, deposits, cash withdrawals, balance inquires, and mortgage and loan payments, and includes an automated banking device as defined by NC GENERAL STATUTES § 14-113.8(la).

Automated teller machine facility means the area comprised of one or more automatic teller machines, and any adjacent space which is made available to customers of such machines during and after regular business hours.

Intimidate means any conduct which would cause a reasonable person to fear imminent bodily harm or the commission of a criminal act upon property in the person's possession, and causes such person to do something he or she would not otherwise have done.

Public area means any area to which the general public has access, and includes, but is not limited to, public streets, rights-of-way, alleys, roads, highways, sidewalks, driveways, bridges, parking lots, parks, playgrounds, plazas, any property owned or operated by the Town, streets open to the general public, any buildings, premises or other structures open to the general public including the doorways and entrances to such buildings, premises or other structures and the grounds enclosing them.

Person means an individual, firm, partnership, association, corporation, organization, or any other group acting as a unit.

Solicit, beg or ask means to request an immediate donation of money or other thing of value from another person, regardless of the solicitor's purpose or intended use of the money or other thing of value. The solicitation, begging or asking may be, without limitation, by the spoken, written, or printed word, or by other means of communication.

Section 9-32 Prohibited Acts.

It shall be unlawful for any person to solicit, beg or ask for money or other things of value, to exhibit oneself for the purpose of soliciting, begging or asking for money or other things of value, or to solicit or otherwise offer the sale of goods or services:

- (A) In an aggressive or intimidating manner in a public area;
- (B) By touching the person being solicited without that person's consent;
- (C) By blocking the path of a person being solicited or blocking the entrance or exit to any building or vehicle;
- (D) By or with profane or abusive language during the solicitation or after an unsuccessful solicitation;
- (E) In any public transportation vehicle or at any station or stop for such vehicle;
- (F) Within fifteen (15) feet of any entrance or exit of any bank or financial institution, or within fifteen (15) feet of any automated teller machine without the consent of the owner or other person legally in possession of such facilities.

Provided, however, that when an automated teller machine is located within an automated teller machine facility, such distance shall be measured from the entrance or exit of the automated teller machine facility;

- (G) While the person being solicited is standing in line waiting to be admitted to a commercial establishment;
- (H) On private property if the owner, tenant, or lawful occupant has asked the person not to solicit on the property, or has posted a sign clearly indicating that solicitations are not welcome on the property; or
- (I) From any operator or passengers of a motor vehicle that is on a public street; provided, however, that this paragraph shall not apply to services rendered in connection with emergency repairs requested by the operator or passengers of such vehicle.
- (J) At any sidewalk cafe permitted under the Town Code, provided such areas are in active use at the time;
- (K) While under the influence of alcohol or after having illegally used any controlled substance as defined in the North Carolina Controlled Substances Act, being NCGA Section 90-86 et.seq.;
- (L) After dark which shall mean ½ hour after sunset and until ½ hour before sunrise;
- (M) In the median of any street;
- (N) In the area of any street corner included in a triangle created by connecting the point formed by the intersection of curb lines and points equal to the width of the sidewalk from said intersection measured along each curb line; or
- (O) In any public area on any street.

Statutory Reference - Authority to prohibit or regulate begging, NCGS Section 160A-179.

Section 9-33 Exceptions.

This prohibition is not intended to apply and shall not apply to:

- (1) Any person, business or organization holding a valid license or permit issued by the Town;
- (2) Any person, business or organization taking part in any festival or other activity;

Section 9-34 Penalty.

Any person who violates any provision of this article shall be guilty of a misdemeanor and shall be subject to a fine not to exceed \$100 and imprisonment in the discretion of the court.

Sections 9-35 through 9-50: Reserved.

ARTICLE IV: CONCEALED AND OPEN CARRY WEAPONS PROHIBITED

Section 9-51 Weapons Prohibited.

- (A) It shall be unlawful for any person to openly carry or possess on or about his person any deadly weapon including but not limited to any: bowie knife, dirk, dagger, sling-shot, loaded cane, metal knuckles, razor, stun gun, pistol, revolver, gun, rifle, or nightstick at any meeting, assemblage, or parade on any property, street, alley or other public way, park, greenway. It shall be unlawful for any person to possess or carry a legally permitted concealed handgun on or at any Town owned playground, athletic field, swimming pool, or athletic facility as defined in G.S. 14-415.23
- (B) This section shall not apply to law enforcement or other government personnel acting within the scope of their employment; nor shall this section apply to weapons used solely for instructional classes or for officially sanctioned ceremonial purposes.
- (C) Any person violating the provisions of this section shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of five hundred dollars (\$500.00) and/or imprisonment. In addition to said punishment, any person convicted under this section will be prohibited from entering on park property of the Town or participating in Parks and Recreation activities for a period of up to one year.

Section 9-52 Signs.

- (A) *Posting of signs required.* The Town Manager or his or her designated official is hereby authorized and instructed to post conspicuous signage at appropriate locations on or within each park, recreational facility and 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 those buildings, indicating that carrying a concealed handgun and the open carry of all firearms are prohibited or restricted as provided by this section.
- (B) *Location of signs.* Signs shall be visibly posted on the exterior of each entrance by which the general public can access the building. The Town Manager or his or her designated official shall exercise discretion in determining the number and appropriate location of signs to be placed on or within appurtenant premises, parks and recreational facilities.

Sections 9-53 through 9-60: Reserved.

ARTICLE III: DAMAGE TO AND INTERFERENCE WITH TOWN PROPERTY

Section 9-61 Damage to Town property.

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

Section 9-62 through 9-65: Reserved.

ARTICLE IV: DISCHARGE OF FIREARMS AND OTHER WEAPONS

Section 9-66 Discharge of firearms and other weapons prohibited.

Except as authorized in the subsections below, it shall be unlawful for any person to shoot or project any stone, rock, shot or other hard substance by means of a slingshot, bean shooter, pop-gun, bow or other similar contrivance; to fire any pistol, rifle, pellet gun, air gun or any firearm; or to discharge any fireworks within the Town, on or off his premises.

(A) This section shall not be construed to prohibit:

- (1) Any Town law Enforcement Officer or authorized employee of the Town in the division of animal control from discharging a firearm in the performance of his duty;
- (2) Any sworn law Enforcement Officer of the Town who is authorized to do so by the police chief from hunting deer within the corporate limits of the Town using a shot gun so long as such hunting takes place with the written consent of the owner of the property where the hunting occurs and in a manner that is consistent with all applicable regulations of the State of North Carolina and the Police Department.
- (3) Any person from discharging a firearm when lawfully defending his person or property.
- (4) The use of pyrotechnics within the Town pursuant to permits issued in accordance with N.C.G.S.14-54.

(1992 Code, Section 130.02)

Statutory Reference— Selling weapons to minors, G.S. § 14-315; permitting children to use firearms, G.S. § 14-316; sale of certain weapons without permit forbidden, G.S. § 14-402; authority to regulate discharge of firearms, G.S. § 160A-189, Authority to regulate possession and use of pellet guns, G.S. § 160A-190.

Sections 9-67 through 9-70: Reserved.

ARTICLE V: DISORDERLY CONDUCT

Section 9-71 Drunk and Disorderly.

It shall be unlawful for any person to be drunk and disorderly in any public place, public street or public alley, whether in a vehicle, walking, sitting or standing.

(1992 Code, Section 130.04)

Section 9-72 Drinking on Town property.

(A) *Consumption and possession of alcoholic beverages on Town property.*

- (1) Except as permitted in subsection (A)(2) and (3) of this section, it shall be unlawful for any person to consume or possess an open container of alcoholic beverage on any public street, public sidewalk, public alley, public parking lot or property owned by the Town, including parks and greenways.
- (2) The consumption or possession of alcoholic beverages may be permitted on public streets, public sidewalks, public alleys, public parking lots or property owned by the Town in connection with a Town-sponsored event, or for a private event, only if approved by the Town Council. Any such event involving the consumption or possession of alcoholic

beverages may be permitted by the Town Council only after the following are complied with:

- a. The business serving the alcoholic beverages is a participant in the event;
 - b. Such business obtains all required ABC licenses and permits;
 - c. Such business adheres to the North Carolina General Statutes pertaining to Chapter 18B, Regulation of Alcoholic Beverages, and the North Carolina Dram Shop Liability Act;
 - d. Such business serving alcoholic beverages serves it within an area designated by the Town Manager;
 - e. Such business serving the alcoholic beverages must maintain liability insurance naming the Town as loss payee and an additional insured for the special event;
 - f. Such business serving the alcoholic beverages must agree to provide and pay for necessary security measures during the time of the event in which the business serve alcoholic beverages as determined by the Town Manager and Police Chief; and
 - g. Such business complies with any additional Town requirements as approved by the Town Council or their designee.
- (3) Pursuant to the authority vested in the Town under G.S. 18B-300, the possession and consumption of alcoholic beverages is permitted in conjunction with outdoor dining on a public sidewalk as part of a restaurant's food service if the following conditions are met:
- a. The restaurant possesses a valid ABC permit for the service of such alcoholic beverages according to G.S. 18B-300 et seq.;
 - b. The consumption of alcoholic beverages shall occur only on the sidewalk immediately in front of the restaurant and at the tables provided;
 - c. The restaurant must be located with approved zones; and
 - d. The restaurant complies with all the specific standards and requirements for outdoor dining on public sidewalks referred to in the Unified Development Ordinance.

Section 9-73 Unreasonably loud or obscene language on public property.

It shall be unlawful for any person to use any unreasonably or loud obscene language on any public street, public alley or at any other public place.

Section 9-74 Disturbing public meetings.

It shall be unlawful for any person to disturb any musical concert, theatrical performance, lecture, motion picture show, public entertainment or place of worship, or any other public gathering, by loud talking, whistling, hissing, shouting or any other conduct.

Section 9-75 Disorderly house.

It shall be unlawful for any person to keep a disorderly house, or house of ill-fame, and no person shall knowingly rent any house, apartment or other dwelling as a house of ill-fame, and any person living within such house shall be considered the keeper thereof.

Section 9-76 Admitting police to disorderly house.

It shall be unlawful for any occupant of any disorderly house to refuse to open his door and give entrance thereto to any police officer demanding admission for the purpose of suppressing disorderly conduct therein

Section 9-77 Indecent exposure; obscene shows, etc.

It shall be unlawful for any person to willfully expose his person, or private parts thereof, or to aid and abet in any such act, or to procure another so as to expose their person, or the private parts thereof, or take part in any obscene show, exhibition or performance where dances or plays are conducted in any booth, tent, room or other public or private place in which the public is invited or present, or any person who, as owner, manager, lessee, director, promoter or agent, or in any other capacity, hires, leases or permits the land, building or premises of which he has control to be used for such purpose shall be guilty of a misdemeanor. Any person who willfully makes any indecent public exposure of his private parts of his person in any public place, or on private property where such action can be viewed by the general public is guilty of a misdemeanor.

Section 9-78 Writing or drawing obscene words or pictures on streets or walls.

It shall be unlawful for any person to perform any act, obscene language or to make obscene drawings or markings on any wall of any public or private building or on the Public Street or sidewalk.

Section 9-79 Trespassing on Town property.

- (A) It shall be unlawful for any person to enter upon any real property belonging to, or under the control of, the Town unless he/she does so under the direction or supervision of the Board, if otherwise closed to the public.
- (B) It is hereby declared to be unlawful for any individual or group of individuals to be on the ground of the Town park during the period from Sunset to sunrise each day, provided that this shall not apply to groups or individuals who have obtained a permit beforehand.

Section 9-80 Obscene literature.

It shall be unlawful for any person, firm or corporation to exhibit for the purpose of gain, or display for sale, lend or hire, or otherwise publish or sell, or have in his possession for sale or distribution, any obscene literature, as determined and defined in the postal laws and regulations of the United States Postal Service in the form of book, paper-writing, print, drawing or other representation, at any newsstand, bookstore, drug store or other public or private place, and it shall be unlawful for any person to post any indecent placards, writings, pictures or drawings on walls fences, billboards or other public or private places.

Cross Reference – See Chapter 8, Article XI, Sexually Explicit Materials.

Section 9-81 Seeing events without paying admission.

It shall be unlawful for any person to attempt to see any public entertainment for which a fee is charged without paying the admission fee so charged.

Section 9-82 Disruptive behavior in public.

- (A) It shall be unlawful for any person in a public place, street or highway, or public vehicular area, to be disruptive in any of the following ways:
 - a. Blocking or otherwise interfering with traffic on the street, highway or public vehicular area;
 - b. Blocking or lying across or otherwise preventing or interfering with access to or passage across a sidewalk, curb ramp, crossing or entrance to a building or parking area;
 - c. Grabbing, shoving, pushing or fighting others or challenging others to a fight;
 - d. Shouting at or otherwise rudely insulting others;
 - e. Creating any unreasonably loud noise which shall disturb the public;

- f. Remaining on property that has been adequately posted "No Trespassing after Business Hours"; or
 - g. Possession of open container of intoxicating beverage.
- (B) It shall be unlawful for any person to remain at a place where disruptive and disorderly conduct is taking place after being ordered to leave by a uniform police officer or an individual who has properly identified himself as a police officer.
- (C) Any person who violates subsection (a) or (b) of this section shall be guilty of a misdemeanor, punishable upon conviction by a fine of \$50.00, or imprisonment not exceeding 30 days, or both, in the discretion of the court.

Statutory Reference— Disorderly conduct at public buildings and grounds, G.S. § 14-132.

Section 9-83 through 9-90: Reserved.

ARTICLE VI: LITTERING

Section 9-91 Littering prohibited.

It shall be unlawful for any person, firm, organization or private corporation to throw or deposit upon any street or sidewalk, or upon any private property, except with written permission of the owner or occupant of such private property any trash, refuse, garbage, building material, cans, bottles, broken glass, paper or any type of litter.

(1992 Code, Section 95.01)

Section 9-92 Littering while in a vehicle.

It shall be unlawful for any person while a driver or a passenger in a vehicle to throw or deposit litter upon any street or other public place within the Town or upon private property.

(1992 Code, Section 95.02)

Section 9-93 Maintenance of public areas—Generally.

Every owner, lessee, tenant, occupant or person in charge of any commercial establishment or premises which maintains any paved or unpaved areas for the use of the public, either for parking or as access area and incident to the carrying on of the public business of any such commercial establishment or premises and which parking or access areas abut or lie within ten feet of any public street or other public way, shall keep and maintain such areas clean and free from trash, litter, rubbish and any materials liable to be blown, deposited or cast upon such street or other public way.

(1992 Code, Section 95.03)

Section 9-94 Penalty.

- (A) Any violation of this Article shall subject the violator to a civil penalty in the sum of \$50 per day.
 - (1) A citation for the penalty shall be issued by the Town Police Department.
 - (2) Each citation for a civil penalty must be paid within 72 hours.

- (3) Each and every day that the violator continues shall be a separate and distinct offense.
- (B) The Town may also, and in addition, seek any and all appropriate equitable remedies, injunctions and/or abatement orders from the appropriate court of competent jurisdiction pursuant to G.S. Section 160A-175.

(1992 Code, Section 95.99)

Statutory Reference - G.S. Section 160A-175.

Sections 9-95 through 9-100: Reserved.

ARTICLE VII: LOITERING

Section 9-101 Purpose.

The Town of Pembroke hereby addresses loitering under circumstances manifesting the intent to engage in drug related activity within the Town of Pembroke.

(Ordinance to Prohibit Loitering, adopted 10 Nov 2015, Title IX, Chapter 100 of Code)

Section 9-102. Definitions.

- (A) Public place means any street, sidewalk, alley or alleyway, park, driveway, parking space or parking lot, or the doorways and entranceways to any building which fronts any of those places, or a motor vehicle, including mopeds and motorcycles, in or on any of those places, or any property owned by the Town of Pembroke.
- (B) Known unlawful drug user, possessor, or seller means a person who has, within the knowledge of the arresting officer, been convicted in any court within the State of any violation involving the use, possession or sale of any of the substances referred to in the North Carolina Controlled Substances Act, G.S. Ch. 90, Art. 5, or such person has been convicted of any violation of any substantially similar laws of any political subdivision of this State or of any other state or of Federal law.

Section 9-103 Unlawful Activity.

It shall be unlawful for a person to remain or wander about in a public place under circumstances manifesting the intent to engage in a violation of the North Carolina Controlled Substances Act. Circumstances which may be considered in determining a person's intent include, but are not limited to, the following:

- (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 is a known unlawful drug user, possessor, or seller;
- (5) Such person repeatedly passing to or receiving from passersby, whether on foot or in a vehicle, money or objects;
- (6) Such person taking flight upon the approach or appearance of a police officer;
- (7) Such person being at a location frequented by persons who use, possess or sell drugs; or

- (8) Any vehicle involved is registered to a person who is a known unlawful drug user, possessor, or seller, or who is known to be or have been involved in drug-related activities.

Section 9-104 Severability.

If any provision of this ordinance is held invalid, such invalidity shall not affect any other provision, or the application thereof, which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are declared to be severable.

Section 9-105 First Amendment.

This ordinance shall not be interpreted to prohibit any activity that is protected by the First Amendment to the United States Constitution.

Section 9-106 Penalty.

Any person who violates the provisions of this section is guilty of a misdemeanor, and upon conviction shall be imprisoned for a period not to exceed 60 days and/or fined up to \$500.00 for each and every offense.

Sections 9-107 through 9-110: Reserved.

ARTICLE IX: NOISE

Section 9-111 Purpose.

North Carolina General Statutes (G.S. Section 160A-184) authorizes the Town of Pembroke, through its duly elected officials, to regulate or prohibit the production of noises or amplified speech, music, or other sounds that tend to annoy, disturb or frighten its citizens. This ordinance shall apply to all sounds or noises originating within the corporate limits or within the one-mile extra territorial jurisdiction of the Town of Pembroke. Nothing in this article shall be construed to limit or prevent the Town of Pembroke or any person from pursuing any other legal remedies for damages or abatement of noises in the Town.

(1992 Code, Chapter 96; Ordinance amending Code adopted 2 Feb 2015)

Statutory Reference— Authority to regulate noise, G.S. § 160A-184.

Section 9-112 Definitions.

"**NOISE**" means any sound or combination of sounds which, because of its volume, duration or intensity, tends to disturb reasonable persons of normal sensibility or to interfere with normal human activity.

"**NOISE DISTURBANCE**" means any unreasonably loud and raucous sound or noise which:

1. Endangers or injures the health and safety of humans or animals;
2. Endangers or injures personal or real property; or
3. Disturbs a reasonable person of normal sensibility.

"**NOISE SENSITIVE AREA**" includes, but is not limited to, a posted area where a school, nursing home, church, court, public library or similar institution is located.

"PERSON" means any individual, association, firm, partnership or corporation.

"SOUND AMPLIFICATION DEVICE" means any device or instrument for amplifying the human voice, music or other sound, including but not limited to loudspeakers, stereos, phonographs, radios, tape players, CD players, or any other electronic devices, portable or otherwise.

"AMPLIFIED SOUND" means any sound or noise, including the human voice that is increased in volume or intensity by means of electrical power.

"SOUND" means any disturbance or the air that is detectable by the unaided human ear or which produces vibrations detectable by persons or normal perceptions.

"SOUND LEVEL METER (also a decibel meter)" means an instrument that includes a microphone, amplifier, RMS detector, integrator or time average, output meter and averaging network used to measure sound level. Such instrument shall be certified to meet or exceed the current standards of the American National Standards Institute.

"PERSON RESPONSIBLE" means an owner, occupant, employee, agent, or any other person who is or who appears to be responsible for a premise, dwelling, or business, or a noise-producing machine or device.

"JAKE BRAKES (JACOBS BRAKE)" means an engine braking mechanism installed on some diesel engines when activated, slows the vehicle but creates an extremely loud and offensive popping noise.

"ONE MILE EXTRA TERRITORIAL JURISDICTION" means the Town of Pembroke also has enforcement authority of this ordinance within one mile of the corporate limits of the Town of Pembroke.

"RESTAURANT" means a place where meals are served to the public.

"NIGHTCLUB or RESTAURANT WITH ENTERTAINMENT" means an establishment that stays open late at night and provides food, drinks, and may provide music for listening and/or dancing, karaoke and other entertainment.

"ZONING DISTRICT" means those districts set out in the Town's Unified Development Ordinance where, when practical and reasonable, some degree of separation exists between the business areas of the Town and the residential areas of the Town.

(1992 Code, Section 96.01; Amended 2 Feb 2015)

Section 9-113 General Prohibitions.

Except as allowed in this article, no person shall willfully engage in any activity on any premises or public area in the Town of Pembroke or within the Town's one mile extra territorial jurisdiction, which produces or constitutes a noise disturbance on occupied neighboring premises or public area;

(A) No person shall make, continue, or cause to be made or continued:

(1) Any unreasonably loud and raucous noise; or

- (2) Any noise which unreasonably disturbs, injures, or endangers the comfort, repose, health, peace, or safety of reasonable person of ordinary sensibilities, within the jurisdictional limits of the Town of Pembroke; or
 - (3) Any noise which is so harsh, prolonged, unnatural, or unusual in time or place as to occasion unreasonable discomfort to any persons within the neighborhood from which said noises emanate, or as to unreasonably interfere with the peace and comfort of neighbors or their guests, or operators or customers in places of business, or as to detrimentally or adversely affect such residences or places of business.
- (B) Factors for determining whether a sound is unreasonably loud and raucous include, but are not limited to, the following:
- (1) The proximity of the sound to sleeping facilities, whether residential or commercial.
 - (2) The proximity of the sound to the noise sensitive area.
 - (3) The land use, nature, and zoning of the area(s) from which the sound emanates and the area where it is received or perceived.
 - (4) The time of day or night the sound occurs.
 - (5) The duration of the sound.
 - (6) Whether the sound is recurrent, intermittent, or constant.

(1992 Code, Section 96.02; Amended 2 Feb 2015)

Section 9-114 Noises Prohibited.

The following acts are declared to be "per se" violations of this ordinance:

- (A) **Unreasonable noises:** The unreasonable making of, or knowingly and unreasonably permitting to be made, any unreasonably loud, boisterous or unusual noise, disturbance, commotion or vibration in a boarding facility, dwelling, place of business or other structure, or upon any public street, park, or other place or building. The ordinary and usual sounds, noises, commotions or vibration incidental to the operation of these places when conducted in accordance with usual activities or the usual standards of practice and in a manner which will not unreasonably disturb the peace and comfort of adjacent residences or which will not detrimentally affect the operators of adjacent places or business are exempted from this provision.
- (B) **Vehicle horns, signaling devices, and similar devices:** The sounding of any horn signaling device, or other similar device, on any automobile, truck, motorcycle, or other vehicle within the jurisdictional limits of the Town of Pembroke for more than five (5) seconds, **however**, the sounding of any horn, signaling device, or other similar device, as a danger warning when such warning is readily apparent and reasonably necessary, is exempt from this prohibition; and further, the reasonable sounding of bells, chimes, whistles or other similar devices of churches, schools, ice cream trucks, seasonal contribution solicitors, or by governments for traffic control purposes are also exempt from this ordinance.
- (C) **Emergency signaling devices:** The intentional sounding or permitting the sounding outdoors of any emergency device including fire, burglar, civil defense alarm, siren, whistle, or similar emergency signaling device, except in an emergency or except as provided below:

- (1) Testing of an emergency signaling device shall occur between 7:00 a.m. and 7:00 p.m. Any testing shall use only the minimum cycle test time not to exceed five minutes; and further, testing of emergency signaling systems shall not occur more than once in each month.
 - (2) Sounding or permitting the sounding of any exterior burglar or fire alarm or any motor vehicle burglar alarm, shall terminate within 15 minutes of activation unless an emergency exists. If a false or accidental activation of an alarm occurs more than twice in a calendar month, the owner or person responsible for the alarm shall be in violation of this ordinance.
- (D) **Radios, televisions, boom-boxes, phonographs, stereos, musical instruments and similar devices:** The use or operation of a radio, television, boom-box, stereo, musical instrument, or similar device that produces or reproduces sound in a manner that is plainly audible to any person other than the player(s) or operator(s) of the device, and those who are voluntarily listening to the sound, and which unreasonably disturbs the peace, quiet, and comfort of neighbors and passers-by, or is plainly audible at a distance of 50 feet from any person in a residential, commercial, industrial area, or public space.
- (E) **Loudspeakers, amplifiers, public address systems, and similar devices:** The unreasonably loud and raucous use or operation a loudspeaker, amplifier, public address system, or other device for producing or reproducing sound in the following areas:
- (1) Within or adjacent to residential or noise-sensitive areas;
 - (2) Within public space(s) if the sound is plainly audible across the real property line of the public space from which the sound emanates, and is unreasonably loud and raucous.
- (F) **Animals and birds:** Unreasonably loud and raucous noise emitted by an animal or bird for which a person is responsible. A person is responsible for an animal or bird if the person owns, control or otherwise cares for the animal or bird.
- (G) **Noise sensitive areas - schools, courts, churches and similar institutions:** The creation of any unreasonably loud and raucous noise adjacent to any noise sensitive area while it is in use, which unreasonably interferes with the workings of the institution or which unreasonably disturbs the persons in these institutions, provided that conspicuous signs delineating the boundaries of the noise sensitive area are displayed in the areas surrounding the noise sensitive area.
- (H) **Commercial establishments adjacent to residential property:** Unreasonably loud and raucous noise from the premises of any commercial establishment, including any outdoor area which is a part of or under the control of the establishment, between the hours of 11:00 p.m. and 7:00 a.m. which is plainly audible at a distance of 150 feet from any residential property.
- (I) **Excessive noise from motorcycles, passenger vehicles and trucks:** The loud, raucous and excessive noise created by the operation of such vehicles when such operation is intended to create, and does create, unreasonably loud, raucous and excessive noise, whether such noise emanates from squealing tires, unreasonably loud exhaust noises, muffled or un-muffled or the use of Jake brakes within the jurisdictional limits of the Town of Pembroke.
- (J) **Commercial garbage collection:** The servicing of a private commercial garbage dumpster or public dumpster by any person using garbage collection vehicles and equipment within 1,000 feet of any

multi- family dwelling, residential area or noise sensitive area between the hours of 10:00 p.m. and 6:00 a.m. on week days and between the hours of 10:00 p.m. and 8:00 a.m. on weekends and holidays.

