

CODE OF ORDINANCES
TOWN OF
VASS, NORTH CAROLINA

Published by Order of the Board of Commissioners



MUNICIPAL CODE CORPORATION

Tallahassee, Florida

2009

OFFICIALS

of the

TOWN OF

VASS, NORTH CAROLINA

AT THE TIME OF THIS RECODIFICATION

Henry E. Callahan
Mayor

George Blackwell
Donald Bridgers
Margaret Cirone
Paulette Elliott
Town Board of Commissioners

Douglas Gill
Town Attorney

Jody Smith
Town Administrator / Clerk

PREFACE

This Code constitutes a recodification of the general and permanent ordinances of the Town of Vass, North Carolina.

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

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

Chapter and Section Numbering System

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

Page Numbering System

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

the page in that portion. In the case of a chapter of the Code, the number to the left of the colon indicates the number of the chapter. In the case of an appendix to the Code, the letter immediately to the left of the colon indicates the letter of the appendix. The following are typical parts of codes of ordinances, which may or may not appear in this Code at this time, and their corresponding prefixes:

CHARTER	CHT:1
SESSION LAWS	SL:1
CHARTER COMPARATIVE TABLE	CHTCT:1
SESSION LAWS COMPARATIVE TABLE	SLCT:1
CODE	CD1:1
CODE APPENDIX	CDA:1
CODE COMPARATIVE TABLES	CCT:1
STATE LAW REFERENCE TABLE	SLT:1
CHARTER AND SESSION LAWS INDEX	CHTi:1
CODE INDEX	CDi:1

Indexes

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

Looseleaf Supplements

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

Keeping this publication up to date at all times will depend largely upon the holder of the publication. As revised pages are received, it will then become the responsibility of the holder to have the amendments inserted according to the attached instructions. It is strongly recommended by the publisher that all

such amendments be inserted immediately upon receipt to avoid misplacing them and, in addition, that all deleted pages be saved and filed for historical reference purposes.

Acknowledgments

This publication was under the direct supervision of Dan Walker, Code Attorney, and K. Barrington, Editor, of the Municipal Code Corporation, Tallahassee, Florida. Credit is gratefully given to the other members of the publisher's staff for their sincere interest and able assistance throughout the project.

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

Copyright

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

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PART I

CHARTER AND AMENDMENTS*

Session 1907

Chapter 407

- Sec. 1. [Town incorporated; name; powers.]
- Sec. 2. [Corporate limits.]
- Sec. 3. [Town officer.]
- Sec. 3^{1/2}. [Compensation of commissioners.]
- Sec. 4. [Appointment of constable and other officers.]
- Sec. 5. [Board power to appoint assistant to constable.]
- Sec. 6. [Election.]
- Sec. 7. [General authority of council.]
- Sec. 8. [Qualification for office after Charter ratification.]
- Sec. 9. That this act shall be in force from and after its ratification.

Charter Amendment

- Sec. 1. [Election method.]
- Sec. 2. [Effect.]

Chapter 7

Section 7:1

- Sec. 1. [Term of board of commission members.]
- Sec. 2. [Effect.]

***Editor's note**—Printed herein is the Charter of 1907, as enacted by the General Assembly of North Carolina. Amendments to the Charter are indicated by parenthetical history notes following amended provisions. Obvious misspellings and punctuation errors have been corrected without notation. The style used for headings and catchlines has been made uniform and consistent with those appearing in the Code. Additions made for clarity, such as consistent state statute citations and catchline modifications, are indicated by brackets.

PRIVATE LAWS OF NORTH CAROLINA

SESSION 1907

CHAPTER 407

AN ACT TO INCORPORATE THE TOWN OF VASS, IN MOORE COUNTY.

The General Assembly of North Carolina do [does] enact:

Sec. 1. [Town incorporated; name; powers.]

That the Town of Vass, in Moore County, be and the same is hereby incorporated by the name and style of the Town of Vass, and shall be subject to all the provisions and possess all the powers contained in chapter seventy-three of the Revisal of one thousand nine hundred and five, and amendments thereto, not inconsistent with this act.

Sec. 2. [Corporate limits.]

The corporate limits of said Town of Vass shall be and include all that territory within a polygon with sixteen equal sides, whose points of radius are in a circle whose radius is one mile from a concrete monument having a brass center and being embedded in concrete, said monument located at a point fifty feet from the center of the main Seaboard Air Line Railroad track on the northwest side, and located South thirty-three degrees and twenty minutes West (S 33-20 W) two hundred sixty four and eight-tenths (264.80) feet from the North end of the West guard rail of the upper concrete elevated railroad crossing; South forty-five degrees and fifty-three minutes East (S 45-53 E) seventy-four and nine-tenths (74.9) feet from the southeast corner of Bud Crockett's Furniture and Hardware Store; North sixty-eight degrees and fifty-one minutes East (N 68-51 E) one hundred thirty and ninety-three one-hundredths (130.93) feet from the northeast corner of Keith's Theatre Building; and North eight degrees and fifty minutes West (N 8-50 W) from the West corner of the Vass Town Hall Building, all bearings based on true North. The said Polygon shall be laid out by making due North, South, East and West as base lines for the diameter of two miles or radius of one mile. Each of the sixteen sides of the polygon measures two thousand and sixty and fifteen one-hundredths (2060.15) feet, and the whole contains an area of one thousand nine hundred and fifty-nine and thirty-two one-hundredths acres (1959.32).

(Act of 2-22-1923, § 1; Act of 4-5-1957, § 1)

Sec. 3. [Town officer.]

That the officers of said corporation shall consist of a mayor, three commissioners, town constable and such other officers as the town commissioners may elect for the better government of said town; and the following named persons shall fill the offices of mayor and commissioners from their qualification until the first Monday in May, one thousand nine

hundred and seven, and until their successors be elected and qualified, viz: Mayor, Alex Gunthur; Commissioners, J. A. Leslie, T. J. Smith and W. B. Graham. The Mayor and Commissioners shall take office at the first regular board meeting following the election.

(Act of 4-5-1957, § 2)

Sec. 3½. [Compensation of commissioners.]

Beginning with the meeting of the Board of Commissioners in July 1957, each Commissioner shall receive for his attendance at each regular board meeting the sum of FIVE DOLLARS (\$5.00) and the Mayor shall receive for his attendance at each regular board meeting the sum of TEN DOLLARS (\$10.00), but said sums shall not be paid for attending more than one regular board meeting in any one month.

(Act of 4-5-1957, § 3)

Editor's note—Pursuant to G.S. 160A-64, all charter provisions in effect as of Jan. 1, 1972, fixing compensation or allowances of municipal officers, are repealed.

Sec. 4. [Appointment of constable and other officers.]

That the town constable and other officers of the town shall be appointed by the town commissioners.

Sec. 5. [Board power to appoint assistant to constable.]

That the board of commissioners may appoint an assistant to the town constable, who in the absence of the town constable shall have all the powers and discharge all the duties of the town constable.

Sec. 6. [Election.]

An election shall be held in the Town of Vass on Tuesday after the first Monday in May 1953, and biennially thereafter, and there shall be elected in said election a mayor and five commissioners which shall constitute the governing authority of the Town of Vass, and said election shall be held under the laws regulating elections for municipalities as contained in Chapter 160 of the General Statutes, as amended.

(Act of 4-16-1953, § 1)

Sec. 7. [General authority of council.]

That the mayor and commissioners shall form a council, and may make, publish and enforce ordinances for the government of said town, not inconsistent with the Constitution of the United States and the Constitution of North Carolina.

Sec. 8. [Qualification for office after Charter ratification.]

That the officers provided for in this act shall qualify, within ten days after its ratification, before a justice of the peace and shall enter upon the discharge of their duties.