(1992 Code; Amended 2 Feb 2015)

***Statutory Reference** - Municipal noise regulation, see G.S. Section 160A-184; Horns and warning devices on motor vehicles, see G.S. Section 20-125–Miscellaneous*

Section 9-115 Exceptions and Exemptions

Sounds caused by the following are exempt from this ordinance:

- (A) The usual noises emanating from the normal operation of vehicles.
- (B) Sirens, whistles, or bells lawfully used by emergency vehicles
- (C) Normal activities conducted on public playgrounds and school grounds, including the University of North Carolina at Pembroke, which are conducted in accordance with the manner in which such spaces are generally used, including but not limited to, school athletics and school entertainment events.
- (D) Outdoor gatherings, public dances, shows, sporting and athletic events, parades, festivals, fire-works shows or other similar scheduled events which are conducted, sponsored or approved by the Town of Pembroke.
- (E) Noise or sound from railroad operations.

(1992 Code; Amended 2 Feb 2015)

Section 9-116 Noise Complaint Procedure.

In the event any person has reasonable grounds for believing that any provision of Town's noise ordinance is being violated, he/she may make a report thereof to the Pembroke Police Department which shall investigate the alleged violation. If such investigation reveals probable cause for a violation, the investigating officer shall cause a written complaint to be made, and may issue a citation for the violation thereof. The Chief of Police for the Town of Pembroke shall be the primary investigating officer when possible in all cases involving noise complaints generated by business establishments.

(1992 Code; Amended 2 Feb 2015)

Section 9-117 Special Permits

Applications for a permit for relief from the maximum allowable noise level limits and/or time limitations designated in the ordinance may be made in writing to the Town Manager for the Town of Pembroke or his/her duly authorized representative. Special permits under this section shall require a \$100.00 fee payable when the application is filed. In the event that the permit is denied the fee shall be returned. Any permit granted by the Manager under this section must be in writing and shall contain all conditions upon which said permit shall be effective.

All applications for Special Permits shall be promptly considered and acted upon by the Town Manager. In considering and acting on all applications for permits, the Manager shall consider, but shall not be limited to, the following factors:

- (A) The nature and duration of the proposed activity.
- (B) The effect of the activity on nearby residential areas.
- (C) Cultural, social, recreational and/or educational benefits of the proposed activity.
- (D) Previous experience with the applicant; and
- (E) Previous violations of this noise ordinance, if any, by the applicant.

Taking into consideration the factors listed above, the Manager shall issue a Special Permit with appropriate conditions upon finding that, under all of the circumstances, the noise generating activity as well as the time and duration of the activity, will not unduly annoy, disturb, injure, or endanger the comfort, health, peace, or safety of reasonable persons of ordinary sensibilities.

A permit may be denied or revoked in the following cases:

- (A) The activity constitutes a threat to the health, safety or welfare of others.
- (B) The applicant has violated any provisions of the ordinance within 12 months preceding the date of the application; or
- (C) The applicant violates any of the permit conditions during the time allowed for the permitted activity.

(1992 Code; Amended 2 Feb 2015)

Section 9-118 Penalties for Violation.

Nothing in the ordinance shall prevent the investigating officer from obtaining voluntary compliance by way of warning or other notice. If a person's conduct or that of a business violates this ordinance, in a first encounter only, the person or business must be ordered to cease and desist and have the opportunity to move, disperse, or otherwise immediately remedy the violation prior to a citation being issued. Failure of a person or business to immediately comply with an officer's warning may result in the issuance of a criminal citation (and possible arrest) for violating this ordinance and an immediate cessation of the source of the noise.

The **first** cited violation of this ordinance shall be a \$250.00 civil penalty payable to the Town of Pembroke within five (5) days. The **second** and all subsequent violations of this ordinance shall be a \$500.00 civil penalty payable to the Town of Pembroke. Failure to pay the civil penalties within the time provided will result in a criminal citation requiring court appearance.

Nothing herein precludes the Town of Pembroke from seeking other means of enforcement of this ordinance, up to and including, injunctive relief against the offender as well as seeking declaration of the offender as a public nuisance.

(1992 Code; Amended March 5, 2015)

Section 9-119 Presumption in prosecution for violation.

The complaints of two (2) or more persons, at least one (1) of which resides in a different home from the other complaining person or persons, or the complaint of one or more persons, when combined with the complaint of a duly authorized investigating person, shall be prima facie evidence that such sound is a loud and annoying, frightening, loud and disturbing, unreasonably loud or unnecessary noise.

(1992 Code; Amended 2 Feb 2015)

Sections 9-120 through 9-125: Reserved.

ARTICLE X: WEEDS AND ACCUMULATION OF REFUSE

Section 9-126 Declaration of nuisance.

No person shall permit the following conditions on land within the corporate limits as such is hereby declared to be dangerous and prejudicial to the public health or safety and to constitute a public nuisance:

- (A) Any condition which is a breeding ground or harbor for mosquitoes, rats, snakes, or other pests, or has the potential for becoming a breeding ground or harbor for such pests;
- (B) A place of heavy growth of weeds or grasses over eight inches in height which lies less than 100 feet from any abutting open street or which lies less than 100 feet from any adjoining property which contains a structure; or a place of heavy growth of weeds or grasses over 12 inches in height which lies within 50 feet of any occupied dwelling. The nuisance shall be cleared and cut not more than three inches in height;
- (C) A place of vines, shrubs or other vegetation over eight inches in height when:
 - (1) Such vines or vegetation lie less than 100 feet from any adjoining property line which contains a structure as defined in the North Carolina State Building Code and when such conditions are not located within a flood plain or not located on any slope that is deeper than three to one; or
 - (2) Such vines, shrubs or vegetation are a focal point for any other nuisance enumerated in this Code, provided that the nuisance herein defined by this subsection (1)c shall be cleared and cut only when it is necessary to abate any other nuisance described in this section;
- (D) A place of growth of noxious vegetation, including poison sumac (*Rhus vernix*), poison ivy (*Rhus radicans*) or poison oak (*Rhus toxicodendron*), in a location that may be accessible to the general public;
- (E) An open place or concentration of combustible items such as mattresses, boxes, paper, automobile tires and tubes, trash, refuse, brush, clothing, rags or any other combustible materials or objects of a like nature;
- (F) An open place of a collection of garbage, food waste, animal waste or any other rotten or putrescible matter of any kind;

- (G) Animal hides, dried or green, provided the same may be kept for sale in the Town when thoroughly cured and odorless;
- (H) Any furniture, appliances, automotive parts or pieces or other wood or metal products of any kind or nature openly kept which have jagged edges of metal or glass, or areas of confinement, or areas which may provide a habitat for rats, snakes, insects or other pests;
- (I) Any ditch, trench or below ground portion of a construction project which remains open for more than 14 days without being completed or which is not protected with barricades, flags or other means so as to constitute a hazard to pedestrians or motor traffic;
- (J) Failure to clean or clear the Town or Department of Transportation public street or highway of mud, gravel and debris related to a business, construction, hauling, timbering or other similar land use activity within 12 hours after notification by the Town Manager or his designee for major and minor thoroughfares or within 24 hours after such notification for collector and local streets; however, if it is found by the Town Manager or his designee that the situation is causing a clear and present danger or hazard to traffic or the general public, such cleaning or clearing may be required to take place as soon after notification as practicable;
- (K) Any improper or inadequate drainage on private property which causes flooding, interferes with the use of, or endangers in any way the streets, sidewalks, parks or other Town-owned property of any kind;
- (L) An open place of collection of water for which no adequate natural drainage is provided and where insects tend to breed or which is or is likely to become a nuisance or a menace to public health;
- (M) Any stormwater retention or detention pond or other impoundment device which is operating improperly;
- (N) Any storm drain, sewer manhole, or other private or public facility which is not properly covered with a grate or other means to remove any hazard to pedestrians or motor traffic or any abandoned well not properly filled to remove any hazard to the public;
- (O) Privies;
- (P) Any condition which blocks, hinders or obstructs in any way the natural flow of branches, streams, creeks, surface waters, ditches or drains to the extent that lots or properties are not free from standing water;
- (Q) Any collection of water such as swimming pools, manmade pools or ponds, fountains, or other similar means of collection of water for which no adequate natural drainage is provided and which is or is likely to become a nuisance and a menace to health; or
- (R) Any condition which violates the rules and regulations of the Robeson County Health Department.

(1992 Code, Section 97.01)

Section 9-127 General.

For any other condition not specifically identified above declared to be a danger to the public health, safety and general welfare of the Town and a public nuisance by the Town Council, abatement proceedings may be initiated by the Town Manager or his designee before the Town Council after giving written notice thereof.

Section 9-128 Complaint and investigation.

The Town Manager or his designee, upon notification from any person or observation by the Town staff of the existence of any of the conditions described in **Section 9-126**, shall cause the appropriate officials of the Town to inspect any premises as necessary to determine whether such conditions exist as to constitute a public nuisance.

(1992 Code, Section 97.02)

Section 9-129 Nuisance abatement fee.

Pursuant to G.S. 160A-414, an administrative fee in accordance with the adopted fee schedule for inspecting nuisances in this chapter may be charged to the owner of such lot or parcel of land for the initial inspection plus one additional inspection to inspect the corrected work. Any additional inspections made shall constitute a separate inspection for which a separate administrative fee will be imposed.

Statutory Reference – NC General Statutes 160A-414.

Section 9-130 Duty to give notice of nuisance and direction to abate.

- (A) Upon a determination that a public nuisance exists, the Town Manager or his designee shall notify in writing by certified or registered mail, return receipt, the owner of the premises of the findings constituting such public nuisance and shall order the prompt abatement thereof within ten days from the date of receipt of such written notice.
- (B) The owner of the property may appeal the findings provided the appeal is filed with the Town within the ten days from the date of receipt of the notice. The appeal must be in the form of a written notice to the Town Manager. An appeal of the decision of the Town Manager shall be to the Town Council. The filing of the appeal shall stay the abatement of the nuisance by the Town until a review and determination by the Town Manager, unless it can be established that a stay would cause imminent peril to life or property, the violation is transitory in nature and would seriously interfere with the effective enforcement of this chapter. Abatement proceedings shall not be stayed with certification of imminent peril, except by order of a court of competent jurisdiction. In the event no appeal is taken, the Town may proceed to abate the nuisance.
- (C) In the event an appeal to the Town Council is submitted, and after hearing all interested persons in reviewing the findings of the Town Manager, the Town Council may reverse the findings; however, if the Town Council shall uphold the findings of the Town Manager, he shall sign an order specifically declaring the condition existing on the property to be a danger and hazard to the public health, safety and general welfare of the citizens of the Town and a public nuisance and directing the Planning Director or his designee to cause the condition or conditions to be abated.
- (D) If any of the above-defined nuisances are found to exist, the responsibility for abatement shall rest with the owner in possession of the property, notwithstanding that the nuisance is found to exist, wholly or in part, within the Town easement which crosses private property.

(1992 Code, Section 97.08)

Section 9-131 Abatement of nuisance by Town.

If any person, after having been ordered to abate a public nuisance described in this chapter, fails, neglects or refuses to abate or remove the condition constituting the nuisance within the prescribed time as stated in **Section 9-130** from receipt of the order, the Town Manager or his designee shall cause the condition to be removed or otherwise abated by the Town employees or a private contractor hired by the Town to go upon such premises and remove or otherwise abate such nuisance under the supervision of the Public Works Director or his designee. In such instances, weeds or grass shall always be cut to a maximum height of three inches.

(1992 Code, Section 97.08)

Cross Reference - Section 1-6 General penalty; civil remedies; enforcement of ordinances; continuing violations.

Section 9-132 Cost of nuisance abatement to be charged to owner.

The actual cost incurred by the Town in removing or otherwise remedying a public nuisance defined in this chapter shall be charged to the owner of such lot or parcel of land, and it shall be the duty of the Town to mail a statement of such charges to the owner or other person in possession of such premises with instructions that such charges are due and payable within 15 days of time from the receipt thereof.

(1992 Code, Section 97.08)

Section 9-133 Lien created.

In the event charges or penalties for the removal or abatement of a public nuisance are not paid within 15 days after the receipt of a statement of charges from the Town as provided in Section 8-122, such charges shall become a lien upon the premises where the public nuisance existed and shall be collected as unpaid taxes, as provided in G.S. 160A-193.

(1992 Code, Section 97.08)

Section 9-134 Second and subsequent violations.

Upon second and subsequent violations of this chapter on properties previously cited for the same public nuisance violation in the same calendar year, notice of the violation as required in **Section 9-130** shall be given, and the Town may impose a civil penalty of \$250.00 for each day that the nuisance remains; and through its agents and employees, may enter upon such lot or premises and abate such nuisance located on either public or private property. The cost to abate the public nuisance, penalties and administrative fees shall be paid by the owner, occupant or person in possession of the premises. If unpaid, the cost shall become a lien against the property and shall have the same priority and be collected as unpaid ad valorem taxes.

Section 9-135 Civil Penalty provided.

- (A) A violation of any provision of this chapter shall constitute a misdemeanor punishable up to a \$500.00 fine or as a civil penalty as set forth below.
- (B) A violation of any provision of this chapter shall subject the offender to a civil penalty in the amount of \$100.00 for the first violation. No penalty shall be imposed if the offender abates the nuisance within the period given. If the offender does not abate the nuisance within the above-designated time period, a \$100.00 penalty may be imposed for each day after the end of the notice period for up to ten calendar days, after which a \$250.00 penalty may be imposed for each day thereafter that the nuisance remains and until the abatement of the nuisance is fully completed. If the Town enters property to abate the public nuisance under the provisions of this chapter the costs shall be included with any penalties imposed by the Town and will be the responsibility of the property owner, occupant or the person in possession to pay.
- (C) The offender shall be issued a written citation by delivery in person or mailed by certified or registered mail. The civil penalty must be paid within 15 days of its receipt by the offender. If the public nuisance has not been abated at the time the civil penalty is due, the penalty will continue to be imposed until the nuisance is abated by the property owner, occupant or person in possession or the Town.

- (D) The costs of abatement and the penalty shall be recovered by the Town in the form of a lien on the property in the form of unpaid ad valorem taxes if the offender does not pay the penalty within the prescribed period of time provided in this chapter. The Town may consider additional payment options proposed by the owner of the property that must be in the form of an agreement and approved by the Town.

Sections 9-136 through 9-140 Reserved.

ARTICLE XI: SEXUALLY EXPLICIT MATERIALS; DISPLAY TO MINORS

Refer to Article 21: ADULT AND SEXUALLY ORIENTED ESTABLISHMENTS of the Unified Development Ordinance, regarding licensing and regulation of businesses.

Section 9-141 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:

Business means any commercial establishment offering sexually explicit material for sale.

Knowingly means with knowledge of the content, nature and character of the material, but does not require knowledge that any material is "sexually explicit."

Material means any book, magazine, newspaper, pamphlet, handbill, or similar printed or written matter; or any drawing, picture, illustration, transparency, photograph, motion picture, film negative, film positive, videotape or similar representation or reproduction.

Minor means a person under the age of 18 years.

Nudity means the showing, in context of sexual or erotic conduct or arousal, of the human male or female genitals, pubic area, or anal area, with less than full opaque covering, or the showing of the female breasts with less than full opaque covering of any portion thereof below the top of the areola, or the depiction of covered or uncovered male genitals in a discernibly turgid state.

Person means any person, individual, firm, corporation, association, partnership, or other legal entity.

Public display or publicly display, with respect to sexually explicit material, means placing or making available that material in any public place so that minors may possess or handle any material and peruse, inspect or leaf through it.

Sexually explicit material means any material which:

- (A) The average person, applying contemporary community standards, would find, when considered in the whole context in which it is used or presented, appeals to the prurient interest in sex of minors;
- (B) Depicts or describes ultimate sex acts, normal or perverted, actual or explicitly simulated; masturbation, excretory functions or direct physical stimulation of unclothed genitals or anal area; nudity, as defined herein; or acts of apparent or actual sexual stimulation or gratification; and

- (C) When considered as a whole and in the context in which it is used or presented, lacks serious artistic, literary, political, educational or scientific value to minors. Material may be found to be explicit if the externally visible covers thereof meet the standard of this section or if the contents thereof meet the standard of this section.

Section 9-142. Prohibited conduct pertaining to sexually explicit material.

- (A) It is a violation of this chapter if any person knowingly places sexually explicit material upon public display in any public place through which minors pass or to which they are invited as members of the general public, except that sexually explicit material may be displayed as provided in subsection (b) of this section.
- (B) A business shall not be deemed to place sexually explicit material upon public display in any area through which minors pass or to which they are invited as members of the general public, if the following conditions are met:
 - (1) The sexually explicit material is placed in racks or on shelves separate from racks, shelves, or other sales display cases for other material;
 - (2) The racks or shelves are located at least 60 inches above floor level and within eight feet or less of a cash register or similar purchase location;
 - (3) Those racks or shelves are constructed with a full opaque barrier that shields the sexually explicit material so that only the title of the material is visible on the covers (other than material that is not sexually explicit) but such that said materials may be conveniently removed and pursued or inspected, subject to the business' practices, by persons not minors;
 - (4) Any of said racks or shelves, or portions thereof, that contain one or more items of sexually explicit material are clearly and continuously visible without obstruction from the cash register or purchase location; and
 - (5) The cash register or purchase location is tended by a proprietor or employee of the business, which person shall be under a duty to affirmatively and frequently ascertain that minors are not able to and do not peruse, inspect, or leaf through sexually explicit materials.
 - (6) Nothing in this chapter shall be deemed to prohibit any other method of removing from minors the opportunity or ability to peruse, inspect, or leaf through sexually explicit materials that places such materials exclusively under the possession and control of the proprietor or employee of the business until the amount of sale of such material to a person other than a minor.

Section 9-143 Defenses.

It shall be a defense to Section 8-132 that:

- (A) A minor possessing or handling sexually explicit materials is at that time under parental or parentally-approved adult supervision; or
- (B) The proprietor or other employee of the business made a bona fide, good faith effort to determine the minor's age and had reasonable grounds to believe the minor was over 17 years of age.

Section 9-144 Declaration of nuisance.

Each violation of this chapter constitutes a public nuisance. Each item of sexually explicit material publicly displayed in violation of this chapter shall constitute a public nuisance.

Section 9-145 Violations deemed separate.

- (A) Each instance of public display of an item of sexually explicit material shall constitute a separate violation of this chapter, but possession of multiple copies of a particular item of sexually explicit material shall constitute a single violation of this chapter.
- (B) Each day of public display of sexually explicit material shall constitute a separate violation of this ordinance.

Section 9-146 Enforcement.

- (A) Violation of this chapter is declared to be a misdemeanor. The Chief of Police may seek from an appropriate official of the General Court of Justice an arrest warrant or other process initiating criminal charges against any person alleged to have violated this chapter. No other agent or employee of the Town may, in his official capacity, seek an arrest warrant or other criminal process without the prior written approval of the Town Manager.
- (B) The Town may also enforce this chapter by bringing suit under G.S. 160A-175 or any successor provision for the enforcement of Town ordinances to abate the public display of sexually explicit materials to minors. No action shall be taken to abate said public display until the alleged violator has been given an opportunity to be heard in an adversarial judicial proceeding to determine whether the materials publicly displayed are sexually explicit within the meaning of this chapter. Any order of abatement shall apply to material judicially determined to be sexually explicit within the meaning of this chapter, and shall direct the abatement of the public display by removal, confiscation and destruction of material judicially determined to be sexually explicit and to have been publicly displayed in violation of this chapter.

Statutory Reference – NC General Statutes 160A-175

Section 9-147 Remedies cumulative.

The remedies provided under this chapter are cumulative, and not exclusive, and may be independently pursued against the same person for the same activity constituting a violation of this chapter.

Sections 9-148 through 9-150 Reserved.

ARTICLE XII: CURFEW FOR MINORS

Section 9-151 Purpose.

The establishment of a curfew for minors will promote the protection of minors from criminal activity that occurs during curfew hours, the protection of the citizenry from criminal activity committed by minors during curfew hours, the protection of minors from improper influences, including gang activity that prevails during curfew hours.

(1992 Code; Ordinance 96-2)

Section 9-152 Definitions.

For the purpose of this section, the following definitions shall apply:

Direct Route: The shortest reasonable path of travel or a commonly used route to reach a final destination without any detour or stop along the way.

Emergency: An unforeseen combination of circumstances or the resulting state that calls for immediate action. The term includes, but is not limited to, a fire, a natural disaster, an automobile accident, or any situation requiring immediate action to prevent serious bodily injury or death. This term also shall include any action that is reasonably necessary in order to respond to the medical needs of a family member of the minor regardless of whether the minor's action is taken in order to prevent death or serious bodily injury.

Establishment: Any privately owned place of business operated for profit to which the public has access or is invited including but not limited to any place of amusement or entertainment.

Guardian: A person who is court-appointed to be the guardian of a minor.

Minor: A person who is under the age of sixteen (16) years.

Owner/Operator: Any individual, firm, association, partnership or corporation, operating, managing or conducting any establishment, including the employees, members or partners of an association or partnership and the officers of a corporation.

Parent: A person who is a natural parent, adoptive parent, foster parent or a step-parent of another person, or a person to whom legal custody has been given by court order.

Public Place: Any place that is generally open to and used by the public or a substantial group of the public, whether it be publicly or privately owned, including but not limited to, streets, sidewalks, highways, alleys, rights of way, public vehicular areas and parking lots, transportation facilities, theaters, restaurants, shops, bowling alleys, schools and school grounds, places of business and amusement, playgrounds, parks, similar areas that are open to the public, and other common areas open to or accessible to the public.

Remain: To linger or stay in a public place, or to fail to leave the premises when requested to do so by a police officer, or to fail to leave the premises of an establishment when requested to do so by the owner/operator or employee of the premises.

(1992 Code; Ordinance 96-2)

Section 9-153 Offenses.

A curfew applicable to minors is established and shall be enforced as follows:

1. **Time Limits:** It is unlawful for any minor under the age of sixteen (16) years to be or remain upon any public place in the Town of Pembroke between 11:00 p.m. on Sunday, Monday, Tuesday, Wednesday, Thursday, Friday or Saturday, and 5:00 a.m. of the following day.
2. **Out of School Suspensions Time Limit:** It is unlawful for any minor under the age of sixteen (16) years who has been suspended from school or has failed to attend school for any reason during regular school hours, who is not in the company of a parent or guardian, to be or remain upon any public place in the Town of Pembroke between the hours of 7:30 a.m. and 3:30 p.m. on any school day.

3. Responsibility of Adults: It is unlawful for any parent, guardian, or other person charged with the care and custody of any minor to allow or permit such minor to be in or upon, or remain in or upon a public place in the Town of Pembroke within the applicable curfew hours set by **Section 9-153 Offenses (1) and (2)**, except as otherwise provided in **Section 9-154 Exceptions**. A parent or guardian of a minor commits an offense if he knowingly permits, or by insufficient control, allows the minor to remain in any public place or on the premises of any establishment within the Town during the restricted hours. The term "knowingly" includes knowledge that a parent should reasonably be expected to have concerning the whereabouts of a minor in that parent's legal custody. This requirement is intended to hold a neglectful or careless parent up to a reasonable community standard of parental responsibility through an objective test. It shall, therefore, be no defense that a parent was completely indifferent to the activities or conduct or whereabouts of such minor.
4. Responsibility of Business Establishments: It is unlawful for any person, firm, or corporation operating a place of business or amusement to allow or permit any minor to be in or upon, or to remain in or upon, any place of business or amusement operated by them within the applicable curfew hours set by **Section 9-153 Offenses (1) and (2)**, except as otherwise provided in **Section 9-156 Enforcement**. The owner, operator, or any employee of an establishment commits an offense if he knowingly allows a minor to remain upon the premises of the establishment during the restricted hours. The term "knowingly" includes knowledge that an owner, operator or employer should reasonably be expected to have concerning the patrons of an establishment. The standard for "knowingly" shall be applied through an objective test whether a reasonable person in the operator's or employee's position should have known that the patron was a minor in violation of this section.
5. Aiding and Abetting by Adult, Guardian, or Parent: It is unlawful for an adult, guardian, or parent to allow, permit, encourage, aid or abet a minor in the violation of **Section Offenses 9-153 (1) and (2)**, except as otherwise provided in **Section 9-156 Enforcement**.

(1992 Code; Ordinance 96-2)

Section 9-154 Exceptions:

A minor who is in a public place or establishment in violation of the restrictions established by **Section 9-153 Offenses** shall not be in violation of this section if the minor is:

- (1) accompanied by his parent or guardian; or
- (2) accompanied by an adult eighteen (18) years of age or older authorized by the parent or guardian of such minor to take the parent or guardian's place in accompanying the minor for a designated period of time and purpose within specified area; or
- (3) engaged in a lawful employment activity, or using a direct route to or from a place of employment; or
- (4) reacting or responding to an emergency; or

- (5) attending or traveling to or from, by direct route, an official school, religious, or recreational activity that is supervised by adults and sponsored by a public or private school, the Town of Pembroke or other governmental entity, a civic organization or another similar entity that accepts responsibility for the minor; or
- (6) exercising First Amendment right protected by the United States Constitution such as the free exercise of religion, freedom of speech, and the right of assembly provided that prior written notice signed by the minor which specifies when, where and in what manner the minor will be in a public place exercising First Amendment rights shall be filed with the Office of the Chief of Police; or
- (7) in a motor vehicle with the consent of his parent or guardian engaged in interstate travel through the town or originating and terminating in the town; or
- (8) married or emancipated; or
- (9) a member of the armed services of the United States.

(1992 Code; Ordinance 96-2)

Section 9-155 Defense.

It is a defense to prosecution under **Section 9-153 Offenses (4)** that the owner, operator, or employee of an establishment promptly notified the police department that a minor was present on the premises of the establishment during the restricted hours established in **Section 9-158 Penalties** and refused to leave.

(1992 Code; Ordinance 96-2)

Section 9-156 Enforcement.