Sec. 9. That this act shall be in force from and after its ratification.

In the General Assembly read three times and ratified this the 8th day of March, A.D. 1907.

CHARTER AMENDMENT

AN ORDINANCE AMENDING THE CHARTER OF THE TOWN OF VASS TO
 PROVIDE FOR MUNICIPAL ELECTIONS TO BE CONDUCTED USING THE
 NONPARTISAN PLURALITY METHOD.

BE IT ORDAINED by the Board of Commissioners of the Town of Vass:

Sec. 1. [Election method.]

Pursuant to G.S. 160A-101 and 160A-102, the Charter of the Town of Vass as set forth in Chapter 407 of the 1907 Private Session Laws of North Carolina, as amended, is hereby further amended to provide that Municipal Elections shall be conducted using the nonpartisan plurality method.

Sec. 2. [Effect.]

This ordinance shall be in full force and effect from and after the day of January 9, 1989.

CHAPTER 7

SECTION 7:1

AN ORDINANCE AMENDING THE CHARTER OF THE TOWN OF VASS TO
 IMPLEMENT FOUR-YEAR STAGGERED TERMS FOR THE MEMBERS OF
 THE BOARD OF COMMISSIONERS.

BE IT ORDAINED by the Board of Commissioners of the Town of Vass:

Sec. 1. [Term of board of commission members.]

Pursuant to G.S. 160A-101 and 160A-102, the Charter of the Town of Vass as set forth in Chapter 407 of the 1907 Private Laws of North Carolina, as amended, is hereby further amended to provide for four-year staggered terms for the members of the Board of Commissioners as authorized by G.S. 160A-101(4). At the regular municipal election to be held in 1999, the three candidates who receive the highest number of votes shall be elected for four-year terms, while the two candidates who receive the next highest number of votes shall be elected for two-year terms. At the regular municipal election to be held in 2001, and every four years

thereafter, two members of the Board of Commissioners shall be elected to serve four-year terms. At the regular municipal election to be held in 2003, and every four years thereafter, three members of the Board of Commissioners shall be elected to four-year terms.

Sec. 2. [Effect.]

This ordinance shall be in full force and effect from and after the 9th day of November, 1998.

CHARTER COMPARATIVE TABLE

ACTS

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

Act Date	Section	Section this Charter
2-22-1923	1	Ch. 407, § 2
4-16-1953	1	Ch. 407, § 6
4- 5-1957	1, 2	Ch. 407, §§ 2, 3
	3	Ch. 407, § 3½

PART II

SESSION LAWS

Session Laws 1955

Chapter 1111

- Sec. 1. [Power and authority of police officers.]
- Sec. 2. [Repeal of conflicting laws.]
- Sec. 3. [Effect.]

SESSION LAWS 1955

CHAPTER 1111

AN ACT PROVIDING FOR THE EXERCISE OF POWERS BY POLICE OFFICERS
OF THE TOWN OF VASS IN MOORE COUNTY ANYWHERE WITHIN ONE MILE
BEYOND THE CORPORATE LIMITS OF SAID TOWN.

The General Assembly of North Carolina do [does] enact:

Sec. 1. [Power and authority of police officers.]

The police officers of the Town of Vass in Moore County shall have, in all that territory embraced within one mile in all directions of the present corporate limits of said town, all the powers and authority which they now exercise within the corporate limits of said town.

Sec. 2. [Repeal of conflicting laws.]

All laws and clauses of laws in conflict with the provisions of this Act are hereby repealed.

Sec. 3. [Effect.]

This Act shall be in full force and effect from and after its ratification

In the General Assembly read three times and ratified this 19th day of May, 1955.