When a minor is found to be in violation of this section, the officer will take the minor to the residence of his parent or guardian, or the parent or guardian will be contacted by the Police Department to come to the Police Department to pick up the minor. The officer shall complete a written curfew Incident Report and the report will be kept on file. The Police Department shall review all filed curfew Incident Reports and proceed as follows:

- (1) The first curfew violation by a minor will result in written notice being sent to the parent or guardian of the minor outlining the provisions of this section and providing a contact number if the parent needs additional information or assistance.
- (2) The second curfew violation by a minor will result in a written notice being sent to the parent or guardian of the minor recommending that they contact the Police Department to discuss the violation and detailing the penalties for subsequent violations.
- (3) The third or a subsequent curfew violation by a minor will subject the minor to a criminal citation or a minor petition pursuant to the provisions of **Section 9-158 Penalties**. The parent or guardian will also be subject to criminal citation upon investigation if the parent or guardian is found to have violated **Section 9-153 Offenses (3)**.

Notwithstanding the foregoing, the Robeson County Department of Social Services may be contacted in relation to any curfew violation by a minor and any person may be subject to a criminal citation for violation of the provisions of **Sections 9-153 Offenses (3), (4) or (5)** in relation to any curfew violation by a minor.

(1992 Code; Ordinance 96-2)

Section 9-157 Refusal of Guardian or Parent to Take Custody of a Minor.

If any guardian or parent refuses to take custody of his minor child found in violation this section, the officer with custody of said minor shall contact the Robeson County Department of Social services and release the minor to that agency, pending further investigation by the Police Department and Department of Social Services. The adult will be subject to a criminal citation for violation of the provisions of ***Section 9-153 Offenses (5).***

(1992 Code; Ordinance 96-2)

Section 9-158 Penalties.

- (a) Any person who violates any provision of this section shall be guilty of a misdemeanor and shall be subject to a fine not to exceed \$100.00 and imprisonment in the discretion of the Court in accordance with N.C.G.S. 14-4.
- (b) In addition to any other applicable penalty, a minor who violates any provision of this section is subject to being adjudicated delinquent. The Court may, in its discretion, impose any dispositional alternative that is provided in the *North Carolina Juvenile Code* for any minor who is delinquent.

(1992 Code; Ordinance 96-2)

Statutory Reference – NC General Statutes 14-4.

Section 9-159 Severability.

If any subsection, sentence, term, or exception of this section, or any application thereof to any person or circumstance is adjudged unconstitutional or invalid, such adjudication shall not affect the validity of any remaining portion of this section or its application to any other person or circumstances.

(1992 Code; Ordinance 96-2)

Sections 9-160 thru 9-170 Reserved.

CHAPTER 10: PARADES, DEMONSTRATIONS AND SPECIAL EVENTS

ARTICLE I: GENERAL

Section 10-1 Permit Required.

No person shall organize, conduct or participate in any parade or group demonstration in or upon any street, within the Town, unless a permit therefor has been issued by the Town in accordance with the provisions of this chapter.

Statutory References:

Local regulation of processions and assemblages, see G.S. Section 20-169

Picketing or parading near court building, see G.S. Section 14-225.1

Weapons at parades and the like, see G.S. Section 14-277.2

Section 10-2 Certain activities prohibited.

The following acts or activities, when performed or undertaken in conjunction with or as a part of any parade or group demonstration are hereby prohibited and declared unlawful:

- (A) The carrying on or about the person any firearm or any weapon or article, including, but not limited to, blackjacks, nightsticks or flashlights which by their use might constitute a deadly weapon; and
- (B) The taking or keeping of any dog or any vicious animal, whether leashed or unleashed.

Section 10-3 Interference with parades, demonstrations prohibited.

No person shall hamper, obstruct or interfere with any parade or group demonstration being conducted under authority of a permit duly issued by the Chief of Police.

Section 10-4 Limitations on picketing.

Picket lines and picketing shall be subject to the following additional regulations.

- (A) Picketing may be conducted only on the sidewalks reserved for pedestrian movement and may not be conducted on the portion of a street used primarily for vehicular traffic.
- (B) Not more than ten pickets promoting the same objective shall be permitted to use either of the two sidewalks within a single block at any one time.
- (C) Pickets may carry written or printed placards or signs not exceeding two feet in width and two feet in length promoting the objective for which the picketing is done, provided that the words used are not derogatory or defamatory in nature.
- (D) Pickets must march in single file and not abreast and not march closer together than 15 feet, except in passing one another.
- (E) If pickets promoting different objectives desire to use the same sidewalk for picketing and the use would result in the presence of more than ten pickets thereon, the Chief of Police shall allot time to each group of pickets for the use of the sidewalk on an equitable basis. Each group shall be allowed the use, subject to the provisions of this section, at least once every two hours.
- (F) Pickets shall not block intersections or driveways.

- (G) Pickets shall not carry on or about the person any firearm or any weapon or article including, but not limited to, blackjacks, nightsticks or flashlights which by their use might constitute a deadly weapon.
- (H) No picket shall have any dog or any vicious animal, whether leashed or unleashed.
- (I) It shall be unlawful for any person to hamper, obstruct or interfere with any pickets except police officers may stop any picketing activity if it becomes unlawful.

Sections 10-5 through 10-15: Reserved.

ARTICLE II: SPECIAL EVENTS

Section 10-16 Purpose; Scope and Intent.

- (A) Recognizing that special events enhance the quality of life for residents and visitors alike, it is the purpose of the Town Council to establish a process for permitting the use of public facilities not otherwise covered in the Town Code, including, but not limited to, staging outdoor activities which use Town streets, facilities or services, or to conduct events that occupy, impact or consume public resources as a result of the congregation of people.
- (B) Given the close proximity of residential and commercial areas, the Town Council must balance the quiet enjoyment of one's residence in relationship to the commercial purposes that sustain and promote our tourist economy and recover costs related to the event, such costs include, but are not limited to: personnel, equipment and supplies, sanitation (litter, debris and human wastes), wastewater, utilities, park maintenance and restoration - including long-term degradation - and park monitoring.
- (C) It is the intent of the Town Council to recognize the rights of all citizens to engage in protected free speech expression activities and yet allow for the least restrictive and reasonable, time, place and manner regulation of those activities within the overall context of rationally regulating commercial special events that have an impact upon public facilities and services. Persons failing to secure such a permit under this article, however, will not be entitled to the benefits provided by this article, including but not limited to, the right to erect stages, barricades, utility poles, booths, tents, or other temporary structures, or the use of amplified devices, parked vehicles or of permanent structures, or to the assistance of city personnel in carrying out their event, or their exclusive or reserved use of the facility unless otherwise authorized by some other ordinance or law.

Cross Reference – Unified Development Ordinance, Section 10-1 Notes to the Table of Permitted Uses. Note 31. Special Events. (Amended 4/3/2017).

Section 10-17 Definitions.

As used in this article:

Building means any temporary or permanent structure as defined by the Pembroke Zoning Code or any structure built for support, shelter, or enclosure of persons, animals, chattels, or property of any kind.

Commercial special event means any special event organized and conducted by any person or entity that does not qualify as a tax-exempt non-profit organization.

Demonstration means any formation, procession or assembly of persons which, for the purpose of expressive activity, is:

- (A) To assemble or travel in unison on any street in a manner that does not comply with normal or usual traffic regulations or controls; or
- (B) To gather at a public park or other public area.

Event organizer means any person who conducts, manages, promotes, organizes, aids or solicits attendance at a commercial or non-commercial special event.

Expressive activity includes conduct, the sole or principal object of which is the expression dissemination or communication by verbal, visual, literary or auditory means of opinion, views or ideas and for which no fee or donation is charged or required as a condition of participation in or attendance at such activity. It includes public oratory and distribution of literature, and picketing.

Facility use permit means a permit issued under the authority of the Town Manager for temporary or reserved use or occupation of a public facility or an area of public land, for a defined period of time and said use does not adversely impact Town resources, due to the anticipated congregation of people in such numbers or in such location as identified.

Festival means a thematic, organized, site-specific celebration, performance, exhibition or competition occurring upon public or private property, or a combination of private and public property, during which commerce occurs, for a defined period of time, advertised and promoted outside the Town of Pembroke, that will have an impact on city resources, due to the anticipated congregation of people in such numbers or in such location as identified.

Goods means wares, personal property, merchandise or any other similar item or object than is generally sold.

Gross revenues means the sum of all revenues received by an event organizer for a special event, including, but not limited to, cash receipts, licensing, sponsorship, television, advertising and similar revenues, and concessions.

Non-commercial special event means any special event organized and conducted by a person or entity that qualifies as a tax-exempt non-profit organization.

Parade means any march, race, presentation, ceremony, pageant or procession of any persons and conveyances of any sort moving upon any public street or sidewalk of the city, which does not comply with normal traffic regulations.

Sidewalk means that portion of a highway, other than the roadway, set apart by curbs, barriers, markings or other delineation for pedestrian travel.

Signage means any sign, pennant, flag, banner, inflatable display, or other attention-seeking device.

Special event can mean:

- (A) Any organized formation, parade, procession or assembly consisting of persons, and which may include animals, vehicles or any combination thereof, which is to assemble or travel in unison on any street which does not comply with normal or usual traffic regulations or controls; or
- (B) Any organized assemblage, not meeting the criteria for a facilities use permit, of persons at any private or public property or public park which is to gather for a common purpose under the direction and control of a person; or
- (C) Any other organized activity conducted by a person or group for a common or collective use, purpose or benefit which involves the use of, or has an impact on, other public property or facilities and the provision of city public safety services in response thereto.

Examples of special events include but not limited to filming, concerts, parades, circuses, fairs, festivals, block parties, community events, mass participation, sporting competition such as, marathons and running events, bicycle races or tours, or spectator sports such as, football, basketball and baseball games, or golf tournaments.

Special event permit means a permit issued under this article.

Special event venue means that defined area identified on a submitted site plan approved by special events coordinator for which a special event permit has been issued.

Street means a public right-of-way, or way or place of whatever nature, publicly maintained and open to use of the public for purposes of vehicular or pedestrian travel. *Street* includes highways, alleyways, sidewalks and any other public area that accommodates vehicular or pedestrian traffic.

Tax-exempt non-profit organization means an organization that is exempted from payment of income taxes by federal or state law and which has been in existence for a minimum of six (6) months preceding the date of application for a special event permit.

Vendor means any person who sells or offers to sell, any goods, food, or beverages within a special event venue, including the event organizer or any person who contracts with the event organizer for space within the special event venue in order to vend goods.

Section 10-18 Special event permit required; facility use permits; parade permits.

- (A) Except as provided in this article, no person or persons shall conduct, promote, manage, aid, or solicit attendance at a special event on public property or on private property, or on a combination of private and public property, any event of such magnitude as to impact public safety, traffic, or the health, safety and welfare of the residents or the invitees, unless that person shall have obtained a special event permit from the special events coordinator, based upon a complete application detailing the particulars of the event.
- (B) The Town Manager, or designee, is authorized to recommend the granting of facility use permits and parade permits, and to determine when a proposed facility use rises to the level of a special event permit, based upon an evaluation of public impact or consumption of public resources, location, anticipated attendance, and purpose.
- (C) The Town Manager shall consider all special event permits for events occurring within the Town limits pursuant to the procedures established in this article. The Town Manager shall determine the special event venue, set reasonable boundaries, balancing the special event requirements and public health, safety, and welfare.

- (D) The Town Manager shall coordinate the issuance of a special event permit with other public agencies through whose jurisdiction or property the event or portion thereof occurs and to issue a special event permit upon the concurrence of other public agencies involved. The Town Manager is authorized to establish administrative and operational policies to issue both the special event permit and the facility use permit. On an annual basis, or as requested, the Town Manager shall report a listing of facility use permits, parade permits and special event permits to council.

Section 10-19 Exceptions to special event permit requirement.

The following activities are exempt from the special event permit requirement:

- (A) Funeral services and processions;
- (B) Activities solely conducted by the Town of Pembroke;
- (C) Lawful picketing on sidewalks;
- (D) Demonstrations that do not involve the use of vehicles, animals, fireworks, pyrotechnics or equipment (other than sound equipment), provided that:
 - (1) No fee or donation is charged or required as a condition of participation in or attendance at such demonstration; and
 - (2) The Police Department is notified at least forty-eight (48) hours in advance of the commencement of the demonstration.

Section 10-20 Issuance of a special event permit does not obligate Town services.

- (A) Issuance of a special event permit does not obligate or require the Town to provide Town services, equipment or personnel in support of an event.
- (B) Town services, equipment, or personnel for commercial special events may be provided, based upon cost recovery.
- (C) Cost recovery for non-commercial events may be waived only if the Town Council finds that a public purpose will be served. A public purpose is served if all four (4) of the following factors are met:
 - (1) The event is organized and conducted by a tax-exempt non-profit organization which operates from or provides services within the Town of Pembroke or Robeson County; and
 - (2) The event provides an identified benefit to the general public; and
 - (3) The event includes participation by the general public (notwithstanding an admission or participation fee); and
 - (4) Provision of Town services will result in improved crowd or event control and general public safety, and does not diminish or detract from the normal level of service for its citizens, based upon the evaluation, advice and approval of the Town Manager.

Section 10-21 Priority of special event permit issuance.

Except for events sponsored by the Town, which have first priority, and wherever possible, priority shall be given for the issuance of a special event permit to local tax-exempt non-profit organizations operating in and providing services to the citizens of the Town of Pembroke or Robeson County. Except for events sponsored by the Town, which have first priority, and whenever possible, priority shall be given for the issuance of a special event permit to larger acreage events over smaller acreage events. Priority shall be given for the issuance of special events that do not abut a residential area.

Section 10-22 Use of city seal or name.

The issuance of a permit shall not be considered an endorsement of a special event by the Town of Pembroke. It shall be unlawful for any person to represent, hold out, promote or publish to another that the Town name or Town seal is an endorsement of the event without specific Town Council action authorizing such endorsement.

Section 10-23 Time for filing application for special event permit or facility use permit.

- (A) An application for a special event permit shall be filed with the Town not less than sixty (60) calendar days, or thirty (30) days for a residential street closing, nor more than one (1) years, before the time when it is proposed to conduct the special event. The application shall be reviewed by such Town departments as designated by the Town Manager and Departmental comments shall be provided to the Town Manager.
- (B) Applications for facility use permits at Town public facilities shall be submitted in accordance within the time limits and procedures established for such facilities.
- (C) Any person organizing a demonstration shall notify the Town Manager not less than forty-eight (48) hours before the time when it is proposed to conduct the demonstration.

Section 10-24 Content of special event permit application.

The application for a special event permit shall include the following:

- (A) The name, address and telephone number of the applicant; and
- (B) A certification that the applicant will be financially responsible for any city fees or costs that may be imposed for the event; and
- (C) The name, address and telephone number of the event organizer, if any, and the chief officer of the event organizer, if any; and
- (D) If the special event is designed to be held by, on behalf of, or for any organization other than the applicant, the applicant for the special event permit shall file a written communication from such organization:
 - (1) Authorizing the applicant to apply for the special event permit on its behalf; and
 - (2) Certifying that the applicant will be financially responsible for any costs or fees that may be imposed for the event; and
 - (3) A copy of the tax exemption letter issued for any applicant claiming to be a tax-exempt non-profit organization; and
 - (4) A statement of the purpose of the special event; and
 - (5) A statement of fees to be charged for the special event; and
 - (6) The proposed signage, boundaries, location, map, dates, times, routes, alternative routes, staging areas, reviewing, parking, or disbanding stands or areas; and
 - (7) The approximate number of persons and kinds and number of animals, structures or vehicles that will participate in the special event, and the parking plan for the vehicle; and
 - (8) Plan for trash removal; and
 - (9) The number of bands or other musical units and the nature of any equipment to be used to produce sounds or noise; and
 - (10) The number and location of portable sanitation facilities; and
 - (11) Other equipment or services necessary to conduct the event with due regard for participant and public health and safety; and

- (12) The number of persons proposed or required to monitor or facilitate the special event and provide spectator or participant control and direction for events using city streets, sidewalks, or facilities; and
- (13) Provisions for first aid or emergency medical services, or both, based on event risk factors; and
- (14) Insurance and surety bond information; and
- (15) Any special or unusual requirements that may be imposed or created by virtue of the proposed event activity; and
- (16) Relevant information on the location, number and names of vendors, and the types of goods or services being intended to be marketed within the boundaries of the special event; [and]
- (17) Any other information required by the Town Manager.

Section 10-25 Conditions affecting the issuance of a special event permit.

- (A) The Town Manager may approve the issuance of the permit when all of the following conditions are met:
 - a. The event will not substantially interrupt public transportation or other vehicular and pedestrian traffic in the area of its route, including specifically the displacement of vehicular parking into adjacent or neighboring commercial areas not part of the venue, or into adjacent or neighboring residential areas.
 - b. The event will not cause a conflict with construction or development in the public right-of-way or at a public facility.
 - c. The event will not block traffic lanes or close streets during peak hours on weekdays or weekends, as determined by the special events coordinator.
 - d. The event will not require the diversion of a great number of police employees from their normal duties, thereby preventing reasonable police protection to the remainder of the city.
 - e. The concentration of persons, animals or vehicles will not unduly interfere with the movement of police, fire, ambulance, and other emergency vehicles on the streets.
 - f. The event will move from its assembly location to its disbanding location expeditiously and without stopping along that route.
 - g. The event will not substantially interfere with any other special event or demonstration for which a permit has already been granted or with the provision of Town services in support of other scheduled events or unscheduled governmental functions.
 - h. The event will not have adverse impact upon residential or business access and traffic circulation in the same general area.
 - i. If the event is a marathon, it will not occur within thirty (30) calendar days of another marathon.
- (B) To make the determination under this section, the Town Manager shall consider pedestrian and traffic circulation and parking, traffic volume and population density, time of year, and neighboring or adjacent zoning uses.

Section 10-26 Consideration of approval and reasons for denial of a special event permit.

- (A) The Town Manager may deny a special event permit to an applicant who has not:
 - a. Provided a sufficient traffic plan or for sufficient traffic controls by persons appropriately trained, certified or appointed pursuant to state law which enables the control of traffic; or
 - b. Provided for an adequate parking plan that does not displace vehicle into neighboring or adjacent non-participating commercial or residential areas; or
 - c. Provided sufficient monitors and a security plan for crowd control and safety; or

- d. Provided sufficient safety, health or sanitation equipment, services or facilities that are reasonably necessary to ensure that the event will be conducted with due regard for public safety and sanitation; or
- e. Provided sufficient off-site parking or shuttle service, or both, when required to minimize any substantial adverse impacts on general parking and traffic circulation in the vicinity of the event; or
- f. Provided sufficient signage information upon which approval can be granted; or
- g. Met all of the requirements for submitting an application for a special event permit; or
- h. The applicant demonstrates an inability or unwillingness to conduct an event pursuant to the terms and conditions of this article; or
- i. The applicant has failed to conduct a previously authorized or exempted special event in any jurisdiction in accordance with law or the terms of a permit, or both; or
- j. The applicant has not obtained the approval of any other public agency within whose jurisdiction the special event or portion thereof will occur; or
- k. The applicant has failed to provide an adequate first aid or emergency medical services plan based on event risk factors; or
- l. The applicant has failed to comply with any term of this article, or with any condition of a special event permit previously issued to the applicant.

Section 10-27 Denial of a special event permit and appeal to the review committee.

To the extent the denial of a special events permit is capable of appeal, any appeal permitted must be made in writing to the Town Review Committee, within thirty (30) days of the adverse decision. The review committee shall include the Town Manager or designee, the Chief of Police or designee, the Fire Chief or designee and the Town Finance Officer or designee.

Section 10-28 Display of special event permit or facility use permit is required.

A copy of the special event permit or facility use permit shall be displayed on location or in the special event venue in the method prescribed by the city special events coordinator applicable to the particular event and shall be exhibited upon demand of any city official.

Section 10-29 Contents of special event permit.

A special event permit shall always be accompanied by the site plan and shall contain the following information or address the following conditions:

- (A) The location of the special event venue, which may be identified by a map attached to the special event permit;
- (B) The date, assembly area, time for assembly and starting time of the special event;
- (C) The specific route plan to the special event;
- (D) The minimum and maximum speeds of the special event;
- (E) The number and types of persons, animals and vehicles, the number of bands, other musical units and equipment capable of producing sound, if any, and limitations thereon pertaining to noise abatement;
- (F) The portion of the street and sidewalk that is to be occupied by the event and the location of reviewing or audience stands, if any;
- (G) The number and location of traffic controllers, monitors, other support personnel and equipment and barricades to be furnished by the special event organizer;
- (H) The area and time for disbanding;

- (I) Conditions or restrictions on the use, sale or free distribution of alcoholic beverages and authorization for and conditions of the exclusive control or regulation of vendors and related sales activity by the event organizer during the special event;
- (J) Provisions for any required emergency medical services;
- (K) The size, manufacturer and location of any temporary buildings or structures to be erected specifically for the special event and removed immediately following the special event;
- (L) Such other information and conditions as are reasonably necessary for the conduct of the special event and the enforcement of this article, including the requirement for the on-site presence of the event organizer or its designated representative for all event coordination and management purposes; and
- (M) As a condition of the issuance of a special event permit, the applicant shall be required to make adequate provisions, which may include security deposits in an amount determined by the special events coordinator, for cleaning-up the area or route of the event both during and upon completion of the event and to return the area or route to the same condition of material preservation and cleanliness as existed prior to the event.

Section 10-30 Insurance required to conduct special event; hold harmless.

- (A) The event organizer of a special event must possess or obtain comprehensive general liability insurance from no less than an A-rated company to protect against loss from liability imposed by law for damages on account of bodily injury and property damage arising from the event. Insurance coverage must be maintained for the duration of the event. Notice of cancellation shall be provided immediately to the Town. When applicable, the city may require proof of workers compensation and auto liability insurance.
- (B) The insurance required shall encompass all liability insurance requirements imposed for other permits required under other sections of this Code and is to be provided for the benefit of the public and not as a duty, express or implied, to provide insurance protection for spectators or participants. The event organizer's current effective insurance policy, or copy, along with necessary endorsements, shall be filed with the Town Manager at least thirty (30) calendar days before the event, unless the Town Manager for good cause modifies the filing requirements.
- (C) No permit is valid until the applicant shall provide adequate insurance as required by this section.

Section 10-31 Revocation of special event permit.

- (A) Any special event permit may be revoked if the Town Manager determines:
 - (1) That the event cannot be conducted without violating the standards or conditions for special event permit issuance; or
 - (2) The event is being conducted in violation of any condition of the special event permit; or
 - (3) The event poses a threat to health or safety; or
 - (4) The event organizer or any person associated with the event has failed to obtain any other permit required pursuant to this Code; or
 - (5) The special event permit was issued in error or contrary to law; or
 - (6) The facts or assertions in the application have been falsified or misrepresented.
- (B) Notices of revocation shall be in writing and specifically set forth the reasons for the revocation.
- (C) If there is an emergency requiring immediate revocation of a special event permit, the special events coordinator or the police chief or the fire chief or their respective designees may notify the permit holder verbally of the revocation and the permit holder shall immediately comply with any order of the police chief, fire chief or their respective designees.

Section 10-32 Cost recovery for special events.

- (A) For any special event requiring expenditure of public resources, the Town shall charge for the actual cost of:
 - (1) A reasonable fee for Town personnel involved in permit processing, event traffic control, fire safety or other facility or event support; and
 - (2) Other non-personnel expense.
- (B) Special events jointly sponsored by the Town are exempt from such charges.
- (C) The Town Manager shall require the payment of fees or a reasonable estimate thereof at the time the completed application is approved, unless the special events coordinator, for good cause extends time for payment.
- (D) If the event organizer fails to comply, the event organizer will be billed for actual Town costs for cleanup and repair of the area or route occasioned by the event. If the event organizer failed to comply with a previously issued special event permit, the event organizer shall deposit adequate surety in the form of cash or letter of credit drawn on a local bank.

Sections 10-33 through 10-50: Reserved.

CHAPTER 11: PUBLIC RECORDS

ARTICLE I: GENERAL

Section 11-1 Custodian and records management program.

The Town Clerk shall be the custodian of all official Town records and shall be responsible for administering the records management program.

Section 11-2 Municipal records retention and disposition.

All official Town records, both paper and those maintained in electronic form, shall be maintained in accordance with the municipal records retention and disposition schedule issued by the division of archives and history, Department of Cultural Resources, which is on file in the office of the Town Clerk.

Section 11-3 Public access.

Records shall be made available to the public, under the supervision of Town personnel in the department in which the record is maintained, during regular office hours. No Town record may be removed from the premises.

Statutory Reference— Inspection and examination of records, G.S. 132-6.

Section 11-4 Copying.

Photocopies of any public record, unless the document has been deemed, according to state law, to be a confidential record, shall be provided to any citizen upon request and payment of the appropriate fee. Further provided as follows:

- (A) *Need to create records.* If the information requested is contained in a set of records, but would require compilation in order to create the record desired, it will be the requester's responsibility to perform such compilation and not the responsibility of the Town. If the Town finds it appropriate to provide such service, it may negotiate a reasonable charge to provide the information to the requester.
- (B) *Computer database records.* Requests for copies of computer databases must be submitted, in writing, to the department in which the record is maintained. Any copies furnished shall exclude any information which has been determined by state law to be confidential. Any confidential data contained in a record shall be eliminated from the record furnished to the public.
- (C) *Geographic information systems (GIS).* Any person requesting a copy of information contained in the geographic information system (GIS) must sign a document agreeing not to resell or otherwise use the information for trade or commercial purposes. If a person requesting a copy of the GIS wishes to resell the information or otherwise use it for trade or commercial purposes, the cost for the information supplied by the Town shall be negotiated by the Town Manager.
- (D) *Forms of available records.* If a record is maintained in non-electronic form, the Town will not be required to create an electronic version for the sole purpose of public distribution.
- (E) *Diskettes and/or CDS.* All diskettes and/or CDS used to obtain Town data shall be furnished by the Town. No other diskettes and/or CDS shall be used in Town owned computers.

Section 11-5 Fees and charges.

Copies of records may be obtained at the current rates which are set from time to time and a schedule of such rates is on file and available in the Town Clerk's office. A special service charge, in addition to the actual cost of duplication, shall be charged where:

- (A) The request requires extensive use of information technology resources or extensive clerical or supervisory assistance by personnel; or
 - (B) Producing the record in the medium requested results in a greater use of information technology resources than that established by the Town for reproduction of the volume of information requested.
- This special service charge will be based on the actual cost incurred for such extensive use of the resources or personnel involved in the fulfillment of the request.

Section 11-6 Confidential information to be removed.

If the records being requested contain confidential information which is commingled with public information, the confidential information shall be deleted from the record before it is distributed to the public or made available for review by the public.

Statutory Reference— Requests, scope, examination, copying, G.S. 132-6—132-6.2.

Section 11-7 through 11-10: Reserved.

CHAPTER 12: PUBLIC SAFETY

ARTICLE I: LAW ENFORCEMENT

DIVISION 1: POLICE DEPARTMENT

Section 12-1: Organization.

The Town Police Department shall consist of a Chief of Police and police officers and personnel as the Manager and Board shall determine from time to time. The Town Manager shall appoint the Chief of Police. The Chief of Police shall have immediate direction and control of the Police Department, subject to the supervision of the Town Manager, and to such rules, regulations and orders as the Town Manager may direct.

(192 Code, Section 32.01)

Section 12-2: Chief of Police; duties.

The Chief of Police, subject to the Town Manager, shall have the following duties:

- (A) Supervise, subject to the Manager and the Board, the Police Department.
- (B) Preserve the peace by enforcing Town ordinances, laws and regulations, preventing crime, suppression of all disturbances and apprehension of all offenders with the authority and powers of a law Enforcement Officer and may arrest, anywhere within the corporate limits of the Town, or within one mile thereof, any person charged with the violation of any Town ordinance or with any other offense against the public peace and good order of the Town.
- (C) Assign such duties as deemed best to the police officers and employees of the Town.
- (D) Perform such other duties as may from time to time be prescribed by the Town Manager, not inconsistent with the U.S. Constitution, State law and provisions of the Town Charter.

(1992 Code, Section 32.02)

Section 12-3: Chief to assign duties.

The Chief of Police shall have charge of the Police Department and as such shall assign such duties to the police personnel as deemed best for the good order of the Town and he shall be responsible to the Manager in seeing that the police personnel perform their duties.

(1992 Code, Sections 32.02 and 32.04)

Section 12-4: General supervision.

Regular and auxiliary Town police officers as well as other Town Police Department personnel shall be under the supervision and direction of the Chief of Police.

(1992 Code, Section 32.02)

Section 12-5: Duties of police officers.

It shall be the duty of the police officers to:

- (A) Preserve public peace of the Town by enforcing Town ordinances, laws and regulations;; prevent crimes, suppressing disturbances and apprehending offenders with the authority and powers of a law Enforcement Officer; arrest anywhere within the corporate limits of the Town or within one mile thereof any person charged with the violation of any Town ordinance, or with any other offense whatsoever against the public peace and good order of the Town.
- (B) Perform any and all other duties that may be assigned to them by the Chief of Police.
- (C) Perform such duties as may from time to time by prescribed by the Town Manager, not inconsistent with the U.S. Constitution, State law or provisions within the Town Charter.

(1992 Code, Section 32.04)

Sections 12-6 through 12-15: Reserved.

DIVISION 2: AUXILIARY POLICE

Section 12-16 Purpose.

This ordinance shall update the Auxiliary Police Officer Program for the Pembroke Police Department.

The Pembroke Police Department's Auxiliary Officer Program is comprised of dedicated men and women who serve to supplement the full-time sworn Officers of the Agency. An Auxiliary Police Officer is a non-regular sworn member of the Department who has the same police powers as a full-time sworn officer only while functioning on behalf of the Town of Pembroke. Auxiliary Officers volunteer time and service to the Agency and are not compensated either monetarily or through Agency provided benefits.

(Ord. 32.05 effective April 4, 2016)

Section 12-17 Organization.

The Auxiliary Police Program of Pembroke Police Department shall be established and organized as follows:

- (A) **Auxiliary Police Program Commander:** The Police Captain shall have command, responsibility and authority over all operations of the Auxiliary Police Program. He shall coordinate and direct the program and serve as a liaison with the Auxiliary Police Unit and the sections within the Department.
- (B) **Auxiliary Police Officer:** A sworn member of the Department who has met the requirements prescribed by the North Carolina Criminal Justice Education and Training Standards Commission, and has been appointed by the Chief of Police to aid or assist the Organization.

(Ord. 32.05 effective April 4, 2016)

Section 12-18 Minimum requirements.

- (A) Auxiliary Officers must be at least 21 years of age;

- (B) Auxiliary Officers must possess a valid North Carolina Driver's License;
- (C) Auxiliary Officers must be certified as a Law Enforcement Officer by the State of North Carolina and be in good standing with the North Carolina Criminal Justice Standards Commission; and
- (D) Auxiliary Officers shall ensure that all annual requirements/training is completed to maintain State Law Enforcement Certification.

(Ord. 32.05 effective April 4, 2016)

Section 12-19 Authority, duties, and responsibilities of auxiliary police officers.

- (A) Auxiliary Police Officers shall have the same authority, duties, responsibilities, and accountabilities of regular sworn police officers and shall abide by all established policies and procedures of the Pembroke Police Department while representing the Town as an Auxiliary Police Officer.
- (B) Auxiliary Police Officers reporting for duty will report to the on-duty shift commander for assignment.
- (C) Auxiliary Police Officers shall report to any full-time Police Officer to whom the Auxiliary Officer is assigned.
- (D) Auxiliary Police personnel are required to perform a minimum of eighteen (18) hours of duty per month. Failure to meet this requirement to two consecutive months requires review by the Auxiliary Police Leader and the Police Captain. Unjustified or continued noncompliance with this requirement may result in suspension or termination of the Auxiliary Police Officer from all activities associated with the Auxiliary Police Unit. Normally, required duty hours consist of working in an official capacity with a patrol unit.
- (E) Any training hours and special assignments will count towards the required duty hours for the month.
- (F) Pembroke Police Uniforms shall be worn by Auxiliary Police Personnel while on duty or as otherwise authorized by the Police Captain.

(Ord. 32.05 effective April 4, 2016)

Section 12-20 Recruitment, selection, and training.

- (A) Employment procedures and training for the Auxiliary Police Officers shall be consistent with current Departmental employment procedures for full-time sworn Police Officers as well as all requirements established by the North Carolina Criminal Justice Education Training and Standards Commission.
- (B) All Auxiliary Police Officers must successfully complete the Department's Field Training Program prior to performing patrol duties without direct supervision.
- (C) Probationary period for Auxiliary Police Personnel shall be one (1) year from the date of appointment.
- (D) Sworn Auxiliary Police Officers shall, while engaged in authorized assignments or training on behalf of the Town be entitled to Workman's Compensation benefits equivalent to those of regular Pembroke Police Officers.

(Ord. 32.05 effective April 4, 2016)

Section 12-21 Special considerations.

- (A) The Chief of Police shall recommend the strength of the Auxiliary Police Unit at a number consistent with the needs of the Pembroke Police Department.
- (B) Auxiliary Police Officers are sworn Police Officers, as required by the North Carolina Criminal Justice Standards Division. However, they shall remain subordinate to any regular sworn Police Officer with the Pembroke Police Department and carry out duty-related instructions given by regular sworn Police Officers.
- (C) Members of the Auxiliary Police Unit shall exercise no command responsibilities, set no policy or make no decisions pertaining to Police Department or Town matters.
- (D) Auxiliary Police Personnel shall devote a minimum of eighteen (18) hours per month to the Police Department. The North Carolina Criminal Justice Education and Training Standards Commission requires a minimum of fifteen (15) hours per month to maintain a Law Enforcement Certification.
- (E) The Department may furnish Auxiliary Officers a service weapon (if available). However, if unavailable, the Auxiliary Officer may be expected to provide his/her own weapon, preferably the same make and caliber as Departmental issued service weapons.
- (F) Auxiliary Police Officers shall be furnished with a uniform and other equipment necessary to perform their duties and shall not carry or use any equipment not issued or authorized by the Chief of Police.
- (G) Candidates will be responsible for the necessary medical and psychological evaluations in the hiring process.

(Ord. 32.05 effective April 4, 2016)

Sections 12-22 through 12-30: Reserved.

ARTICLE II: FIRE PROTECTION AND ENFORCEMENT

It is the intent of this article to prescribe regulations consistent with nationally recognized good practice for the safeguarding of life and property within the jurisdiction of the Town from the hazards of fire and explosion arising from the storage, handling and use of hazardous substances, materials and devices and from hazardous conditions in the use or occupancy of buildings or premises.

Section 12-31 Organization.

The Fire Department shall consist of the Chief of the Fire Department and a sufficient number of fire fighters (voluntary, part or full-time) to maintain and operate the Department. The Town Manager with the approval of the Town Council shall appoint the Chief after having received a recommendation from a simple majority of Fire Department membership. The Town Manager shall approve the appointment of all members to the Department of all members.

(1992 Code, Section 32.20)

Section 12-32 Chief of Fire Department; duties.

The Fire Department shall be headed by the Fire Chief, who shall be responsible to the Town Manager for the supervision and control of all firefighting and fire prevention activities, personnel and equipment, under rules and regulations as prescribed by the Town Council and or Town Manager. Duties of the Fire Chief shall be as follows:

- (A) To have general control of the Fire Department, the personnel, apparatus and fire alarm systems;
- (B) To organize, train, assign and direct all full-time, part-time and volunteer personnel of the Fire Department in such manner as will best ensure protection of life and property.
- (C) The Fire Chief or his designee shall have control at all fires, shall investigate the origin of all fires as required by G.S. 58-79-01, provide public education on fire and life safety concerns, seek out and cause to be corrected all places and conditions dangerous to the safety of the Town and its citizens from fire, and shall enforce or have enforced all laws and ordinances relating to fire protection.
- (D) To inspect or cause to be inspected all trucks and other equipment of the Fire Department each and every week to ascertain that such equipment is being kept in proper condition.
- (E) To report annually the Town Manager on the condition of all equipment.
- (F) To inspect or cause to be inspected all fire hydrants and alarm systems at least once every three months and make a report of those inspections to the Town Manager.

(1992 Code, Section 32.21)

***Statutory reference** — Authority for Town to appoint fire chief and to prescribe duties of fire department, G.S. 160A-291; duties of fire chief, G.S. 160A-292.*

Section 12-33 Order for fire hazards remedied.

Whenever any inspection shall deem any building or premises to constitute a fire hazard, for any reason, the Chief together with the Fire Prevention Inspector shall serve or cause to be served upon the owner and occupant of such place a written notice specifying the conditions complained of, ordering the same corrected promptly and indicate what time shall be so allowed for the requirements and compliance of such order.

***Cross Reference** — Chapter 5, Article IV - Fire Prevention and Enforcement, Sections 5-40 through 5-42.*

Section 12-34 Failure to comply with lawful order.

It shall be unlawful for the owner or occupant of any building or premises to fail, refuse or otherwise delay in the compliance of any lawful order directed to them by the Fire Chief.

Section 12-35 Roping off space adjacent to fire.

The Fire Department or Police Department is authorized to lay off by rope or otherwise such portions of the streets or lots adjacent thereto as may be deemed necessary for properly fighting any fire. It shall be unlawful for any person to cross over or enter designated area without permission of the Fire Department or Police Department.

Section 12-36 Fire protection outside Town limits.

The Town Manager or his designee is authorized to enter into and execute mutual aid agreements with other municipalities and counties for assistance in case of major fires within and outside the Town or County, provided that fire protection can be maintained within the Town limits.

Statutory reference— Fire protection outside Town limits, G.S. 160A-293.

Section 12-37 Open burning.

- (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:

Bonfire means an outdoor fire utilized for ceremonial purposes. These are typically large fires in conjunction with a planned event such as a pep rally or holiday event.

Campfire means a small outdoor fire intended for recreation or cooking, but not including a fire intended for disposal of waste wood or refuse.

Clean wood means natural wood which has not been painted, varnished or coated with a similar material; has not been pressure treated with preservatives; and does not contain resins or glues as in plywood or other composite wood products.

Construction and demolition waste means building waste materials, including, but not limited to, waste shingles, insulation, lumber, treated wood, painted wood, wiring, plastics, packaging and rubble that results from construction, remodeling, repair and demolition operations on a house, commercial or industrial building or other structure.

Open burning means kindling or maintaining a fire where the products of combustion are emitted directly into the ambient air without passing through a stack or a chimney. This definition includes burning in a burn barrel.

Outdoor burning means open burning or burning in an outdoor wood-fired boiler or patio wood-burning unit.

Outdoor wood-fired boiler means a wood-fired boiler, stove or furnace that is not located within a building intended for habitation by humans or domestic animals.

Patio wood-burning unit means a chiminea, patio warmer or other portable wood-burning device used for outdoor recreation and/or heating.

Refuse means any waste material except trees, logs, brush, stumps, leaves, grass clippings and other vegetative matter.

- (B) *Purpose.* This section is intended to promote the public health, safety and welfare and to safeguard the health, comfort, living conditions, safety and welfare of the citizens of the Town by regulating the air pollution and fire hazards of open burning and outdoor burning.

- (C) *Applicability.*

This section applies to all outdoor burning and open burning within the Town with the following exceptions:

- (1) This section does not apply to fires used solely for grilling or cooking food using charcoal, wood, propane or natural gas in cooking or grilling appliances.

- (2) This section does not apply to burning for the purpose of generating heat in a stove, furnace, fireplace or other heating device within a building used for human or animal habitation.
 - (3) This section does not apply to the use of propane, acetylene, natural gas, gasoline, kerosene or similar fuel in a device intended for heating, construction or maintenance activities.
 - (4) This section does not apply to open burning or outdoor burning for the purpose of public safety as deemed by the Fire Chief, Town Manager or Town Council.
 - (5) This section does not apply to camp fires used solely for recreational purposes, or for recognized ceremonial purposes.
- (D) *General prohibition on outdoor burning and open burning.* Open burning and outdoor burning are prohibited in the Town unless the burning is specifically permitted by this section.
- (E) *Burning trees, logs, brush, stumps, leaves, grass clippings, and other yard waste.* Open burning of trees, logs, brush, stumps, leaves, grass clippings and other yard waste is prohibited.
- (F) *Patio wood-burning units.* No person shall install, use or maintain a patio wood-burning unit in the Town except that such units are permitted provided they are located on a noncombustible surface and located a minimum distance of 20 feet from the residence or any raised structure. Outdoor masonry fireplaces constructed in the same manner as indoor residential fireplaces shall be permitted in the Town.
- (G) *Campfires.* Campfires shall not be permitted in the Town unless the campfire is located at least 25 feet from any structure and 25 feet from any property line. The campfire shall be no larger than four square feet and shall be surrounded by bricks at least two tiers high.
- (H) *Fire suppression training.*
- (1) Structures and other materials may be burned for fire suppression training only in accordance with the following provisions:
 - a. The burn must be exclusively for fire suppression training. The burning shall not be used as a means to dispose of waste material including tires and other hazardous materials.
 - b. Any standing structure that will be used in fire suppression training must be inspected and should be inspected by a licensed asbestos inspector. Notification of this inspection must be submitted to the North Carolina Department of Environmental Quality, Air Quality Division, at least ten business days prior to burning a standing structure.
 - c. All asbestos must be removed prior to conducting the fire suppression training. If the structure is a residential dwelling, the owner may remove the asbestos or have it removed by a licensed abatement contractor. If it is a commercial building, all asbestos must be removed by a licensed abatement contractor.
 - d. All ash shall be disposed of in an approved landfill or at an alternate location approved by the North Carolina Department of Environmental Quality at the property owner's expense.
 - (2) The following additional provisions are optional when burning for fire suppression training purposes:
 - a. Asphalt shingles and asphalt or plastic siding shall be removed prior to the practice burn unless the Fire Chief determines that they are necessary for the fire practice.
 - b. At least 48 hours before a planned practice burn, residents within 1,000 feet of the site of the proposed burn shall be notified.
 - c. All fire suppression training should conform to the guidelines established by the National Fire Protection Association (NFPA) Standard on Live Fire Training Evolutions (NFPA 1403).
- (I) *Bonfires.* Bonfires are strictly prohibited within the Town limits.

(J) *Penalty.* Penalties for violation of this section as those as included in Section 1-6.

(1992 Code, Section 50.02; Ordinance revision of Code, June 2, 2014)

See also – Chapter 12, Article I, Solid Waste Disposal.

Section 12-38 Right-of-Way in event of an alarm of fire.

In the event of an alarm of fire, the apparatus of the Fire Department responding to it shall have the right-of-way in and upon all streets, lanes, alleys, squares and railroad crossings.

(1992 Code, Section 32.22)

Section 12-39 Unauthorized persons prohibited from riding on trucks.

No person other than a bona fide member of the Fire Department shall mount any fire engine, wagon or apparatus before it leaves the station or while on its way to a fire, or at any other time unless by permission of the driver or officer in command of said vehicle or apparatus.

(1992 Code, Section 32.23)

Sections 12-40 through 12-50: Reserved.

ARTICLE III: INSPECTION AFTER FIRES

Section 12-51 Inspection after fires.

- (A) The Chief shall conduct or cause to be conducted an inspection of each fire occurring within the district. The Chief, or his designated agent, shall have authority to enter into any and all premises, at a reasonable time, for purposes of an inspection.
- (B) The Chief shall keep records of his findings as to the items below and shall report these to the North Carolina Insurance Commissioner at regular intervals:
 - (1) Location of premises.
 - (2) Owner.
 - (3) Brief description of premises.
 - (4) How place was occupied.
 - (5) Amount and nature of total damages.
 - (6) Amount of insurance.
 - (7) Cause of fire.
 - (8) Date.

(1992 Code, Section 32.21)

Section 12-52 Adoption of technical and standards by reference; copies on file.

- (A) There is hereby adopted by reference and incorporated herein that a certain code, known as and entitled International Fire Code, most recent edition. Copies of the Town fire prevention, protection

and inspection ordinance and all technicals and standards adopted by reference, shall be filed with, and available for public inspection in the offices of the Town Clerk and the Fire Inspector.

- (B) Amendments to codes and standards adopted by reference herein which are adopted and published by the State Building Code Council shall be effective in the Town at the time those amendments become a part of the most recent International Fire Code.

(1992 Code, Section 93.01)

Statutory reference— *Authority of Town to adopt certain published technical codes by reference, G.S. 160A-76.*

Sections 12-60 through 12-70: Reserved.

ARTICLE IV: CIVIL EMERGENCIES

Section 12-71 State of Emergency.

- (A) A state of emergency shall be deemed to exist whenever, during times of great public crisis, disaster, rioting, catastrophe or similar public emergency, for any reason, municipal public safety authorities are unable to maintain public order or afford adequate protection for lives, safety or property, or whenever the occurrence of any such condition is imminent.
- (B) In the event of an existing or threatened state of emergency endangering lives, safety, health and welfare of the people within the Town, or threatening damage to or destruction of property, the Mayor is hereby authorized and empowered to issue a public declaration announcing to all persons the existence of such a state of emergency, and, in order to more effectively protect the lives and property of people within the Town, to place in effect any or all of the restrictions hereinafter authorized, as provided under the provisions of G.S. 166A-19.31.
- (C) The Mayor is hereby authorized and empowered to limit by the declaration, the application of all or any part of such restrictions to any area specifically designated or described within the corporate limits of the Town and to specific hours of the day or night; and to exempt from all or any part of such restrictions law Enforcement Officers, firefighters and other public employees, EMS personnel, doctors, nurses, employees of hospitals and other medical facilities; on-duty military personnel whether State or Federal; on-duty employees of public utilities, public transportation companies and newspaper, magazine, radio broadcasting and television broadcasting corporations operated for profit; and such other classes of persons as may be essential to the preservation of public order and immediately necessary to serve the safety, health and welfare needs of the people within the Town.
- (D) The Mayor may impose as many of those specified prohibitions and restrictions as he finds necessary because of an emergency to maintain an acceptable level of public order and services and to protect lives, safety and property. The Mayor shall recite his findings in his declaration. The declaration shall be in writing. The declaration shall be posted in Town Hall. The Mayor shall send reports of the substance of the declaration to the mass communications media which serve the area. The Mayor shall retain a text copy of the declaration and furnish upon request certified copies of it.
- (E) In a County-declared state of emergency, the Town may request to be included in the declaration without making a declaration of its own.
- (F) In a Town-declared state of emergency, the County may request that unincorporated areas adjacent to the Town be included in the Town's declaration without making a declaration of its own.
- (G) The Mayor shall declare the end of such state of emergency or all or any part of the restrictions imposed as soon as circumstances warrant or when directed to do so by the Board.
- (H) During the existence of a declared state of emergency, the Mayor may impose by declaration any or all of the following restrictions:
 - (1) Prohibit or regulate the possession off one's own premises of explosives, firearms, ammunition or dangerous weapons or substances of any kind, and prohibit the purchase, sale, transfer or other disposition thereof. The Mayor may exempt from some or all of

the restrictions classes of people whose possession, transfer or transportation of certain dangerous weapons or substances is necessary to the provision of the public's health, safety or welfare. The declaration shall state the exempted classes and the restrictions from which each is exempted.

- (2) Prohibit the possession or consumption of any alcoholic beverages, including beer, wine and spirituous liquor, other than on one's own premises and may prohibit the transfer, transportation, sale or purchase of any alcoholic beverage within the area of the Town described in the declaration. The declaration, if imposed, may apply to transfer of alcoholic beverages by employees of alcoholic beverage control stores as well as by anyone else within the geographical area described.
- (3) Prohibit or regulate any demonstration, parade, march, vigil or participation therein from taking place on any of the public ways or upon any public property.
- (4) Prohibit or regulate the sale of gasoline, kerosene, naphtha or any other explosive or flammable fluids or substances.
- (5) Prohibit obtaining access or attempting to obtain access to any area designated in the manner described in this section in violation of any order, clearly posted notice or barricade indicating that access is denied or restricted. Areas to which access is denied or restricted shall be designated by law enforcement when directed in the declaration to do so. When acting under this authority, law enforcement may restrict or deny access to any area, street, highway 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.
- (6) Prohibit or regulate the participation in or carrying on of any business activity, and prohibit or regulate the keeping open of places of business, places of entertainment and any other places of public assembly.
- (I) Any declaration may be extended, altered or repealed in any particular during the continued or threatened existence of a state of emergency by the issuance of a subsequent declaration.
- (J) During the existence of a declared state of emergency, it shall be unlawful for any person to violate any provision of any restriction imposed by any declaration authorized by this article.
- (K) Evacuation. The Mayor may direct and compel voluntary or mandatory evacuation of all or part of the population of the Town, to prescribe routes, modes of transportation and destination in connection with the evacuation and to control ingress and egress of a disaster area, the movement of persons within the area and the occupancy of premises therein. Details of the evacuation may be set forth or amended in a subsequent declaration which shall be well publicized.
- (L) Curfew. The declaration may impose a curfew prohibiting certain areas and during certain periods the appearance in public of anyone who is not a member of an exempted class. The declaration shall specify the geographical area or areas and the period during each 24-hour day to which the curfew applies. The declaration shall state the exempted classes and restrictions from which each is exempted.
- (M) The following activities or conditions may be prohibited or restricted:
 - (1) Movements of people in public places;
 - (2) The operation of offices, business establishments and other places to or from which people may travel or at which they may congregate; and

(3) Other activities or conditions the control of which may be reasonably necessary to maintain order and protect lives or property during the state of emergency within the area designated in the declaration.

(N) The Mayor shall proclaim the end of such state of emergency or all or any part of the restrictions imposed as soon as circumstances warrant.

(O) In case of the absence or disability of the Mayor, the Mayor Pro Tempore of the Town Council, or such person as may be designated by the Mayor, shall have and exercise all of the powers herein given the Mayor.

(1992 Code, Section 92.01, 92.02, 92.03, 92.04, 92.05, 92.07)

Section 12-72 Form and Content of emergency declarations.

The declaration of a state of emergency and the imposition of specific prohibitions and restrictions shall take substantially the form:

Town of Pembroke State of Emergency Declaration

WHEREAS, the governing body of the Town of Pembroke, has duly adopted an ordinance authorizing the Mayor to determine and declare the existence of a state of emergency and to impose various restrictions after he determines that such restrictions are necessary as a response to an emergency.

Now, therefore, I, _____, Mayor of the Town of Pembroke declare that a local disaster emergency exists in the Town of Pembroke and that I hereby invoke and declare those portions of the Town of Pembroke Code of Ordinances which are applicable to the conditions and have caused the issuance of this declaration, to be in full force and effect within the corporate limits for the exercise of all necessary emergency authority for protection of the lives and property of the people of this Town and the restoration of local government with a minimum of interruption.

All public offices and employees of the Town are hereby directed to exercise the utmost diligence in the discharge of duties required of them for the duration of the emergency and in execution of emergency laws, regulations and directives—local, State and Federal.

All citizens are called upon and directed to comply with necessary emergency measures, to cooperate with public officials in executing emergency operations plans and to obey and comply with the lawful directions of properly identified officers.

Anyone violating any restriction imposed by this proclamation or under its authority violates Town ordinance and is guilty of a misdemeanor.

All operating forces will direct their communications and requests for assistance and operations directly to the Town of Pembroke Emergency Operations Center.

This declaration of a state of emergency shall be in effect on this day _____ and remain effect for _____ days.

In witness, whereof, I have hereunto set my hand this _____ day of _____, 20____.

Mayor

SEAL OF THE TOWN

(1992 Code, Section 92.06)

Section 12-73 Penalty for Violation.

The violation of any provision of this article, or of any provision of any restriction imposed by any declaration authorized by this article, shall constitute a misdemeanor, punishable upon conviction by a fine not exceeding \$50.00 or imprisonment not exceeding 30 days, as provided by G.S. 14-4.

(1992 Code, Section 92.99)

Sections 12-74 through 12-80: Reserved.

CHAPTER 13: PUBLIC WORKS

ARTICLE I: SOLID WASTE DISPOSAL

Section 13-1 Definitions.

For the purpose of this chapter the following definitions shall apply unless the context clearly indicated or requires a different meaning:

Construction or demolition waste – Scrap building material from the construction, reconstruction, remodeling or repair of a building, walkway, driveway, sign or other structure, including but not limited to, excavated earth, tree stumps, tree trunks, rocks, gravel, bricks, plaster, concrete, lumber or any other similar material used in construction.

Brown goods – Brown goods include, but are not limited to, couches, chairs, tables, chest of drawers, mattresses and box springs, and other similar household items.

Bulk container - A metal container, commonly referred to as a dumpster, of not less than two cubic yards nor more than eight cubic yards, to be water tight, of all steel construction and supplied by a company under franchise agreement with the Town of Pembroke. Bulk container does not include those which are to be serviced by the use of roll-offs or compactors.

Bulky waste – means large items of solid waste including but not limited to appliances, furniture, tree limbs or branches which may require special handling due to their size, shape or weight.

Collector – Employees of the Town or designated agents of the Town who are engaged in the collection or transportation of rubbish, garbage or waste matter within the Town of Pembroke

Curbside – That space in the grass strip between the street and the sidewalk, where such strips exist, or that space immediately adjacent to that portion of the street right-of-way normally used by vehicles.

Electronics and electronic devices – Items such as televisions, stereo equipment, speakers, microwave ovens, computer equipment including monitors and printers, or any other electronic equipment.

Garbage – Every accumulation of animal or vegetable foodstuff that attends the preparation, consumption, dealing in or storage of meats, fish, fowl, fruit or vegetables including the cans, container or wrappers, including all putrescible waste, but excluding sewage and human waste.

Hazardous waste – Solid waste, or combination of solid wastes, which because of its quantity, concentration or physical, chemical or infectious characteristics may:

- (1) Cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness; or
- (2) Pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, disposed of or otherwise managed.

Medical waste – Any solid waste which is generated in the diagnosis, treatment, or immunization of human beings or animals, but does not include any hazardous waste or those substances excluded from the definition of solid waste.

Recyclables – Recyclables include, but are not limited to, newspapers, magazines, cardboard, aluminum and metal cans, plastic bottles and jugs, glass bottles and jars, and other materials commonly recycled.

Recycling – The process of collecting, sorting, cleansing, treating and/or reconstituting materials that would otherwise become solid waste for the purpose of using the altered form in the manufacture of new, reused or reconstituted products. Recycling does not include burning, incinerating, or thermally destroying solid waste.

Refuse - all non-putrescible waste; by definition, putrescible waste is solid waste that contains organic matter capable of being decomposed by microorganisms and of such a character and proportion as to cause obnoxious odors. However, non-putrescible waste does not include construction or demolition waste, hazardous waste, medical waste, tires, batteries, tree stumps and trunks, and similar such items.

Refuse container – The 95 gallon plastic roll-out carts distributed to each applicable residence in the Town of Pembroke. The Town maintains ownership of these carts; however the owner/occupant of each residence is responsible for the security of these carts, including replacement costs in the event the assigned cart is misplaced.

Residential leaves and limbs – Those items naturally occurring (shedding of leaves) where trees are located and otherwise generated when trees are pruned, including those leaves and limbs generated during weather related events.

Solid waste – Any garbage, refuse or other material that is either discarded or is being accumulated or stored prior to being discarded, or has served its original intended use and is generally discarded.

Special waste – Solid wastes that requires special handling and management, including whole tires, used oil, lead-acid batteries, and medical wastes. The Town of Pembroke, including its designated Collector, will not pick up these items. It is the responsibility of the person or entity that generates these items to properly dispose of the same.

White goods – Includes inoperative and discarded refrigerators, ranges, water heaters, freezers, and other similar domestic and commercial large appliances. White goods do not include electronic equipment such as televisions, stereo equipment, microwave ovens, computer equipment or other electronic devices.

Yard trash – Solid waste consisting solely of vegetative matter resulting from yard maintenance, such as grass clippings and/or shrub clippings.

(1992 Code, Chapter 50; Ordinance November 7, 2016; technical corrections dated Jan. 3, 2017)

Section 13-2 Burning or burying garbage and refuse prohibited.

- (A) It shall be unlawful to burn or set fire to or bury any garbage for the purpose of disposal. See “Burning Ban” as adopted by the Town of Pembroke Code. **Note:** That which follows in this paragraph is the technical correction to this Ordinance such that the “Town of Pembroke Burning Ban” language adopted on June 2, 2014 is now incorporated in this new Ordinance, and reads as follows:

All outdoor and/or open burning is banned and prohibited within the Town of Pembroke.

- (B) This prohibition of open burning includes, but is not limited to, all yard waste. Hereafter no person shall cause, allow, or permit any open burning within the Town, however an exception exists for camp fire and fires used solely for cooking and other recreational purposes, or for recognized ceremonial purposes.

(1992 Code, Chapter 50; Ordinance November 7, 2016; technical corrections dated Jan. 3, 2017)

Cross reference – See Section 11-37.

Section 13-3 Garbage and refuse required to be deposited in approved containers.

It shall be unlawful for any person to throw, place or deposit any garbage or refuse of any kind on any public or private property except in approved containers or as otherwise provided in this chapter. The approved containers are the 95 gallon roll-out carts for residential use and metal containers (dumpsters) for commercial establishments and applicable high density apartments. All garbage and refuse shall first be placed in a suitable plastic bag with the bag securely closed, then placed in the appropriate container, except that bulk newspapers, magazines and other suitable paper recyclables shall be bundled and securely tied rather than being placed in plastic bags. Plastic bags containing garbage or refuse must be placed in the appropriate roll-out cart or dumpster and shall not otherwise be placed curbside. Upon the effective date of this Ordinance, it shall be a violation of this Ordinance to place plastic bags containing garbage or refuse curbside, however properly bagged leaves may be placed curbside. Non-acceptable refuse that shall not be placed in the roll-out carts includes, but is not limited to, large motor parts, batteries, concrete blocks, tree stumps, ashes, charcoal, paints, solvents, flammable materials and used oils.

(1992 Code, Chapter 50; Ordinance November 7, 2016; technical corrections dated Jan. 3, 2017)

Section 13-4 Location and placement of roll-out carts for pick-up; Deposit; Cart responsibility.

- (A) Roll-out carts shall be placed curbside for pick up by the Collector. Curbside generally means at or near the front of the lot but not within the travel portion of the street. Roll-out carts shall not be placed curbside earlier than sunset on the day prior to the scheduled pick-up and shall be removed from curbside no later than 8:00 p.m. on the day of the pick-up.
- (B) A deposit fee shall be charged for each cart and shall be included in the *Schedule of Rates and Fees*.
- (C) It shall be the responsibility of the householder in charge of each residence to maintain proper care of the roll-out cart assigned to that residential address. If the cart is misplaced, stolen or significantly damaged from improper use while in the care of the assigned residential user, it shall be the sole responsibility of the assigned customer to replace the container. Only approved containers may replace lost, stolen or damaged containers. They can be purchased from the designated Collector as determined by the Town. If the container is damaged by the Collector, the Collector will repair or replace the container.

(1992 Code, Chapter 50; Ordinance November 7, 2016; technical corrections dated Jan. 3, 2017)

Section 13-5 Accumulation of garbage and refuse prohibited.

All garbage and refuse shall be collected and placed in containers as required by this chapter. It shall be unlawful for any person to permit garbage or refuse to accumulate or remain on any premises longer than is reasonably necessary to remove and deposit same in approved containers as required herein.

(1992 Code, Chapter 50; Ordinance November 7, 2016; technical corrections dated Jan. 3, 2017)

Section 13-6 Collection of white goods.

The Collector will pick up white goods, as defined herein, once monthly at fixed date to be determined by the Town of Pembroke. Placement for collection shall be curbside and shall not be placed no earlier than twenty-four (24) hours before scheduled pickup.

(1992 Code, Chapter 50; Ordinance November 7, 2016; technical corrections dated Jan. 3, 2017)

Section 13-7 Collection of residential leaves and limbs.

The Collector will pick up residential leaves and limbs, as defined herein, at dates to be determined by the Town of Pembroke, provided limbs are cut in lengths not to exceed four (4) feet long and four (4) inches in diameter. Piles of residential limbs shall be no greater than (4) four feet high, six (6) feet wide, and eight (8) feet long. Such piles shall be placed curbside for pickup and shall be picked up according to the schedule set by the Town. This service is offered by Collector for leaves and limbs when an individual resident is doing yard improvement and/or as a result of weather related causes. Piles exceeding the size set out above and items generated by an independent builder or contractor will not be removed by the Collector. Residents may contract with the entity of their choice for pickup of items not meeting the specifications set out above; however, it is the sole responsibility of each resident and/or owner to pay for these contracted services.

(1992 Code, Chapter 50; Ordinance November 7, 2016; technical corrections dated Jan. 3, 2017)

Section 13-8 Collection of brown goods and electronic equipment.

The Collector will pick up brown goods, as defined herein, at dates and times to be determined by the Town of Pembroke. Such items shall be placed curbside for pick up no earlier than twenty-four (24) hours before scheduled pick up. Also the Collector will pick up electronic equipment and electronic devices for recycling on pick-up days for brown goods.

(1992 Code, Chapter 50; Ordinance November 7, 2016; technical corrections dated Jan. 3, 2017)

Section 13-9 Solid wastes not collected by the Town of Pembroke.

Unless otherwise provided in this chapter, the collector will not collect medical waste, hazardous waste, human and animal waste, used oil, and used tires. No person shall place any of the aforementioned items in any container or receptacle intended for collection by the Town or the Town's designated collector. It is the responsibility of the person in possession of the premises where such items are generated to ensure that such items are disposed of properly.

(1992 Code, Chapter 50; Ordinance November 7, 2016; technical corrections dated Jan. 3, 2017)

Section 13-10 Recycling and recyclables.

The Town of Pembroke encourages its residents to recycle those items that are generally recyclable, as defined herein. The Town will provide a recycling station at a centralized location for citizen use as well as recycling tubs/bins for individual residential use. The Collector will pick up residential recyclables weekly at a day to be determined by the Town.

(1992 Code, Chapter 50; Ordinance November 7, 2016; technical corrections dated Jan. 3, 2017)

Section 13-11 Improper container use.

Roll-out carts for residential use and metal containers (dumpsters) for commercial use are to be used for collection of garbage and refuse generated by the assigned customer only. No person or entity, resident or non-resident of the Town of Pembroke, shall place, or caused to be placed, any garbage, refuse or any other items, in any residential roll-out cart or commercial metal container (dumpster) not assigned to the person or entity placing, or causing to be placed, such garbage or refuse in said container. Placing or depositing garbage or refuse in assigned containers by non-residents of the Town is strictly prohibited and is a violation of this Ordinance.

(1992 Code, Chapter 50; Ordinance November 7, 2016; technical corrections dated Jan. 3, 2017)

Section 13-12 Provisions for infirmed and/or handicapped individuals.

The Town of Pembroke and the designated Collector shall develop policies and procedures that will adequately address the needs of those residents who demonstrate through satisfactory evidence that they are unable, or that it would prove to be of significant difficulty, to cause their roll-out cart to be placed curbside for pick up. Until further notice, all such requests shall be made directly to the Collector. The Collector's name and number are available at the Pembroke Municipal Building.

(1992 Code, Chapter 50; Ordinance November 7, 2016; technical corrections dated Jan. 3, 2017)

Section 13-13 Penalties.

- (A) Violations of the provisions of this chapter or failure to comply with any of its requirements shall constitute a misdemeanor punishable as provided in N.C. General Statute 14-4. Such violation shall be a Class 3 misdemeanor including a fine of not more than **\$50.00**. In the event of a first offense or in the case of a minor violation, the violator may be issued a warning notice in the discretion of the charging official. Each day constitutes a separate offense and may be charged as such.
- (B) The Town may also seek any and all appropriate equitable remedies, injunctions and/or abatement orders from the appropriate court pursuant to G.S. 160A-175 in order to address violations of this Ordinance.

(1992 Code, Chapter 50; Ordinance November 7, 2016; technical corrections dated Jan. 3, 2017)

Cross Reference – General Penalty Section 1-6.

Sections 13-14 through 13-20: Reserved.

CHAPTER 14: STREETS AND SIDEWALKS

ARTICLE I: ACCEPTANCE AND IMPROVEMENT OF PUBLIC STREETS

Section 14-1 Policy established.

The policy of the Town for the acceptance of streets dedicated for public use and the policy for improving all streets shall be as hereinafter prescribed in this article.

(1992 Code, Section 99.40)

Section 14-2 Requirements for the acceptance of new streets.

- (A) The requirements for acceptance of new street right-of-way shall be as established in the Town's Unified Development Ordinance, Article 24, and shall apply to all streets.
- (B) No street, alley or other public right-of-way dedicated for public use within the Town will be accepted by the Town as a public street, and no maintenance or improvement will be authorized thereon, unless the conditions of the Town's Unified Development Ordinance have been complied with.

(1993 Code, Section 99.41)

Section 14-3 Street improvements defined.

Street improvements for all existing streets, the total cost of which shall be assessed against the abutting property owners, shall include the following:

- (A) Storm sewer drainage facilities, including drainage pipe 30 inches or less in diameter, inlets and other necessary incidentals as may be required by Town specifications.
- (B) Curb and gutter as required by Town specifications.
- (C) Grading for a width of 30 feet on those streets which were opened prior to this article and which need to be graded prior to surfacing.
- (D) Base course material for a width of 30 feet if existing base course is not adequate in accordance with Town specifications.
- (E) Street surfacing according to Town specifications for a minimum width of 20 feet. The improvement costs for street widths in excess of 30 feet, the cost of required drainage facilities which are larger in size than required herein and the total cost of all improvements at street intersections shall not be assessed against abutting property owners and shall be paid for by the Town.

Section 14-4 Street improvement project procedure.

Existing, unimproved Town streets and right-of-way may be improved in accordance with the following provisions:

- (A) Upon the receipt of a petition for street improvements, the Town's Public Works Department shall examine the petition and certify with concurrence from a qualified and licensed Engineer completeness and shall forward such petition to the Town Clerk. No petition shall be considered for a street less than one normal block in length.

- (B) If the petition from the property owners is found to be sufficient, the Board shall direct the Director of Public Works and Engineer to estimate the total cost of the street project in accordance with street specifications, to determine the total cost per foot of property frontage and the total cost to the Town for intersections and other improvements the cost of which is to be borne by the Town.
- (C) When cost estimates are received, the Board shall consider the availability of funds for street improvements, the degree of development along the street proposed to be improved and may approve such street improvement project as they deem best.
- (D) When a street improvement project is approved, the property owners abutting such improvement shall be notified of the total estimated cost per foot of frontage and further notified that each owner has the opportunity to pay his proportionate share in cash in advance.
- (E) When the required amount has been deposited, with the Town, the street improvement assessment procedure as authorized in G.S. Chapter 160A, Article 10 shall be followed and assessments shall be made against the properties abutting upon such improvement according to an equal rate per front foot. Property owners who have made cash deposits in advance as required herein shall be credited for such payments on the assessment rolls. In accordance with the requirements of the General Statutes, property owners not paying assessments in cash in advance shall pay their assessments as provided by the Statutes.
- (F) In event the actual cost of improvements is less than the estimated cost, such excess shall be refunded to the property owners. In event the actual cost exceeds the estimated cost the property owners will be assessed for this amount or may pay such amount in cash in the manner provided by law.

Statutory Reference – NC General Statutes, Section 160A-216.

Section 14-5 Sidewalk improvements.

Petitions for street improvements may include requests for sidewalk improvements. Such sidewalk improvements may be constructed as part of the street improvement project and in the same manner except that 100 percent of the total cost of sidewalk improvements exclusive of the cost at intersections shall be assessed against the property owner.

Statutory Reference – NC General Statutes, Section 160A-216.

Section 14-6 Installation of utilities.

The Board, prior to approving any project or authorizing any street improvement, shall determine if water and sanitary sewer facilities have been installed within that portion of the street located between curbs. If such facilities have not been installed, or if facilities are inadequate and will have to be replaced, the Board shall postpone the street improvement project pending the installation of such facilities.

(1992 Code, Section 99.43)

Section 14-7 Responsibility of property owners.

- (A) Property owners along streets which are paved and have curb and gutter are responsible for replacing any driveway or walkway within the street right-of-way as a result of new street construction improvements. Driveway entrances and aprons at the curb line will be constructed by the Town at the location designated by the property owner and the cost thereof will be included in

the total cost assessed for street improvements. Replacement driveway cuts must meet ADA requirements and provide a continuous clear pedestrian access route.

- (B) Property owners shall be responsible for seeding, landscaping or otherwise improving the area between curbs and the property line as they may desire, provided no walls or other permanent structures are located within the street right-of-way.
- (C) Drainage pipes and other material in the right-of-way at the time of construction which were purchased by the property owner will be removed and placed on the lot of the owner for his disposition. The Town will haul away such items if requested by the owner and with the owner's permission.

Section 14-8 Construction according to specifications.

All street grading, base course preparation, storm drainage, surfacing, curb and gutters and other improvements shall be constructed in accordance with the Standards and Specifications which have been approved by the Board.

(1992 Code, Section 99.45)

Section 14-9 Opening & improving existing right-of-way without petition.

When, in the opinion of the Board, a new street should be opened and improved within existing dedicated public right-of-way and no petition is filed asking for the assessment of the cost thereof, and when the Board is of the opinion that the public benefit will be greater than the benefit to abutting property owners, the Board may direct that such improvements be made. High visibility crosswalk markings shall be added wherever crosswalks are part of the resurfacing project on intersections involve street classifications of Type 7: Residential Collector Street or greater, in accordance with the Town's Standard Specifications & Construction Details.

(1992 Code, Section 99.46)

Section 14-10 Resurfacing improvements.

Whenever determined by the Town that it is necessary to resurface any street which has been surfaced under this policy as herein established, the Town will undertake such resurfacing based on current policy to expend funds for such resurfacing and the Town shall bear the entire cost of such when funds are appropriated.

(1992 Code, Section 99-47)

Sections 14-11 through 14-15: Reserved.

ARTICLE II - EXCAVATION & REPAIR

Section 14-16 Digging in streets—Permit.

No person shall make any excavation or opening or dig any ditch, trench, tunnel or hole in, along, across or under any street, sidewalk or other public place for the purpose of laying or placing therein any pipe, wires or poles for any other purposes, unless a written permission therefor has been issued by the Town, provided that a permit shall not be required where such work is performed under a contract with the Town, but in the event such work requires a sidewalk or street to be wholly or partially obstructed, the person shall notify the Town's Public Works Department and the Police Department at least two hours before obstructing the sidewalk or street, unless prevented by sudden emergency.

Section 14-17 Same—Application for permit.

All persons desiring a permit in order to make an opening in any street or sidewalk shall make written application therefor, which application shall show the location of the proposed opening, the purpose therefor, the approximate number of square yards of surface to be cut and details of alternative temporary access provisions and signage. Such application shall be accompanied by the appropriate fee. The fee required for making any opening in any street or sidewalk shall be determined by the Town Council.

Section 14-18 Same—Town indemnified.

Any person obtaining a permit, as a condition of the issuance of said permit, to indemnify and hold harmless the Town against any claims or expenses, including attorney's fees for bodily injury or property damage for accidents or occurrences arising out of the person's operation, excluding only the liability of the Town for its sole negligence, except in connection with general supervision of work performed by said person.

Section 14-19 Street repair.

When any part of any street, sidewalk, alley or other public place of the Town shall be torn or dug up for any purpose, the person making such excavation or opening shall have the duty of refilling such excavation or opening so as to restore it to essentially the same condition that existed prior to the excavation or opening, and such refilling shall be done in accordance with the standards and specifications issued by the Town Manager or his duly authorized representative. Any person, firm or corporation neglecting, refusing or failing to comply with any provisions of this section shall be guilty of a violation thereof, and where such neglect, refusal or failure is continued, after notice from the said Director of Engineering or his authorized representative, every day's continuance thereafter shall constitute a separate and distinct offense.

Section 14-20 Excavations; leaving unprotected.

It shall be unlawful for any person, firm or corporation who obtains a permit under the sections of this article to do any excavation of any kind which may create or cause a dangerous condition in or near any street, alley, sidewalk or public place of the Town without placing and maintaining proper guard rails and signal lights or other warning at, in or around the same, sufficient to warn the public of such excavation or work, and to protect all persons using reasonable care from injuries on account of same.

Section 14-21 Supervision & control.

All excavations and work in streets, sidewalks, alleys or public places of the Town shall be under the supervision of the permittee. It shall be the duty of the Town to inspect the same from time to time during the progress thereof to ensure work complies with the Town specifications and the Town Code. Upon the completion thereof, he shall make a final inspection and see that the street, sidewalk or public place is restored to a condition as good in all respects as before the excavation or work was made or done, and that all debris, materials, tools and equipment are removed therefrom. Any person refusing or failing to comply with any provisions of this section shall be guilty of a violation thereof, and where such failure or refusal is continued after notice from the Town, every day's continuance shall constitute a separate and distinct offense.

Section 14-22 Disposition of fees.

All fees collected under the provisions of this article shall be paid into the general fund.

Section 14-23 Violation.

If any person shall violate this article, such person shall be guilty of a Class 3 misdemeanor and shall be fined not more than \$500.00, or as otherwise provided by the North Carolina General Statutes.

Section 14-24 Sidewalk construction.

No sidewalk of any description shall be built by any individual, firm or corporation of any alternate material, including brick, wood or other material without a written permit from the Town except where brick is otherwise required by the Town.

Section 14-25 Streets not to be damaged.

It shall be unlawful for any person, firm or corporation to drag, or run, or cause to be dragged or run, any implement, engine, machine or tool upon any street of the Town in any way, to injure or cut the surface thereof.

Section 14-26 House moving.

No person shall move any house or building upon or across the public streets or sidewalks without the written consent of all governmental entities having authority.

Section 14-27 Damage to municipal property.

No person shall injure, tamper with, remove or paint upon or deface any bridge, culvert, ditch and drain, sign, sign post, street light, traffic signal or bulletin board or other municipal property upon the streets and sidewalks except employees of the Town in performance of their duties.

Section 14-28 Driving through street barricade.

No person shall drive any motor vehicle of any kind into or upon any alley or street when said street or alley has been barricaded by an employee of the Town.

Section 14-29 Removing barricade forbidden.

No person, other than an employee of the Town, shall remove, tear down or destroy any barricade which has been erected by the Town.

Sections 14-30 through 14-40 Reserved.

ARTICLE III - POLES & LINES

Section 14-41 Permit required for placing poles.

No pole shall be erected on any right-of-way where there are existing poles on such right-of-way for the purpose of supporting electric, telephone or other utility wires. All walkways must be in compliance with the Americans with Disabilities Act of 1990, which mandates the establishment of minimum walkway clearance widths.

Section 14-42 By agreement, separate lines of wires on same poles.

Whenever any electric, telephone or utility company shall desire to place lines or wires along any particular right-of-way upon which it does not have a line of poles, but upon which said right-of-way there exists a line of poles owned by another company, then such companies may maintain their wires upon the same poles. If an agreement cannot be reached between the companies owning the poles and the companies desiring to place wires thereon, then the said companies may submit the question of compensation to three disinterested persons for arbitration or they may submit the same to the Board for determination. This section shall apply to poles owned by the Town, as well as poles owned by companies operating under franchise with the Town.

Section 14-43 Care & inspection of poles.

It shall be the duty of the owners of all poles supporting electric, telephone or utility wires to keep the same in a safe condition and, for that purpose, maintain the same regularly.

Section 14-44 Use of poles & underground conduits for Town purposes.

One duct in all underground conduit systems shall be provided for the Town, free of charge, for the Town police or fire alarm system when required, and the Town shall have the use of any and all poles on rights-of-way for the same purposes.

Sections 14-45 through 14-50: Reserved.

CHAPTER 15: REGULATION OF BUSINESSES; TOWN TAXES

ARTICLE I: AD VALOREM TAXES

Section 15-1 Annual Determination.

The ad valorem tax rate shall be reviewed and altered by the Town Council each year as needed to maintain operations and service to the residents

Statutory Reference— General power to impose taxes, NC General Statutes § 160A-206.

Section 15-2 Payment of Taxes; Discounts and Penalties.

All ad valorem taxes levied by the Town Council shall be due and payable on September 1 of the year in which they are assessed or levied. Tax payers who pay their taxes due in full prior to September 1st of each year shall receive a 1% discount. Penalties and interest shall be added at such times and in such amounts as may be prescribed by the General Statutes pertaining to the late payment of taxes.

Section 15-3 Sale of property for unpaid taxes.

The Town Tax Collector is hereby designated or commissioned to sell all property, real or personal, to satisfy any tax certificate or lien, penalty or forfeiture, as is provided under state laws.

Sections 15-4 through 15-20: Reserved.

ARTICLE II: BUSINESS TAXES; PRIVILEGE LICENSE TAXES

Section 15-21 Privilege License Tax Repealed.

Statutory G.S. 160A-211 has been repealed by the North Carolina General Assembly for taxable years beginning on or after July 1, 2015.

(Replaces Chapter 110 of 1992 Code)

Sections 15-22 through 15-30: Reserved.

ARTICLE III: BUSINESS REGISTRATION

Section 15-31 Registration required.

All businesses operating within the Town of Pembroke are required to register with the Town. A violation of this section shall constitute a misdemeanor as set out in this article and each day that such person shall engage in or carry on such business shall be construed to be a separate offense.

Section 15-32 Application.

- (A) A person shall apply to the Town for each business registration required by this article by June 30th of each year. The application, which shall be submitted on forms provided by the Town, shall contain:
 - a. The name of the applicant and whether the applicant is an individual, a partnership, a corporation, or some other entity.
 - b. The nature of the business.
 - c. Where the business is conducted.
 - d. An address where notices and statements may be mailed to as required by this article.
 - e. All telephone numbers applicable to the business.
 - f. Any other information the Town Tax Collector determines to be necessary to compute the amount of tax due.
- (B) Each new application or an established business moving to a new location must be approved as to zoning requirements by the Town.
- (C) Each applicant must continue to comply with other sections of this article and the Pembroke Code of Ordinances concerning public health and safety, nuisances, police, building standards, and/or fire department requirements before the license shall be issued or renewed.

Section 15-33 Change in the business during the fiscal year.

The owner of any business registered under this article shall report a change in the information contained in the registration to the Town within ten (10) days after the change occurs.

Sections 15-34 through 15-50: RESERVED.

ARTICLE IV: PAWNBROKERS

Section 15-51 License Required.

It is unlawful for any person, firm or corporation to establish or conduct a business of pawnbroker unless such person, firm or corporation has procured a license to conduct business in compliance with the requirements of this article and the Pawnbrokers and Cash Converters Modernization Act, as amended. Such license shall expire on June 30 of each year and shall not be transferable.

Section 15-52 Application for License.

Every person, firm or corporation desiring to engage in the business of pawnbroker shall petition the Town for a license to conduct such business. Application to conduct such business shall be made on forms provided by the Town.

Section 15-53 Compliance with requirements of State Law.

Requirements set forth in G.S. 66-385—66-399 regarding pawnbrokers shall be enforced by the Town.

Sections 15-54 through 15-60: Reserved.

Cross Reference – Unified Development Ordinance, Section 10-1 Notes to Table of Permitted Uses, Note 28. Pawnshops or Used Merchandise Store. (Amended 5/2/2016).

ARTICLE VI: PUBLIC GAME ROOMS (INCLUDING POOLROOMS, BOWLING ALLEYS, BILLIARD HALLS, BINGO PARLORS, AMUSEMENT CENTERS, VIDEO ARCADES AND ELECTRONIC GAME ESTABLISHMENTS).

Section 15-61 Definitions.

Game room means any public poolrooms, bowling alleys, bingo parlors, billiard halls, amusement centers and any public place of business that operates two (2) or more mechanical games or pay devices or tables for which charge is made either directly or indirectly (including, by way of illustration, video arcades or electronic game establishments operating video games) provided that such games or pay devices shall not include vending machines or photo laminating machines. (The sale of alcoholic beverages, food, magazines and other incidentals in said place of business shall not prevent its classification as a game room.)

Operator means a person or firm that owns, rents, leases or has possession or control over a public game room.

(1992 Code, Section 112.01)

Section 15-62 Licenses.

Every operator of a public game room shall be required to register with the Town of Pembroke.

(1992 Code, Section 112.16)

Section 15-51 Restrictions.

The Town shall not issue a permit for operation to any applicant who:

- (A) Is less than twenty-one (21) years of age (provided, that this shall not be construed to prohibit a person who is eighteen (18) years of age or older from being a manager or other person in charge of any establishment which has a license and permit); or
- (B) Has been convicted of, or entered a plea of guilty or nolo contendere to, a felony or other crime involving moral turpitude within the past three (3) years, or any liquor law, illegal drug law, or gambling law (either state or federal) within the past three (3) years, or has completed a sentence for violating any law mentioned in this subparagraph within the past two (2) years; or
- (C) Is not a citizen of the United States and who has not been a bona fide resident of the State of North Carolina for the immediately preceding twelve (12) months. No resident of the state shall obtain a license under this section and employ or give aid to or receive aid from a nonresident for the purpose of defeating this requirement or the requirement that the individual applying be the operator in charge of the premises for which the license is applied for.

(1992 Code, Section 112.17)

Section 15-52 Prohibitions.

Operating Permits under this section shall not, and neither shall their employees:

- (A) Suffer or permit any illegal gambling on the licensed premises at any time; nor the sale or use of any racing, football, or other parlay cards or gambling boards or devices; or
- (B) Suffer or permit the licensed premises to become disorderly; or permit any profane, obscene or indecent language thereon.

(1992 Code, Section 112.18)

Section 15-53 Regulations for Operations.

The following regulations shall be observed by all operators of public game rooms within the city:

- (A) No public game rooms shall open for customers or patrons in the morning before 7:00 A.M. on Monday through Saturday; all public game rooms shall close at midnight on Monday through Saturday unless a permit for longer hours related to a non-reoccurring special activity shall be obtained from the chief of police.
- (B) Public game rooms may be open on Sunday only between the hours of 1:00 p.m. and 11:00 p.m.; provided, however, that said game rooms may be open until midnight on Sundays when the public schools are not in regular session on the following day.
- (C) No play on any game shall be allowed during the times when public game rooms are required by this section to remain closed.
- (D) All public game rooms shall be closed to minors (under eighteen (18) years of age) during school hours (that is, while any public school is in regular session within the city limits, except for summer school) except for school/preschool sponsored events; provided, however, that minors too young to be enrolled in public schools may attend during school hours if accompanied by an adult (over eighteen (18) years of age.)
- (E) There must be an adult (eighteen (18) years of age or older and meeting the requirements of subparagraphs (2) and (3) of subsection (c) hereof) managing the business on the premises during hours of operation at all times.
- (F) All public game rooms hereafter constructed or opened shall comply with all provisions of the Unified Development Ordinance of the Town of Pembroke; all public game rooms in existence on the date of the passage of this section shall have until September 30, 2018, to bring said specific existing public game room within compliance with all the terms and conditions of this Code and the Zoning Ordinance.

(1992 Code, Section 112.19)

Section 15-54 Permit Revocation.

After giving the operator of a public game room adequate notice and an opportunity to be heard, the Town council may revoke the permit of any public game room operator who:

- (A) Violates any provisions of this section; or
- (B) Makes any false statement in his application; or
- (C) At any time ceases to meet all of the requirements and restrictions set forth in this section.

(1992 Code, Section 112.21)

Sections 15-55 through 15-75: Reserved.

ARTICLE VII: PEDDLING, SOLICITING, AND ITINERANT MERCHANTS

Section 15-76 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:

Itinerant merchant means any person who engages in a temporary business for the retail sale of goods, wares, or merchandise for less than six consecutive months at a single location, whether such person proposes to conduct such business from a truck, a cart, or other vehicle or mobile platform on non-residential property located in the municipality, or who hires, rents, leases or is given permission to occupy any premises, room, building, hotel, rooming house, structure or motor vehicle of any kind for the purpose of selling and delivering goods.

Peddler means any person engaging temporarily in the retail sale of goods, wares or merchandise within the Town from place to place, house to house, transporting goods whether by foot or by other means of transportation, including soliciting orders for goods or services or distributing, disseminating or gathering information by written or spoken word upon the streets and sidewalks of the Town.

Person means an individual, a firm, an association, a partnership, a limited liability company, a corporation or another group acting as a unit.

Seasonal sales means any person participating in a specific type of itinerant merchant sales, specifically for items typically related to the season or holiday and for a temporary period of time, including but not limited to Christmas tree and fireworks sales.

Solicitor means any person who travels from place to place taking or offering to take orders for the sale of goods for future delivery or for personal services to be performed in the future, whether or not samples are displayed or money is collected in advance, and any person who uses or occupies any building or premises for the sole purpose of taking or offering to take orders for the sale of goods for future delivery or for personal services to be performed in the future, whether or not samples are displayed or money is collected in advance.

(1992 Code, Section 114.01)

Section 15-77 Permit required for peddling & soliciting.

- (A) No person shall conduct any business within the Town by solicitation or as a peddler until such person has obtained a permit in accordance with this chapter and has paid an administrative fee to the Town for processing of the permit, in accordance with the Town's adopted fee schedule.
- (B) No person shall conduct any business within the Town by solicitation or as an itinerant merchant or peddler unless:
 - a. Such activity occurs between the hours of 9:00 a.m. and 8:00 p.m.
 - b. The commercial solicitation permit is carried at all times by the permittee when engaged in the activity and is displayed when requested by any police officer or person solicited.
 - c. All other permits or licenses required by law have been obtained.

- d. The above exceptions shall not be allowed on Town property except for Town-sponsored events and upon invitation of the Town. Town property includes, but is not limited to, sidewalks, parking lots, streets, parks or any other Town-owned or controlled property.
- (C) Nothing herein shall prevent a property owner, Homeowners Association or other similar organization from posting their privately owned property to prevent peddling and solicitation. Such posting shall be given full force and effect and shall supersede the application of this article as to the subject property so posted.

Section 15-78 Permit application.

- (A) Applications for soliciting or peddling permits under this article shall be submitted to the Town Manager during normal business hours (Monday through Friday, 9:00 a.m. to 5:00 p.m.) on a form provided by the Police Department, under oath, and shall include, but not be limited to, the following information:
 - a. The full name of the applicant.
 - b. The permanent residence address of the applicant.
 - c. The applicant's temporary address in or in the vicinity of the Town, if applicable.
 - d. The name and address of the applicant's employer or the organization with which the applicant is associated in connection with the activity.
 - e. The types of goods, wares, merchandise, food periodicals or services to be sold, offered for sale, displayed or delivered.
 - f. The period for which the application is sought, which shall not exceed one year from the date of issuance of the permit.
 - g. A record of all crimes of which the applicant has been convicted or has pleaded no contest in the ten years preceding the submittal of the application.
 - h. The age and height of the applicant and any other additional information which the Town may reasonably require for identification, including a copy of the documents used by the applicant to verify personal identification (e.g., driver's license, passport, picture I.D.).
 - i. A complete listing of and information concerning all other permits or licenses, such as business licenses, which were obtained by the applicant.
- (B) If an application is filed by an employer, there shall also be filed separate applications for each individual engaging in the activity, giving the information set forth above for each such individual and signed and sworn to by each such individual, and a separate permit shall be issued for each such individual.
- (C) Applications for itinerant merchant permits under this article shall be submitted to the Town Manager during normal business hours on a form provided by the Planning Department, and shall include all required information. In some cases, additional information may be required to review such permit applications.

Section 15-79 Process for considering the application.

- (A) Upon receipt of a complete peddler or solicitation application, the Town Manager or designee shall make such investigation as is reasonably necessary to verify the information in the application and to ensure compliance with the provisions of this chapter and shall issue a permit unless the applicant:
 - (1) Has not submitted a complete application, along with the administrative fee for the permit;
 - (2) Is not permitted by law to engage in the activity due to age;

- (3) Has been convicted of, or has pleaded no contest to, a felony charge within the ten years preceding the submittal of the application;
- (4) Has been, within the previous five years, convicted of, or pleaded no contest to, a misdemeanor charge under G.S. 66-257, or a misdemeanor charge involving theft, fraud, forging, uttering or other crimes of like nature or any crime involving moral turpitude;
- (5) Does not have valid driving privileges in the State in those cases where the applicant will be operating a vehicle in the course and scope of the commercial solicitation; or
- (6) Has not obtained the necessary licenses.
- (7) The Town Manager shall have up to 72 hours to approve or deny an application and issue a permit.
- (8) Upon receipt of a complete itinerant merchant application, the Town shall make such investigation as is reasonably necessary to verify the information in the application and to ensure compliance with the provisions of this chapter and shall issue a permit unless the applicant fails to comply.
- (9) The Town shall have up to three business days to approve or deny an application and issue a permit.

Section 15-80 Permit Renewals.

Permits issued under the provisions of this chapter shall be renewed by following the process outlined in **Section 15-78.**

Section 15-81 Appeals.

The appeal of a refusal to issue or the revocation of a permit shall be made to the Town Manager by filing a written notice of appeal, specifying with particularity the grounds upon which the appeal is made, no later than ten days from the date of the refusal to issue a permit or the revocation of a permit. The Town Manager shall fix a reasonable time for the hearing of the appeal, shall give due notice to all parties and shall render a decision within a reasonable time. The order or decision of the Town Manager shall be final municipal action for the purpose of judicial review.

Section 15-82 Revocation of Permit.

Permits issued under this chapter may be revoked by the Town, after notice and hearing, for any of the following causes:

- (A) Any fraud, misrepresentation or false statement contained in the application for the permit.
- (B) Any fraud, misrepresentation or false statement made in connection with the selling of goods, wares, merchandise and services.
- (C) Any violation of this Code and/or other ordinance of the Town.
- (D) Conduct under this Code and/or any ordinance of the Town in an unlawful manner or in such a manner as to constitute a breach of the peace or to constitute a menace to the health, safety, morals or general welfare of the public.
- (E) Where evidence is presented, it is shown that the applicant has been arrested for a felony or a misdemeanor under G.S. 66-257 or a misdemeanor involving theft, fraud, forgery, moral turpitude, criminal trespass or a threat to the public safety during the permit period, or has otherwise violated the provisions of this chapter.

Section 15-83 Exemptions.

The following are exempt from the provisions of this article:

- (A) The delivery of goods or services which have been ordered before delivery.
- (B) The circulation of petitions for signature or lawful distribution of advertising materials, flyers or materials expressing views on political, social or religious matters.
- (C) The lawful promotion or expression of views concerning political, social, religious and other like matters.
- (D) The selling or offering for sale of goods, wares, merchandise, food, periodicals or services by bona fide members or representatives of charitable, religious, civic, educational or fraternal organizations, and who receive no compensation of any kind for their services, and such sale or offering by children under the age of 18 years who are students in a public or private school for school activities.
- (E) The solicitation of contributions or pledges thereof for bona fide nonprofit organizations.
- (F) The selling or delivery of goods to business establishments.
- (G) The selling of an individual's household personal property at a yard sale on the premises of the individual's residence, where in compliance with the Town Code of Ordinances.

Section 15-84 Prohibitions.

- (A) No person shall stand or loiter in the main traveled portion, including the shoulders and median, of any Town or State highway or street, or stop any motor vehicle for the purpose of soliciting employment, business or contributions from the driver or occupant of any motor vehicle that impedes the normal movement of traffic on the public highways or streets, provided that the provisions of this section shall not apply to licenses, employees or contractors of the Department of Transportation or of any municipality engaged in construction or maintenance or in making traffic or engineering surveys.
- (B) No person shall conduct any business as an itinerant merchant or peddler within 20 feet of any right-of-way in the Town.

Section 15-85 Itinerant merchants.

Itinerant merchants shall be permitted under the following conditions:

- (A) *Food vendors and seasonal merchants.*
 - a. Shall apply for a permit and all applicable fees paid prior to operation of such business.
 - b. Shall be allowed only on premises owned or controlled by the itinerant merchant or with the written permission of the property owner.
 - c. Shall be allowed only on commercially zoned locations.
 - d. Shall not impede vehicular or foot traffic.
 - e. Shall not occupy designated parking spaces.
 - f. Shall not be allowed on Town property except for Town-sponsored events and upon invitation of the Town or events approved by the Town, provided that specific authorization for such vendors and/or merchants is granted by the Town Council for the approved event. Town property includes, but is not limited to, sidewalks; parking lots, streets, parks or any other Town owned or controlled property.
 - g. Shall comply with the Town's sign regulations.

Cross Reference – Unified Development Ordinance, Section 10-1, Notes to the Table of Permitted Uses, Note 34-Food Trucks.

Statutory Reference – G.S. Article 32, Section 66-250

(B) *Food and beverage vendors; additional requirements.*

- a. Must be a non-motorized, non-permanent, push-type or pull-type cart.
- b. Shall not occupy more than 100 square feet of designated area for the itinerant use and appurtenances.
- c. Shall not be allowed closer than 500 feet from another vendor. This requirement does not apply to events sponsored or approved by the Town for approved events having been granted authorization for such vendors and merchants, as described in subsection (1) of this section.
- d. Health Department approval must be furnished prior to receiving a permit from the Town.

(C) *Seasonal merchants; additional requirements.*

- a. Shall be limited to one sales event per calendar year.
- b. Shall not operate for more than 30 days during the one event. This shall include set-up and takedown time.
- c. Prior to opening for business, all temporary structures associated with the business must be inspected and approved by appropriate Town staff, and all applicable fees must be paid.

Section 15-86 Penalty.

Commercial solicitation without a permit or otherwise in violation of any of the provisions of this chapter, including failing to surrender a revoked permit, shall constitute a criminal misdemeanor and shall subject the offender to a fine of not more than \$500.00 or imprisonment for not more than 30 days.

Section 15-87 through 15-95: RESERVED.

ARTICLE VIII: FLAMMABLE FLUIDS & EXPLOSIVES

Section 15-96 Purpose.

The purpose of this article is to regulate the storage and handling of dangerous materials in accordance with safety methods as established by experience and the finding of the National Board of Fire Underwriters and other authorities.

Section 15-97 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:

Explosives means and includes the known explosive materials such as black powder, gunpowder, blasting powder, dynamite, blasting caps, detonators, etc.

Flammable fluids means and comprises of all liquids and gases of dangerous volatility and low flash point, such as gasoline, kerosene, fuel oils, acetylene, etc.

Section 15-98 Private residences.

- (A) *Flammable fluids* . The maximum quantity allowed is five gallons if kept in approved metal containers.
- (B) *Oil burner installations*. The maximum quantity of fuel oil allowed is 285 gallons if kept in an approved metal tank on noncombustible supports. Larger quantities may be stored in an underground tank with pump feed.
- (C) *Explosives*. The maximum quantity allowed is five canisters of powder.

Section 15-99 Dealers.

- (A) *Flammable fluids.* The maximum quantity is 100 gallons if kept in approved metal containers; larger quantities must be stored in buildings constructed of brick or stone, provided with iron roofs or arched roofs made of brick or stone. There may be no openings in such structure except fireproof doors located in one end or side. The floor of such building must be at least three feet below the lowest level of the ground immediately surrounding.
- (B) *Explosives.* Maximum quantity allowed is 60 pounds of powder or 25 pounds of dynamite.

Section 15-100 Oil plants.

The construction, arrangement and location of oil plants, manufacture, storage (over or underground) and distribution of flammable fluids, shall be in conformity with the State laws and the specifications established by the National Board of Underwriters.

Section 15-101 Dynamite and Powder Explosives.

- (A) No person shall keep in any car or warehouse or platform any cargo of gunpowder or blasting powder or other explosive for more than six hours.
- (B) Powder or dynamite must be kept in steel receptacles, preferably cylindrical in shape, mounted on wheels and fitted with a lock. Such receptacle shall have displayed on it the words "Powder" or "Dynamite—Danger."
- (C) All persons handling dynamite, giant powder or other dangerous explosives as articles of merchandise, shall first obtain from the Town Clerk a sales permit upon a written application which states the time and date and sale of the above mentioned explosives. They shall also keep a record of their sales, to whom sold, for what purpose, the amount sold and the date of sale.
- (D) Every person having any powder or dynamite on his premises shall notify the Chief of the Fire Department, in writing, of the location of the said powder or dynamite and shall display conspicuously, clean and legible, a sign bearing the words "Powder—Danger" or "Dynamite—Danger" at such place.
- (E) Any person desiring to store powder or dynamite shall first obtain from the Chief of the Fire Department a permit. It shall be the duty of the Fire Chief to notify the Chief of Police, giving the name of the permittee and location of the dynamite or powder.
- (F) It shall be the duty of the Fire Chief to inspect, with the Chief of Police, any premises for which an application has been requested for the purpose of storing powder or dynamite and to refuse to issue such permit unless the provisions of this article are met.
- (G) Should any person desire to handle percussion or dynamite caps, the same may be stored in a receptacle designed for powder. Under no conditions may the caps be stored in the same receptacle with dynamite.

Section 15-102 Garages, filling stations & bulk plants.

- (A) It shall be unlawful for any person to construct, repair, alter, maintain or operate any garage, filling station or bulk or wholesale plant for furnishing or offering for wholesale or retail sale, gasoline, naphtha, kerosene, diesel oil, fuel oil, distillate, oil or other inflammable or explosive oil derivatives to the public or to private individuals or corporations, without having first obtained a permit for the same, and any person desiring to obtain such a permit shall make application in writing to the Town Manager and show by petition accompanied by a map or sketch, the proposed location and all pipes and tanks connected thereto, and the distance from adjacent sidewalks and streets of the proposed location and width of driveways, if any.

- (B) No permit or license shall be granted for the erection or operation of any garage, service or filling station, bulk or wholesale plant for the handling of gasoline, naphtha, kerosene, distillate, oil, diesel oil, fuel oil or any other inflammable or explosive oil derivatives within the Town limits at any place where, in the judgment of the Town Council, the handling of such products would be injurious to the health, comfort or safety of persons or property in such vicinity, and in passing on the matter of the issuance of such permit, the Town Council may consider traffic conditions on nearby streets both as they may exist at the time or in the opinion of the Town Council may hereafter arise, together with a report from the Chief of the Fire Department as to whether or not the applicant has complied in his specifications with the ordinances and laws thereto appertaining.
- (C) It shall be unlawful to keep or store more than 55 gallons of gasoline, kerosene, naphtha, diesel oil, fuel oil, distillate, oil or other inflammable or explosive derivatives which are offered for wholesale or retail sale in any part of the Town unless such inflammable liquids are kept in a tank or a suitable closed container.
- (D) More than 55 gallons of gasoline, kerosene, naphtha, diesel oil, fuel oil, distillate, oil or other inflammable or explosive derivatives may be kept and offered for wholesale or retail sale if contained in a tank or a suitable receptacle placed under the ground and entirely covered, provided that the tank or receptacle be provided with a pump for drawing out such inflammable liquids.

Sections 15-103 through 15-110: Reserved.

ARTICLE IX: YARD SALES

Section 15-111 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:

Yard sale or garage sale means a display and sale from a residence or residential property of personal property which has been owned or previously used. The term "yard sale" or "garage sale" does not include the mere incidental sale of one or two items of personal property when such sale is not part of a general sale of a number of items of personal property.

Section 15-112 Regulations.

No person shall conduct any yard sale or garage sale without first obtaining a permit therefor from the Town. All such sales shall be subject to the following rules and regulations:

- (A) *Permits.* All persons conducting such sale shall obtain a permit therefor from the Town. Applications for such permit shall be made to the Town in such form as may be required by the Town and shall be accompanied by a permit fee in the amount as may be established from time to time.
- (B) *Consignment sales prohibited.* No one shall accept or take in for sale any goods from any commercial business or enterprise on a consignment basis for sale in a yard sale.
- (C) *Signs.* One sign advertising such sales may be placed on the property of the residence of the person conducting such sale, and two off-site directional signs may be permitted, but only during the hours the sale is actively being conducted. All signs must be removed at the close of the sale activities or by the end of daylight, whichever first occurs, each day of the sale. No freestanding signs may be placed in the public

right-of-way. For the purposes of this article, the application and permit fee for temporary signs is hereby waived.

- (D) *Number limited.* Not more than two such sales per year shall be held at the premises if occupied by the same family or any member of such family. No single sale shall be conducted for longer than 72 hours.
- (E) *Hours.* Yard sales or garage sales may be conducted during daylight hours only.
- (F) *Unowned premises.* No yard sale or garage sale shall be permitted on premises not owned or controlled by the person holding the sale, except as permitted in subsection (7) of this section. Any violation of this subsection shall be referred to the Zoning Inspector for investigation of possible violation of the zoning provisions, and to the Town for investigation of possible violation of the business license taxation ordinance.
- (G) *Nonprofit organizations.* Nonprofit organizations may hold yard sales or garage sales consisting of donated personal property. Such yard sale or garage sale may be held on commercial property with written permission from the property owner and the signature of the property owner on the application for a permit.

Section 15-113 Coverage.

The provisions of this article shall not apply to or affect persons selling goods pursuant to an order of a court of competent jurisdiction or persons acting in accordance with their powers and duties as a public official.

Section 15-114 Penalties.

- (A) Violation of any provision of this article shall subject the offender to a civil penalty in the amount of \$50.00 to be recovered by the Town. Violators shall be issued a written citation which must be paid within 72 hours.
- (B) Each day's continuing violation of this article shall be a separate and distinct offense.

Sections 15-115 through 125: Reserved.

CHAPTER 16: VEHICLES FOR HIRE

DIVISION I: TAXICABS

ARTICLE I: GENERALLY

Section 16-1 Definitions.

The following words and phrases shall, for the purposes of this article, have the meanings respectively ascribed to them in this section, except where the context clearly indicates a different meaning.

Cruising. The movement of a vehicle for hire over public streets or public vehicular areas in search of passengers or for the purpose of attracting passengers.

Driver. Any person who drives a taxicab.

Driver's Permit. The license issued by the Town to any person to enable that person to drive a taxicab vehicle.

Individual Owner-Driver. A person, self-employed, who engages in the business of operating a single taxicab, as its owner and driver. The term includes all operating permit holders who hold no more than one operating permit.

Medallion. A nontransferable, numbered insignia to provide exterior identification that a particular taxicab has a valid operating permit associated with it.

Operating Permit. The license, issued by the Town Manager or his or her designee, under which a person may operate a taxicab vehicle, and which shows that the convenience and necessity of the public requires the operation of the taxicab.

Operating Permit Holder. The vehicle owner and supporting services provider to whom an operating permit for the operation of a taxicab has been issued.

Street. Any street, alley, avenue, highway or any other public vehicular area within the corporate limits of the Town as the same may exist or may be hereafter extended.

Taxicab. Any motor vehicle seating nine or fewer passengers and driver-operated for hire upon any street, on call or demand.

Taxicab Company. Any company which engages in the business of operating taxicabs as the owner or franchiser.

(1992 Code, Section 115.01)

Section 16-2 Reports and recommendations of Police Chief.

The Police Chief or his or her designee shall advise the Town Manager with respect to matters covered or incidentally involved in the operation or administration of this article. He or she shall make reports to the Town Manager and the Council as may be required. He or she shall make recommendations to the Town Manager with respect to whether applicants for an operating permit meet the eligibility criteria set out in these Sections.

Section 16-3 Conduct of Drivers.

- (A) No driver shall deceive or attempt to deceive any passenger who may ride or desire to ride in his or her taxicab as to his or her destination or the rate of fare to be charged, or convey or cause to be

conveyed any passenger to any place other than as directed by the passenger, and in no event shall any driver providing taxi service take a longer route to the requested destination than is necessary, unless he or she is so requested by the passenger.

- (B) Drivers shall comply with all reasonable and lawful requests of the passenger as to the speed of travel and the route to be taken.
- (C) No driver shall at any time solicit passengers by any word, sign or gesture, or for the purpose of soliciting patronage, in any manner annoy any person or obstruct the movement of any person or traffic or follow any person, except that within a taxicab stand, as designated in Section 15-4, a driver located inside his or her vehicle or outside, but within ten feet of the taxicab, may solicit passengers. Except in a manner provided by this subsection, drivers may not solicit. Nothing in this subsection shall prohibit drivers from alighting to the street or sidewalk for the purpose of assisting passengers into or out of taxicabs.
- (D) No driver shall allow the seating capacity of his or her taxicab to be exceeded, with the exception that rear seat passengers may hold children in their arms.

Section 16-4 Taxicab Stands.

A list of all taxicab stands in the Town shall be kept on file in the office of the Town Manager and shall be open to inspection by the public.

Section 16-5 Penalties.

It shall be unlawful for any person to violate any of the provisions of this article. If the person violating any provision of this article is a corporation, the officers, agents or employees thereof who shall violate or procure, aid or abet any violation of any provisions of this article or permit the operation of any taxicab contrary to the requirements hereof, shall be subject to the same penalties as if they themselves were personally operating the taxicab at the time the violations were committed. Upon a person's violation of any provision of this article, the Town Manager or his or her designee may suspend or revoke any operating permit held by that person, and the Town Manager may suspend or revoke any driver's permit held by that person.

Sections 16-6 through 16-10: Reserved.

DIVISION 2: OPERATING PERMIT

Section 16-11 Required. N

No person shall operate any taxicab in the Town without first having obtained an operating permit authorizing the operation.

(1992 Code, Section 115.16; previously referred to as Certificate of Convenience and Necessity)

Section 16-12 Issuance.

- (A) The Council, by resolution, may in its discretion limit by policy the total number of taxicab operating permits to be granted. The Town staff will review on an annual basis the limit on the total number of operating permits available and make recommendations for changes, if any. An operating permit, whether or not limited in number, shows that by its issuance the convenience and necessity of the public requires the operation of the taxicab.
- (B) The Council authorizes the Town Manager or his or her designee to issue operating permits to any applicant or applicants subject to those conditions as the Council may deem advisable or necessary in the public interest, and upon payment of a regulatory fee provided by Section 15-21. These operating permits shall be issued for a period of one year and be renewable annually upon payment of a regulatory fee as provided by **Section 16-21**.

- (C) No operating permit shall be issued to or renewed by any person who shall not have fully complied with all of the prerequisite requirements of this article before the commencement of the operation of the proposed service.
- (D) The operating permit holder shall, in the case of any change in business address or telephone, notify the Town Manager or his or her designee in writing of the change within 48 hours of the effective date of the change.
- (E) The Town Manager, Chief of Police or their designee, shall conduct an investigation of any taxi driver permit.
- (F) The applicant for the permit shall upon request provide to the Town Manager, Chief of Police or their designee:
 - (1) A completed taxi driver permit application;
 - (2) A valid state driver's license; and
 - (3) The fees for the application so that the Town Manager, Chief of Police or their designee may cause a thorough search to be made of local and state criminal records to determine if the applicant has a history of criminal convictions or the crimes enumerated above by the use of the Division of Criminal Information network (DCI).
- (G) Prior to denial of the taxi driver permit based upon DCI inquiry, the Town shall verify the existence of a record by submitting a fingerprint card of the individual to the State Bureau of Investigation (SBI) for verification that the DCI record belongs to the individual.

Section 16-13 Application requirements.

- (A) Requirements:
 - a. If the DCI indicates a possible record found, the applicant shall provide:
 - (1) All necessary identification information, either name and other appropriate identifiers, or a completed fingerprint form approved by the State Bureau of Investigation (SBI);
 - (2) Any other physical or numerical personal descriptors requested;
 - (3) Authorization in a form acceptable to the SBI for performing a computerized criminal history (CCH) records check; and
 - (4) Payment of the then-current fee for a CCH records check.
 - b. If the Town Manager, Chief of Police or their designee receives a CCH records check (or copy thereof), he or she shall not disseminate the same and shall take reasonable steps to maintain its confidentiality.
 - c. The findings from the CCH shall be provided to the Chief of Police, Town Manager or their designee, provided that all necessary agreements with the State Bureau of Investigations Division of Criminal Information have been executed.
 - d. No operating permit shall be issued if the CCH records check described above or other information obtained by the Town reveals that the applicant has, within the ten-year period preceding the application, been convicted of any felonies or misdemeanors involving controlled substances.
- (B) The Council may request that the applicant submit the following additional information:
 - a. Existence of a depot or terminal on private property;
 - b. Ability to provide radio-dispatched taxi service 24 hours a day, seven days a week;
 - c. Ability to provide adequate supervision of taxicabs and drivers operating under the operating permit(s);
 - d. Evidence that the telephone number(s) of the taxicab company will be listed in the local telephone directory issued; and
 - e. Assurance that each vehicle operating under the permit shall be kept clean and in good mechanical condition and in good physical condition at all times.

- (C) The applicant shall swear that the information submitted is neither false nor misleading. Submitting, or causing to submit, false or misleading information is unlawful and shall be grounds for denial of an operating permit.

Section 16-14 Hearing on application.

The Town Manager or his or her designee may require a hearing with the operating permit applicant if the Manager is not convinced that the applicant meets all eligibility criteria and has provided all necessary data to the Town Manager as outlined in Section 15-13.

Section 16-15 Conditions of issuance.

- (A) On recommendation of the Police Chief or his or her designee, the Town Manager or his or her designee shall authorize issuance to every person who files an application as herein provided for an operating permit for a taxicab, subject to the conditions this chapter may require, provided that:
- a. The vehicle for which application for an operating permit or permits is made shall have been found, after investigation by the Police Chief, to be in strict compliance with this article;
 - b. The court record of the applicant is not one as would make it against the public interest for the application to be granted; specifically, any felon whose latest conviction is less than five years old or whose conditions of parole or offense might be considered contrary to public safety. More than one count conviction of driving while intoxicated within the last five years shall constitute grounds for rejection;
 - c. The applicants shall have complied with all the provisions of this article, including, but not limited to, the provision of:
 - i. Adequate supervision of drivers;
 - ii. Evidence that telephone numbers for the taxicab company will be listed in the next local telephone directory issued; and
 - iii. Assurance that each vehicle operating under this permit shall be kept clean and in good mechanical condition and in good physical condition at all times.
 - iv. The issuance is not in conflict with these conditions as placed by the Council on the issuance of operating permits.

- (B) Upon authorization by the Town Manager or his or her designee shall issue the operating permit.

Statutory Reference: Administrative search and inspection warrants, see G.S. Section 15-27.2

Section 16-16 Expiration.

All operating permits shall expire on December 31st of the year during which the operating permit is granted. The operating permit shall automatically expire if the conditions under which the permit was issued change.

Section 16-17 Renewal.

Upon application, prior to the end of each calendar year, the Town Manager or his or her designee shall renew any operating permit or cause a new operating permit to be issued for the ensuing year, in the absence of any contrary evidence and finding of the Town Manager or his or her designee regarding the operating permit holder's fulfillment of the eligibility criteria in **Section 16-13** and his or her ability to comply with the provisions of this article.

Section 16-18 Transfer.

Each permit issued pursuant to the provisions of this division is separate and distinct and shall not be transferable from the operating permit holder or entity.

Section 16-19 Suspension and revocation.

- (A) The Town Manager or his or her designee may suspend or revoke an operating permit upon the occurrence of any one of the following:

- (1) The operating permit holder fails to operate his or her taxicab or taxicabs in compliance with all the provisions of this article;
 - (2) The Manager or his or her designee finds that the operating permit holder submitted, or caused to be submitted, false or misleading information on his or her application for an operating permit;
 - (3) The operating permit holder ceases to operate any taxicab, during a period of 30 consecutive days, for a minimum of 20 days at least eight hours a day, without having obtained permission for the cessation from the Police Chief;
 - (4) The operating permit holder commits any act with the intent to defraud his or her creditors; or
 - (5) The Town Manager or his or her designee determines that, in the interest of the public safety and welfare, an operating permit should be suspended or revoked.
- (B) The Town Manager or his or her designee may also revoke an operating permit due to acts of drivers, pursuant to **Section 16-20**.
- (1) No operating permit may be suspended or revoked until the Town Manager or his or her designee has conducted a hearing thereon.
 - (2) The holder of the permit shall have the right to be present at the hearing and shall be given at least 48 hours' advance notice thereof.
- (D) Operating permits may be suspended under this section for a period not to exceed six months.
- (E) An operating permit holder who has had an operating permit revoked may not apply for an operating permit for a period of six months.

Section 16-20 Suspension and revocation; appeals.

- (A) Upon a finding by the Town Manager or his or her designee that an operating permit should be suspended or revoked pursuant to Section 15-19, the operating permit holder shall be so notified and informed of the manner in which the finding may be appealed.
- (B) The operating permit holder may appeal the suspension or revocation of an operating permit by filing with the Town Manager, within ten days after the Manager's decision is rendered, written notice of appeal. The notice of appeal shall set forth the reasons why the suspension or revocation is improper.
- (C) The suspension or revocation of an operating permit shall not become effective until ten days after the decision is rendered. If an appeal is filed within this period, the suspension or revocation shall be stayed pending final decision of the Council.

Section 16-21 Fees.

Fees for obtaining, renewing, duplicating, transferring and reinstating operating permits shall be collected. Fees shall be approved by the Town Manager and on file with the Police Chief. Other fees as permitted by state law may be collected.

Sections 16-22 through 16-25: Reserved.

DIVISION 3: DRIVER'S PERMIT

Section 16-26 Required.

No person shall drive a taxicab within the Town without first having obtained a taxicab drivers permit from the Police Chief.

Section 16-27 Application Requirements.

- (A) Each applicant for a driver's permit shall make application on forms to be provided by the Police Chief. (For renewal applications, a physical will be required every two years.) The application shall contain the following information:
 - (1) The applicant's full name and address;
 - (2) The applicant's physical condition, with particular reference to hearing, eyesight and use of alcoholic beverages or narcotic or barbiturate drugs;
 - (3) The applicant's physical description, including age, race, height, weight and color of eyes and hair;
 - (4) The length of time the applicant has resided at his or her present address; and
 - (5) The applicant's court records.
- (B) It shall be unlawful for any applicant to willfully include, or willfully cause to be included, a false statement in his or her application for a driver's permit.

Section 16-29 Qualifications of applicant.

Each applicant for a driver's permit must meet the following requirements:

- (A) Be at least 18 years of age;
- (B) Possess eyesight correctable to 20/20 and not suffer from epilepsy, vertigo, heart disease or any other physical or mental condition which renders him or her unfit for safe operation of a taxicab;
- (C) Be able to read, write and speak the English language;
- (D) Be clean in dress and person;
- (E) Be not addicted to the use of alcoholic beverages or narcotic or barbiturate drugs;
- (F) Possess a valid state driver's license issued to him or her; and
- (G) Have permission from an operating permit holder to operate a taxicab under the permit assigned to that operating permit holder.

Section 16-30 Refusal; Grounds specified.

The Town Manager may refuse to grant or renew a driver's permit for any applicant:

- (A) Whose state motor vehicle operator's license is in a state of revocation or suspension;
- (B) Who has committed, been convicted of or pleaded guilty or no contest to, within five years immediately prior to the date of application, any of the following:
 - (1) A felony;
 - (2) Any crime involving the driving of a motor vehicle;
 - (3) Impaired driving under state law or any comparable provision of any other state;
 - (4) A violation of any town, county, state or federal law relating to the use, possession or sale of alcoholic beverages or substances regulated by the State Toxic Vapors Act; or
 - (5) A violation of any town, county, state or federal law relating to prostitution or gambling.

- (C) Who, within a period of five years immediately prior to the date of his or her application, has been an habitual violator of traffic laws, or an habitual user of intoxicating liquors or any substance regulated by the State Controlled Substances Act (G.S. Section 90-86 through 90-113.8) or the State Toxic Vapors Act (G.S. Section 90-113.8A through 90-113.14); and
- (D) Who does not fulfill the qualifications set forth in Section 15-29.

Section 16-31 Issuance; Probationary period.

The Police Chief, upon finding that an applicant has satisfactorily complied with the provisions of this division, shall issue to an applicant a driver's permit, which shall show the applicant's photograph, name, height, weight, age, the expiration date and the operating permit holder for whom the driver will be employed. The driver's permit must be displayed at all times in the card frame attached to the glove compartment or dash on the right side in the driver's taxicab. No driver shall operate a cab for any operating permit holder other than the operating permit holder shown on his or her driver's permit, and, upon the termination of a driver's agreement to drive for the operating permit holder, the driver shall surrender his or her permit to the Police Chief within 48 hours.

Section 16-32 Fees. NEW

Fees to cover the administrative cost of the driver's permit shall be as follows and shall be reviewed and modified from time to time and included in the *Schedule of Rates and Fees*:

Issuing new permit or reinstating permit	\$10
Renewal of permit annually	\$5

Section 16-33 Revocation; Grounds.

The Town Manager may revoke or refuse to renew a driver's permit if the person to whom the driver's permit was issued is, at any time after issuance:

- (A) Found by the Police Chief to have committed, been convicted of or pled guilty or no contest to, any of the following:
 - (1) A violation of any federal, state or local law relating to the use, possession, manufacture or sale of alcoholic beverages or any substance regulated by the State Controlled Substances Act (G.S. Section 90-86 through 90-113.8) or the State Toxic Vapors Act (G.S. Section 90-113.8A through 90-113.14);
 - (2) A violation of any federal, state or local law relating to prostitution or gambling;
 - (3) An accumulation, under G.S. Section 20-16, within a three-year period of 12 or more points, or eight or more points within the three-year period following reinstatement of a state driver's license which has been suspended or revoked; or has been convicted of any other moving violation of traffic laws, for which the state driver's license is suspended or revoked;
 - (4) Any felony;
 - (5) Any violation of a federal, state or local law designed for the protection of life; or
 - (6) Any criminal assault involving the operation of a taxicab.
- (B) Found by the Police Chief to be an habitual user of alcoholic beverages or any substance regulated by the State Controlled Substances Act (G.S. Section 90-86 through 90-113.8) or the State Toxic Vapors Act (G.S. Section 90-113.8A through 90-113.14);
- (C) Found by the Police Chief to have made or caused to be made a false statement in his or her application for issuance or renewal of a driver's permit; or
- (D) Does not continue to meet the qualifications for a driver's permit suspended three times in any five-year period.

Section 16-34 Appeals.

A decision by the Town Manager not to grant or renew or to suspend or revoke a driver's permit, and a determination by the Town Manager under Section 15-19, shall be subject to appeal to the Council.

Sections 16-35 through 16-40: Reserved.

DIVISION 4: OPERATION

Section 16-41 Registration and all proper permits necessary.

No person shall operate a motor vehicle as a taxicab until the vehicle has been registered in accordance with all the requirements of this state and all proper permits have been obtained therefor.

Section 16-42 Compliance with state law, ordinances and the like.

- (A) Every taxicab shall be operated in accordance with the laws of this state and the ordinances of this Town and with due regard for the safety, comfort and convenience of passengers and for the safe and careful transportation of property and for the safety of the general public.
- (B) No taxicab shall be operated at a rate of speed inconsistent with existing traffic regulations, road conditions and the hazard at intersections and any other conditions then existing, nor in a manner or condition to endanger or to be likely to endanger the safety of passengers, pedestrians, vehicles or the person and property of others.

Section 16-43 Insurance policies to be filed.

The operating permit holder shall file with the Police Chief a copy of the vehicle insurance policy insuring the liability of the vehicle, as a condition precedent to the operating of any taxicab on the streets of the Town. The policy filed shall, among other things, set forth a description of each and every taxicab operating under the terms of the policy or policies.

Section 16-44 Insurance liable regardless of operator.

- (A) Any policy of insurance submitted under this division shall be conditioned upon the payment of any final judgment recovered by any person as a result of the negligent operation of any vehicle or taxicab permitted to operate hereunder, no matter by whom operated or driven at the time of the injury or damage.
- (B) The insurance shall contain a provision for the continuing liability thereunder to the full amount thereof notwithstanding any recovery thereon.

Section 16-45 Safety and Maintenance.

The operating permit holder shall maintain all taxicabs in a safe condition that would meet or exceed all state inspections standards.

Statutory References:

Age limits for drivers of public passenger-carrying vehicles, see G.S. Section 20-10

Financial responsibility, see G.S. Section 20-280

For-hire vehicles to be marked, see G.S. Section 20-101

Franchise ordinances, see G.S. Section 160A-76

General municipal powers as to taxicabs, see G.S. Section 20-37, 160A-304

Municipal license tax on taxicabs, see G.S. Section 20-97

Passenger vehicle registration fees, see G.S. Section 20-87

Transporting fortified wine or spirituous liquor in a for-hire passenger vehicle, see G.S. Section 18B-401

Sections 16-46 through 16-50: Reserved.

APPENDICES

Appendix A: Robeson County Animal Control Ordinance

RULES AND REGULATIONS GOVERNING ANIMAL CONTROL IN ROBESON COUNTY

ARTICLE I

ANIMAL CONTROL OFFICERS

Sec. 1. General Duties of an Animal Control Officer

The Animal Control Officers shall be charged with the responsibility of:

- 1) Enforcing, in this county, all state and county laws, ordinances and resolutions relating to the care, custody and control of animals;
- 2) Cooperating with the Health Director and assisting in the enforcement of the laws of the state, with regard to animals and especially with regard to the vaccination of animals against rabies and the confinement or leashing of vicious animals; and
- 3) Canvassing the county to determine if there are any dogs or cats not wearing the required rabies vaccination tag. Compliance procedures shall be in accordance with G.S. 130A-192, Public Health Laws.

Sec. 2. Interference with enforcement of chapter.

It shall be unlawful for any person to interfere with or hinder the 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.

Sec. 3. Records kept by the Animal Control Officers.

- 1) It shall be the duty of the Animal Control Officers to maintain accurate and detailed records of:
 - a. The date of each impoundment, a description of every animal impounded and the placement or location of the impoundment. The Animal Control Officer shall also note the date on which each animal disposition occurred. For animals adopted, reclaimed, and other dispositions, an agent for the animal control facility will provide the necessary records on a demand basis to the Animal Control Officer for adequate record keeping.
 - b. The date and investigation of all animal bite cases. All violations or complaints and the investigations of same shall be recorded.
- 2) The Animal Control Officer shall be responsible for submitting a daily or demand report to the Health Director (noting that data must be furnished to the Animal Control Officer by the animal control facility). This report will include:
 - a. The number of animals picked up or placed in the pound or quarantined;
 - b. The number of animals released to owner;

- c. The number of animals sold;
- d. The number of animals destroyed ;
- e. Complete information on animal bites;
- f. The number of vaccination clinics;
- g. The number of animals vaccinated;
- h. Areas patrolled for strays;
- i. Total number of miles traveled; and
- J. All other items deemed necessary by the Health Director.

ARTICLE II.
RABIES CONTROL

Sec. 1. Compliance with state law, article as supplement to state law.

- 1) 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.
- 2) 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.

Sec. 2. Inoculation of dogs, cats and other pets.

- 1) It shall be unlawful for an owner to fail to provide current inoculation against rabies (hydrophobia) for any dog or cat four (4) 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.
- 2) To establish the term "current" inoculation the following information applies: North Carolina law requires that all dogs and cats four (4) months of age and older be vaccinated against rabies. The first rabies vaccination (inoculation) that a dog or cat receives is recognized for 12 months. Subsequent rabies vaccinations are good for three years. Dogs and cats of unknown rabies vaccination status should be considered unvaccinated.
- 3) All antirabic vaccine shall be administered by a licensed veterinarian.

Sec. 3. Inoculation tag.

- 1) Upon complying with the provisions of Section 2 of this article, 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, and indicating that the animal has been inoculated against rabies.
- 2) It shall be unlawful for any dog or cat owner to fail to provide the dog or cat with a collar or harness to which a current tag issued under this section

is securely attached. The collar or harness with attached tag must be worn at all times, except during the time the dog and/or cat is performing at shows, obedience trials, tracking tests, field tests, schools or other events sanctioned and supervised by a recognized organization.

- 3) It shall be unlawful for any person to use for any animal a rabies inoculation tag issued for an animal other than the one using the tag.

Sec.4. Animal Bite Cases.

- 1) Every animal (dog or cat) which has bitten anyone or which shows symptoms of rabies shall be confined immediately and shall be promptly reported to the County Health Department by its owners, or persons having the animal in charge, and thereupon shall be securely quarantined at the direction of the Animal Control Officer, Health Director or his/her delegated representative, for a period of ten (10) days, and shall not be released from such quarantine except by written permission from the Animal Control Officer, Health Director or his/her delegated representative. The biting animal and its record of vaccination shall be inspected by the Animal Control Officer, Health Director, or his/her delegated representative, who will then observe the following policy:
 - a. A properly vaccinated dog or cat may be confined on the owner's premises provided that an Animal Control Officer, Health Director or his/her delegated representative, determines that the owner has an adequate means of confinement upon his own premises and the animal is subject to observation by the health department representative at any time during the ten-day period.
 - b. An animal not properly vaccinated, belonging to an owner, shall immediately be confined in a veterinary hospital or animal control facility (pound), in which case the expense shall be borne by the owner for the ten (10) day confinement. The animal shall not be vaccinated during confinement.
 - c. A stray animal shall immediately be confined to the animal control facility (pound) for a ten (10) day period.
- 2) It shall be the duty of every physician, after his first professional attendance upon a person bitten by any animal having rabies or suspected of having rabies, to report to the Health Director, or person duly authorized by the Health Director, the name, age and sex of the person so bitten, and precise location of the bite wound, within twenty-four (24) hours after first having knowledge that the person was bitten. If the owner of or a person who has in his possession or under his control an animal having rabies or suspected of having rabies refuses to confine the animal as required by this ordinance or by G.S. 106-378, the Health Director may order seizure of the animal and its confinement for ten (10) days in such place as the Health Director designates.
- 3) Law enforcement agencies investigating animal bites, shall report such bites immediately to the Health Director or person duly authorized by the Health Director and give the names and addresses of persons bitten and the owner of the animal.
- 4) Except as provided in subsection (1) above, it shall be unlawful for the owner of an animal which has bitten a human to refuse to surrender said animal for the purpose of supervised

quarantine by the Animal Control Officer, Health Director or his/ her delegated representative, upon demand. The expense of said supervised quarantine shall be borne by the owner. If rabies does not develop within the ten (10) days, the animal may be reclaimed upon payment of the approved daily fee and upon compliance with other provisions of this ordinance.

- 5) If an animal dies while under observation for rabies, then the head of such animal shall be submitted to the Robeson County Health Department for shipment to the North Carolina State Laboratory of Hygiene for diagnosis.
- 6) When reports indicate a positive diagnosis of rabies, the Health Director may order an area-wide quarantine for a period as he deems necessary; and upon invoking such emergency quarantine by the said Health Director, no animal shall be taken onto the street or permitted to be in the street during such time. During such quarantine, no animal may be taken or shipped away from the county without written permission from the Health Director; and each Animal Control Officer, police department and sheriff's department is hereby authorized during such emergency quarantine to impound any animal found running at large in the county. During the quarantine, the Animal Control Officers and/or the local veterinarians shall be empowered to provide for further mass immunization by the establishment of temporary emergency rabies vaccination clinics strategically located throughout the county.

No animal which has been impounded by reason of its being a stray, unclaimed by its owner, is allowed to be adopted from the animal control facility (pound) during the period of emergency rabies quarantine, except by special authorization of the public health officials. Stray and non-owned quarantined animals shall not be adopted after the ten (10) day observation period but humanely euthanized (destroyed).

- 7) Animals bitten by a known rabid animal shall be immediately destroyed unless the owner agrees to strict isolation of the animal in the animal control facility (pound) or at a veterinary hospital for a period of six (6) months; or if the animal has a current rabies inoculation, revaccination and confinement for a period of six (6) weeks. Expenses incurred are the responsibility of the owner.
- 8) In the event 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 Health Director. During the quarantine period, the County Health Director may require annual vaccination of animals against rabies.
- 9) 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 biting a human, or to remove such animal from the county without written permission from the County Health Director.
- 10) The carcass of any dead animal exposed to rabies shall be surrendered to the Animal Control Officer. The head of such animal shall be submitted to the County Health Department for shipment to the North Carolina State Laboratory of Hygiene for diagnosis.
- 11) It shall be unlawful for any person to fail or refuse to surrender any animal for quarantine or destruction as required herein when demand is made thereof by the Animal Control Officer, Health Director or his/ her delegated representative.

ARTICLE III
IMPOUNDMENT AND CONTROL OF ANIMALS

Sec. 1. Generally.

Any animal which appears to be lost, straying, or unwanted, or which is found not to be wearing a currently valid rabies vaccination tag, as required by state law or this ordinance, shall be impounded by the Animal Control Officer and confined in an animal control facility (pound) in a humane manner. Impoundment of such an animal shall not relieve the owner thereof from any penalty which may be imposed for violation of this ordinance. Animal Control Officers may treat with pesticides any animal prior to confinement in an animal control facility (pound).

Sec. 2. Notice to owner.

Immediately upon impounding an animal, the Animal Control Officer shall make reasonable effort to notify the owner and in form such owner of the conditions whereby the animal may be redeemed. If the owner is unknown or cannot be located, notice of such impoundment is left at the nearest residence where animal was found that said animal will be kept for (5) days, or until the animal is disposed of.

Sec. 3. Redemption by owner generally.

The owner of an animal impounded under this article may redeem the animal and regain possession thereof within one hundred twenty (120) hours (five [5] days) after notice of impoundment is given by complying with all applicable provisions of this chapter and by paying the Board approved redemption and boarding fees, receiving the required vaccination to obtain current status and paying all necessary veterinarian's fees.

Sec. 4. Destruction or adoption of unredeemed animal generally.

- 1) If an impounded animal is not redeemed by the owner within the period prescribed in Section 3, it may be destroyed in a humane manner or shall become the property of the animal control facility (pound) and offered for adoption to any responsible adult who is willing to comply with this ordinance. Such animal may be adopted by the first such person who pays the approved adoption fee and rabies vaccination charge as necessitated by State requirements for all animals four (4) months or older. For animals less than four (4) months old, an agent for the animal control facility (pound) will explain the procedure.
- 2) The Animal Control Officer and/or animal control facility (pound) agent shall recommend that all adopted animals (both male and female) be surgically neutered. A pamphlet will be provided explaining the need for neutering of all adopted animals.
- 3) 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 control facility (pound) during a period of emergency rabies quarantine invoked pursuant to Article II, Section 4 of this ordinance, except by special authorization of the County Health Director.

Sec. 5. Procedure with respect to redemption or adoption of unvaccinated dog or cat.

- 1) All animals redeemed or adopted from the animal control facility (pound) that are four (4) months of age or older will be required to obtain a current rabies vaccination at the time of release.

A veterinarian for the animal control facility (pound) will provide the inoculation (vaccination) for the approved fee per animal. The opportunity will be given for those animals four (4) months of age or less to be returned to the animal control facility (pound) at four (4) months of age for the same approved fee.
- 2) Payment for rabies vaccination provided for in this section will be the responsibility of the person redeeming or adopting the animal.

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

Notwithstanding any other provision of this article, animals impounded which appear to be suffering from rabies shall not be redeemed or adopted, but shall be dealt with in accordance with Article II of this ordinance.

Sec. 7. 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 Officer 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 Officer may destroy the animal at its discretion in a humane manner.

Sec. 8. Destruction of animals which cannot be seized by reasonable means.

Notwithstanding any other provision of this ordinance, an animal which cannot be seized by reasonable means may be humanely destroyed by order of the Health Director or person duly authorized by the Health Director.

Sec. 9. Confinement, muzzling, and control of vicious or dangerous domestic animals.

- 1) It shall be unlawful for any person to keep any vicious, fierce or dangerous domestic animal within the county unless it is confined within a secure building or enclosure (with signs posted to beware), or unless the animal is securely muzzled and under restraint by means of a leash, chain or rope and firmly under control at all times. The Animal Control Officer will determine if the enclosure is an adequate safeguard. A vicious animal is one which on or off the property of its owner or keeper has without provocation:
 - a) killed or caused life threatening injuries through bite(s) to a person;
 - b) bitten or caused physical harm through bite(s) to a person;
 - c) attempted to bite or cause physical harm through bite(s) to a person;
 - d) injured, maimed or killed any pet or domestic livestock;
- 2) The County Health Director may declare an animal vicious and a menace to the public health based upon the criteria outlined in Section 9.1 (a) - (d).
- 3) Animals which have committed any of the acts contained in Section 9.1 (a) will be immediately impounded and destroyed in a humane manner.
- 4) Animals which committed any of the acts contained in Section 9.1 (b) are subject to this section as well as Article II Section 4 (Animal Bite Cases) and must be confined as directed.
- 5) Animals which committed any of the acts contained in Section 9.1 (c) and (d) are subject only to the restrictions addressed in Section 9.1.
- 6) Any animal previously declared vicious by the County Health Director that commits a subsequent violation as described in Section 9.1 shall be immediately impounded and destroyed humanely.

Sec. 10. Animals creating nuisance prohibited.

It shall be unlawful for an owner to permit an animal to create a nuisance or to maintain a nuisance created by an animal. An animal or animals shall be considered a nuisance if it:

- 1) damages, soils, or defiles private or public property;
- 2) interferes with, molests, or attacks persons or other animals;
- 3) is repeatedly at large;
- 4) causes unsanitary, dangerous or offensive conditions including fouling of the air by odors;
- 5) chases, snaps at, harasses, or impedes pedestrians, bicyclists, or vehicles;
- 6) by virtue of number or type is offensive or dangerous to the public health, safety, or welfare;
- 7) is diseased or dangerous to the public health. Compliance shall be required as follows:
 - 1) When an animal control officer, law enforcement officer, or person duly authorized by the Health Director observes a violation, the owner will be provided written notification of such violation and be given 48 hours from time of notification to abate the nuisance.
 - 2) Upon receipt of a written detailed and signed complaint being made to the Health Director by any person or persons that any other person is maintaining a nuisance as defined in this ordinance, the Health Director shall cause the owner of the animal or animals in question to be notified that a complaint has been received, and shall cause the situation complained of to be investigated and a report and findings thereon to be reduced to writing.

- 3) If the written findings indicate that the complaint is justified, then the Health Director or person duly authorized by the Health Director, shall cause the owner or keeper of the animal or animals in question to be so notified in writing, and ordered to abate such nuisance within forty-eight (48) hours by whatever means may be necessary. In the event the owner or keeper of the animal or animals is unknown and cannot be ascertained, the notice and order, along with a general description of the animal or animals shall be posted for forty-eight (48) hours at the animal shelter and the county courthouse.

- 4) In the event the owner or keeper of the animal or animals is unknown and cannot be ascertained the notice and order, along with a general description of the animal or animals shall be posted for forty-eight (48) hours at the animal shelter. If after 120 hours the owner or keeper of the animal or animals remains unknown, the animal may be impounded or humanely destroyed.

It shall be unlawful for a person to fail or refuse to abate the nuisance as required by this ordinance.

Sec. II. Noisy animals

It shall be unlawful for any person to own, keep, or have within the county an animal that habitually or repeatedly makes noises or other sounds that tend to annoy, disturb, or frighten its citizens.

Sec. 12. Violations.

If any person shall violate the rules and regulations made by the County Board of Health, he shall be guilty of an infraction.

Sec. 13. Severability.

If any part of this ordinance shall be held invalid, such part shall be deemed severable and the invalidity thereof shall not affect the remaining parts of this ordinance.

Sec. 14. Conflicting Ordinances.

All other ordinances of the County of Robeson that are in conflict with this ordinance are hereby repealed to the extent of such conflict.

Sec. 15. Effective Date.

effective on the _____ 30th day of

July 1990.

ROBESON COUNTY BOARD OF HEALTH

Billie S. Britt
Billie S. Britt, Chairman

Onita Cox
Onita Cox, R.N.

Ray Cox
Ray Cox

Dan Floyd
Dan Floyd, D.D.S.

Larry Graham
Larry Graham

James Hall
James Hall

Curt Locklear, Jr.
Curt Locklear, Jr., D.V.M.

Heyward Lowmy
Heyward Lowmy, R.Ph.

Mary Ann Masters
Mary Ann Masters, O.D.

John C. Rozier, Jr.
John C. Rozier, Jr., M.D.

Leroy Scott
Leroy Scott Sr.

William J. Smith
William J. Smith, Health Director

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COMPARISON CHART OLD TO REVISED ORDINANCES

Existing Code	Chapter Reference	New Code	Section Reference	History/Notes
Title I: General Provisions		Chapter 1: General Provisions		
General Provisions	10			1979 Code; 1992 Code
<i>How Code to be Constructed and Interpreted</i>	10.01 through 10.99	<i>In General</i>	1-1 through 1-20	Updated from 1992 Code; Section 10.99 is General Penalty Section referenced in subsequent sections.
Title III: Administration		Chapter 2: Administration		
Town Council	30	<i>In General</i>	2-1 through 2-10	1979 Code; 1992 Code; includes Conflict of Interest statement; bonding requirements; elections-generally
<i>Committees</i>	30.01	<i>Committees</i>	2-32	1979 Code; 1992 Code
<i>Rules and Procedures</i>	30.15 through 30.26	<i>Administration In General; Mayor; Town Council; Town Officers</i>	2-1 through 2-31; 2-33 through 2-80	1979 Code; 1992 Code
<i>Ordinances</i>	30.35 through 30.38	<i>Ordinances in General</i>	1-1 through 1-20	1979 Code; 1992 Code
Town Officials and Employees	31	<i>Town Council</i>	2-33 through 2-80	1979 Code; 1992 Code
<i>Code of Conduct</i>	31.01	<i>Code of Conduct</i>	2-184	Ordinance 1987-11 adopted 7 Dec 1987; 1992 Code
<i>Mayor</i>	31.15	<i>Mayor</i>	2-61 through 2-70	Ordinance 1987-2 adopted 1 June 1987; 1992 Code
Police and Fire Departments	32	Chapter 12: Public Safety		1979 Code; 1992 Code
<i>Police Department</i>	32.01 through 32.05	<i>Police Department</i>	12-1 through 12-15	1979 Code; 1992 Code
<i>Auxilliary Police Officer Program</i>	32.05	<i>Auxilliary Police</i>	12-16 through 12-30	new ordinance adopted 4 April 2016 replacing 32.05
<i>Fire Department</i>	32.20 through 32.23	<i>Fire Protection and Enforcement</i>	12-31 through 12-50	1979 Code; 1992 Code
		<i>Inspections After Fires</i>	12-51 through 12-70	New

Existing Code	Chapter Reference	New Code	Section Reference	History/Notes
		<i>Civil Emergencies</i>	12-71 through 12-90	New
Commissions and Boards	33	<i>Commissions</i>	2-81 through 2-140	1979 Code; 1992 Code
<i>Planning Commission</i>	33.01 through 33.08	<i>Unified Development Ordinance</i>	Separate Ordinance	Adopted 4 May 2009
<i>Parks and Recreation Commission</i>	33.20 through 33.33	<i>Parks and Recreation Advisory Board</i>	2-81 through 2-105	1979 Code; 1992 Code
<i>Economic Development Commission</i>	33.45 through 33.99	<i>Removed/Replaced</i>		
		<i>Alcoholic Beverage Control Commission</i>	2-106 through 2-140	New
Finance and Revenue	34	<i>Finance and Purchasing; Fiscal Policies</i>	2-141 through 2-200	1979 Code; 1992 Code
<i>Purchasing</i>	34.01	<i>Finance and Purchasing</i>	2-141 through 2-160	1979 Code; 1992 Code
		<i>Town Fiscal Policies and Procedures</i>	2-161 through 2-180	New
		<i>Personnel</i>	2-181 through 2-200	New
Title V: Public Works		Chapter 13: Public Works		
Garbage and Refuse	50	<i>Solid Waste Disposal</i>	13-1 through 13-20	1979 Code; 1992 Code
<i>General Provisions</i>	50.01 through 50.04	<i>Solid Waste Disposal</i>	13-1 through 13-20	50.02- Burning or burying garbage and refuse- adopted 1992, amended 1 Jan 2017- now Section 11-37 under Fire Protection; 50.04-Open Burning Ordinance - adopted 4 Jun 2013, amended 2 June 2014; now Section 11-37.

Existing Code	Chapter Reference	New Code	Section Reference	History/Notes
<i>Collection and Disposal</i>	50.20 through 50.99	<i>Solid Waste Disposal</i>	13-1 through 13-20	Revised by new Solid Waste Ordinance, Section 50.20 adopted 9 Jan 2017 with effective date of 1 Jan 2017, technical corrections adopted 3 Jan 2017.
Water and Sewer System Regulations	51	Chapter 8: Municipal Water and Sewer		1979 Code; 1992 Code
<i>General Provisions</i>	51.001 through 51.003	<i>In General</i>	8-1 through 8-20	1979 Code; 1992 Code; connections; penalties; applications for service.
<i>Water System Regulations</i>	51.015 through 51.017	<i>Removed/Replaced</i>		
<i>General Sewer Use Regulations</i>	51.030 through 51.032	<i>Removed/Replaced</i>		
<i>Discharges</i>	51.045 through 51.059	<i>Sewer Use Ordinance</i>	8-91 through 8-150	New
<i>Industrial Wastes</i>	51.070 through 51.075	<i>Sewer Use Ordinance</i>	8-91 through 8-136	New
<i>Extensions</i>	51.090 through 51.095	<i>Extensions of Water or Sewer Service Outside of Town</i>	8-21 through 8-30	1979 Code; 1992 Code
<i>Rates, Charges and Billing Procedures</i>	51.105 through 51.108	<i>Rates and Charges/Biling and Payments</i>	8-31 through 8-40; 8-41 through 8-55	1979 Code; 1992 Code
<i>Administration</i>	51.120 through 51.999	<i>Disconnection and Reconnection</i>	8-56 through 8-65	New
		<i>Irrigation Water Meters</i>	8-66 through 8-75	New
		<i>Right to Suspend Service</i>	8-76 through 8-80	New
<i>Water Shortage Response Plan</i>		<i>Water Shortage Response Plan</i>	8-81 through 8-90	Added to Code; Plan adopted April 23, 2010
<i>Fats, Oils and Grease Regulations</i>	52	<i>Fats, Oils and Grease Regulations</i>	8-151 through 8-165	Added to Code; Ordinance adopted and effective April 1, 2010

Existing Code	Chapter Reference	New Code	Section Reference	History/Notes
<i>Backflow and Cross Connections</i>		<i>Backflow and Cross Connections</i>	8-186 through 8-210	Added to Code; Ordinance adopted Oct. 3, 2005
Title VII: Traffic Code		Chapter 7: Motor Vehicles and Traffic		
General Provisions	70	<i>Removed/Replaced</i>		1979 Code; 1992 Code
<i>General Provisions</i>	70.01 through 70-.06	<i>General Provisions</i>	7-1 through 7-5	1979 Code; 1992 Code
<i>Traffic Control Devices</i>	70.20 through 70.25	<i>Removed/Replaced</i>		1979 Code; 1992 Code
<i>Motor Vehicle Registration</i>	70.40 through 70.99	<i>Removed/Replaced</i>		no longer applies
Traffic Rules	71	<i>Removed/Replaced</i>		1979 Code; 1992 Code
<i>Operation Generally</i>	71.01 through 71.05	<i>Operation of Vehicles on Public Streets</i>	7-6 through 7-60	1979 Code; 1992 Code
<i>Special Stops Required</i>	71.20 through 71.26	<i>Removed/Replaced</i>		1979 Code; 1992 Code
		<i>Pedestrian Rights and Duties</i>	7-61 through 7-85	New; crossings; rights-of-way.
<i>Prohibited Acts</i>	71.40 through 71.44	<i>Cruising</i>	7-131 through 7-139	71.40- Cruising: initial ordinance 1990-11adopted 2 Jan 1990, amended by Ordinance 1997-1 adopted 29 May 1997, now found at ; 71.44 Speed of trains: repealed by Ordinance 1997-8 adopted 7 Apr 1977.
Stopping, Standing , and Parking	72	<i>Removed/Replaced</i>		1979 Code; 1992 Code
<i>Method of Parking</i>	72.01 through 72.11	<i>Parking Regulations</i>	7-86 through 7-130	1979 Code; 1992 Code
<i>Restricted or Prohibited on Certain Streets</i>	72.25 through 72.30	<i>Parking Regulations</i>	7-86 through 7-130	1979 Code; 1992 Code

Existing Code	Chapter Reference	New Code	Section Reference	History/Notes
<i>Loading and Unloading Zones; Public Carrier Stops and Stands</i>	72.40 through 72.42	<i>Parking Regulations</i>	7-86 through 7-130	1979 Code; 1992 Code
Bicycles and Motorcycles	73	<i>Removed/Replaced</i>		1979 Code; 1992 Code
<i>General</i>	73.01 through 73.09	<i>Operation of Vehicles on Public Streets</i>	7-27 through 7-32	1979 Code; 1992 Code; Bicycles
Golf Carts	74	<i>Golf Carts on Public Streets and Roads</i>	7-140 through 7-160	Ordinance 2010-04-01 adopted 5 Apr 2010 effective 1 July 2010, amended by Ordinance 2013-05-02 adopted and effective 4 May 2013.
Title IX: General Regulations		Chapter 9: Offenses, Nuisances, and Miscellaneous Provisions		
Abandoned, Nuisance and Junked Vehicles	90	<i>Abandoned and Junked Motor Vehicles</i>	9-1 through 9-30	1979 Code; 1992 Code
<i>General</i>	90.01 through 90.99	<i>Begging and Soliciting</i>	9-31 through 9-50	New
		<i>Concealed and Open Carry Weapons</i>	9-51 through 9-60	New
		<i>Damage to and Interference With Town Property</i>	9-61 through 9-65	New
		<i>Discharge of Firearms and Other Weapons</i>	9-66 through 9-70	New
		<i>Disorderly Conduct</i>	9-71 through 9-90	New
Animals	91	Chapter 4: Animals and Fowl		
<i>Prohibitions; Vicious Dangerous and Nuisance Animals</i>	91.01 through 91.05	<i>In General</i>	4-1 through 4-15	Livestock now Section 4-36;
<i>Rabies Control</i>	91.15 through 91.17	<i>Rabies Control</i>	4-16 through 4-35	1979 Code; 1992 Code

Existing Code	Chapter Reference	New Code	Section Reference	History/Notes
<i>Impoundment and Control of Animals</i>	91.30 through 91.36		4-20 through 4-22	1979 Code; 1992 Code
<i>Administration and Enforcement</i>	91.50 through 91.99		4-24 through 4-27	1979 Code; 1992 Code
		<i>Livestock</i>	4-36 through 4-40	1979 Code; 1992 Code
		<i>Chickens and Fowl</i>	4-41 through 4-50	New
<i>Bird Sanctuary</i>		<i>Bird Sanctuary</i>	4-51 through 4-55	1979 Code; 1992 Code
Civil Emergencies	92	Chapter 12: Public Safety		1979 Code; 1992 Code
<i>General</i>	92.01 through 92.99	<i>Civil Emergencies</i>	11-71 through 11-80	1979 Code; 1992 Code
Fire Prevention	93			1979 Code; 1992 Code
<i>Fire Prevention Code Adopted</i>	93.01	<i>Code adopted</i>	11-52	See Public Safety
Health and Sanitation	94	Chapter 6: Health and Sanitation		1979 Code; 1992 Code
<i>General Provisions</i>	94.01 through 94.05	<i>General Provisions</i>	6-1 through 6-15	1979 Code; 1992 Code
<i>Enforcement</i>	94.20 through 94.99	<i>General Provisions</i>	6-1 through 6-3 and 6-7	1979 Code; 1992 Code
Littering	95	Chapter 9: Offenses, Nuisances, and Miscellaneous Provisions		1979 Code; 1992 Code
<i>General</i>	95.01 through 95.99	<i>General Provisions</i>	9-81 through 9-90	1979 Code; 1992 Code
Noise Control	96	<i>Noise</i>		1979 Code; 1992 Code
<i>General</i>	96.01 through 96.99	<i>General Provisions</i>	9-101 through 9-115	79 Code, amended by Ordinance 49-68 adopted 1 Nov 1968, amended 2 Feb 2015 effective 5 Mar 2015.
Nuisances: Weeds and Refuse	97	<i>Weeds and Accumulation of Refuse</i>		1979 Code; 1992 Code
<i>General</i>	97.01 through 97.99	<i>Weeds and Accumulation of Refuse</i>	9-116 through 9-130	1979 Code; 1992 Code

Existing Code	Chapter Reference	New Code	Section Reference	History/Notes
		<i>Sexually Explicit Materials; Display to Minors</i>	9-131 through 9-145	New
Parks and Recreation	98	<i>Removed/Replaced</i>	See Parks and Recreation Commission	79 Code, amended by Ordinance 1981-5 adopted 8 Sept 1981.
<i>General</i>	98.01 through 98.99	<i>Removed/Replaced</i>		1979 Code, amended by Ordinance 1981-5 adopted 8 Sept 1981.
		Chapter 11: Public Records		New
		<i>In General</i>	11-1 through 11-10	New
Streets and Sidewalks	99	Chapter 14: Streets and Sidewalks		1979 Code; 1992 Code
<i>General Provisions</i>	99.01 through 99.07	<i>Removed/Replaced</i>		1979 Code; 1992 Code
<i>Excavation and Repair</i>	99.20 through 99.30	<i>Excavation and Repair</i>	14-16 through 14-40	1979 Code; 1992 Code
<i>Acceptance and Improvement of Public Streets</i>	99.40 through 99.47	<i>Acceptance and Improvement of Public Streets</i>	14-1 through 14-15	1979 Code; 1992 Code
		<i>Poles and Lines</i>	14-41 through 14-50	New
<i>Parades and Demonstrations</i>	99.60 through 99.99	Chapter 10: Parades, Demonstrations, and Special Events		1979 Code; 1992 Code
		<i>In General</i>	10-1 through 10-15	New
		<i>Special Events</i>	10-16 through 10-50	New
Loitering	100	<i>Loitering</i>	9-91 through 9-100	New; See also Cruising
<i>General</i>	100	<i>General Provisions</i>	9-91 through 9-100	Ordinance adopted and effective 2 Nov 2015

Existing Code	Chapter Reference	New Code	Section Reference	History/Notes
Title XI: Business Regulations				
Privilege License Taxes	110	Chapter 15: Regulation of Businesses; Town Taxes		New
<i>General Provisions</i>	110.01 through 110.09	<i>Removed/Replaced</i>		1979 Code; 1992 Code
<i>Business Activities on Sundays</i>	110.20 through 110.99	<i>Removed/Replaced</i>		79 Code, Amended by Ordinance 1983-6 adopted 2 May 1983, '92 Code
		<i>Ad Valorem Taxes</i>	15-1 through 15-20	New
		<i>Business Taxes; Privilege License Taxes</i>	15-21 through 15-30	New ordinance adopted 4 April 2016 replacing 32.05
		<i>Business Registration</i>	15-31 through 15-50	New
		<i>Pawnbrokers</i>	15-51 through 15-60	New
		<i>Public Games Rooms (including poolrooms, bowling alleys, billiard halls, bingo parlors, amusements centers, video arcades and electronic gaming establishments)</i>	15-61 through 15-75	1979 Code; 1992 Code
		<i>Peddling, Soliciting, and Itinerant Merchants</i>	15-76 through 15-95 and See UDO	
		<i>Flammable Fluids and Explosives</i>	15-96 through 15-110	
		<i>Yard Sales</i>	15-111 through 15-125	
Alcoholic Beverages	111	<i>See Chapter 3: Alcoholic Beverage Regulation</i>	3-1 through 3-20; See also Disorderly Conduct in Chapter 9 and UDO	1979 Code; 1992 Code

Existing Code	Chapter Reference	New Code	Section Reference	History/Notes
<i>General</i>	111.01 through 111.99	<i>Removed/Replaced</i>	See Disorderly Conduct 8-58 through 8-59 and UDO	1979 Code; 1992 Code
Amusements	112	<i>See Public Games Rooms, Etc. above</i>	<i>See also UDO</i>	1979 Code; 1992 Code
<i>General Places of Amusements</i>	112.01 through 112.02	"	<i>See also UDO</i>	Ordinance 1984-10 adopted 4 Sept 1984, 1992 Code
<i>Amusement Devices and Game Rooms</i>	112.15 through 112.99	"	<i>See also UDO</i>	Ordinance 1983-5 adopted 2 May 1983, 1992 Code
Massage Parlors and Health Salons	113	<i>Removed/Replaced</i>	<i>See UDO</i>	1979 Code; 1992 Code
<i>General Provisions</i>	113.01 through 113.05	<i>Removed/Replaced</i>	<i>See UDO</i>	1979 Code; 1992 Code
<i>Licensing Provisions</i>	113.15 through 113.99	<i>Removed/Replaced</i>	<i>See UDO</i>	1979 Code; 1992 Code
Peddlers and Solicitors	114	<i>Peddling, Soliciting, and Itenerant Merchants</i>	15-76 through 15-95 and See UDO	1979 Code; 1992 Code
<i>General</i>	114.01 through 114.99	"	<i>See Begging and Soliciting 8-41 through 8-45</i>	1979 Code; 1992 Code
Taxicabs	115	Chapter 16: Vehicles for Hire		1979 Code; 1992 Code
<i>General Provisions</i>	115.01	<i>Taxicabs: General Provisions</i>	16-1 through 16-10	1979 Code; 1992 Code
<i>Certificate of Convenience and Necessity</i>	115.15 through 115.99	<i>Taxicabs: Operating Permit</i>	16-11 through 16-25	1979 Code; 1992 Code
		<i>Taxicabs: Driver's Permit</i>	16-26 through 16-40	New
		<i>Taxicabs: Operation</i>	16-41 through 16-45	New
Title XIII: General Offenses				
Offenses against town regulations	130	<i>Removed/Replaced</i>	See Chapter 9 - Offenses and Nuisances	1979 Code; 1992 Code

Existing Code	Chapter Reference	New Code	Section Reference	History/Notes
<i>General</i>	130.01 through 130.99	<i>Removed/Replaced</i>	See Chapter 9 - Offenses and Nuisances	1979 Code; 1992 Code
Title XV: Land Usage		Chapter 5: Buildings and Building Regulation		1979 Code; 1992 Code
Building Regulations				1979 Code; 1992 Code
<i>Building Codes</i>	150.01 through 150.09	<i>In General; Codes Adopted</i>	5-1 through 5-20	1979 Code; 1992 Code; State Codes adopted
<i>Permit Requirements</i>	150.20 through 150.28	<i>Building Code Inspections and Enforcement</i>	5-21 through 5-30	1979 Code; 1992 Code; Duties; permit required
		<i>Zoning Permit Required</i>	5-31 through 5-35	New
		<i>Fire Prevention Inspection and Enforcement</i>	5-36 through 5-50	incorporated from agreement
		<i>Non-Residential Code</i>	5-51 through 5-85	New; addresses unsafe commercial and industrial structures
		<i>Abandoned Structures</i>	5-86 through 5-110	New; address all abandoned structures
		<i>Minimum Housing Standards</i>	5-111 through 5-140	1979 Code; 1992 Code
		<i>Minimum Maintenance Standards for Non-Residential Buildings and Structures</i>	5-141 through 5-160	New; standards for safe and sanitary maintenance of non-occupied commercial and industrial structures
		<i>Regulation of Boarded-Up Residential Structures</i>	5-161 through 5-180	New; process and enforcement regs for managing/preventing boarded up residential structures

Existing Code	Chapter Reference	New Code	Section Reference	History/Notes
<i>Property Numbering System</i>	150.40 through 150.45	<i>Removed/Replaced</i>		
<i>Inspections Department</i>	150.55 through 150.63	<i>Removed/Replaced</i>		
<i>Unsafe Buildings</i>	150.75 through 150.80	<i>Removed/Replaced</i>		
Subdivision Regulations	151	<i>See Unified Development Ordinance</i>		Adopted 4 May 2009
Zoning Code	152	<i>See Unified Development Ordinance</i>		Adopted 4 May 2009
Related Local Laws				
Sewer Services for Pembroke State College	Article II	<i>Removed/Replaced</i>		
Policies Codified				
Procedures for Public Comment Period	n/a	<i>Procedures for Public Comment Period</i>	2-29	New; Adopted 4 Feb 2008, Amended 4 May 2009, Codified 2018