PART III

CODE OF ORDINANCES

Chapter 1

GENERAL PROVISIONS

- Sec. 1-1. Code designation and citation.
- Sec. 1-2. Definitions and rules of construction.
- Sec. 1-3. Catchlines of sections.
- Sec. 1-4. Severability of parts of Code.
- Sec. 1-5. Supplementation of Code.
- Sec. 1-6. Repeal, expiration and revival of ordinances.
- Sec. 1-7. Altering Code.
- Sec. 1-8. General penalty for violation of Code.
- Sec. 1-9. Provisions reserved from repeal.
- Sec. 1-10. Ordinances codified by entries on official map books or official lists and schedules.
- Sec. 1-11. Parenthetical and reference matter.
- Sec. 1-12. Amendments to Code; effect of new ordinances; amendatory language.

Sec. 1-1. Code designation and citation.

The provisions in the following chapters and sections shall constitute and be designated as the "Code of Ordinances, Town of Vass, North Carolina" or the "Vass Municipal Code," and may be so cited.

State law references—Codification required, G.S. 160A-77; admission of Code into evidence, G.S. 8-5, 160A-79.

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

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

Administrator. The term "administrator" refers to the chief administrative officer of the Town of Vass, whether designated "administrator," "manager" or some other title.

Board of commissioners. The term "board of commissioners" refers to the governing body of the Town of Vass, unless by virtue of context another board is that to which is being referred.

Bond. Where a bond is required, an undertaking in writing shall be sufficient.

Code. The term "the Code" or "this Code" means the Code of Ordinances, Town of Vass, North Carolina.

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

County. The term "the county" or "this county" means the County of Moore in the State of North Carolina.

Delegation of authority. Whenever a provision of this Code requires or authorizes an officer or employee of the town to do some act or perform some duty, it shall be construed to authorize the officer or employee to designate, delegate and authorize subordinates to perform the act or duty, unless the terms of the provision shall specifically designate or provide otherwise.

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

Health officer or health director. The term "health officer" or "health director" means the health officer or health director of Moore County, North Carolina.

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

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

Month. The term "month" means a calendar month.

Municipality, municipal. The term "municipality" refers to the Town of Vass, in the County of Moore, North Carolina. The term "municipal" shall be construed as referring to the Town of Vass.

N.C. Admin. Code, NCAC. These refer to the North Carolina Administrative Code.

Nontechnical and technical words. Words and phrases shall be construed according to the common and approved usage of the language, but technical words and phrases and such others as may have acquired a peculiar and appropriate meaning in law shall be construed and understood according to such meaning.

Number. Terms used in the singular include the plural and the plural includes the singular number.

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

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

Or, and. The term "or" may be read as "and" and the term "and" may be read as "or," if the sense requires it.

Owner. The term "owner," when applied to a building or land, includes any part owner, joint owner, tenant in common, joint tenant or tenant by the entirety of the whole or a part of such building or land.

Person. The term "person" includes a corporation, firm, partnership, association, organization and any other group acting as a unit, as well as an individual.

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

Preceding, following. The terms "preceding" and "following" mean next before and next after, respectively.

Property. The term "property" includes real and personal property.

Real property. The term "real property" includes lands, tenements and hereditaments.

Sidewalk. The term "sidewalk" means any portion of a street between the curblin and the adjacent property line intended for the use of pedestrians.

Signature, subscription. The terms "signature" and "subscription" include a mark when a person cannot write.

State. The term "the state" or "this state" means the State of North Carolina.

State law references. Whenever reference is made, for example, to G.S. 160A-200, it shall be construed to refer to the General Statutes of North Carolina, section 160A-200, as amended, or to whatever section is cited.

Street. The term "street" means and includes any public way, road, highway, street, avenue, boulevard, parkway, alley, lane, path, viaduct, bridge, or other public place and the approaches thereto within the city when any part thereof is open to the use of the public and established for purposes of vehicular traffic.

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

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

Town. The term "town" means the municipality of Vass, North Carolina.

Town limits or corporate limits. The term "town limits" or "corporate limits" means the legal boundary of the town as set out in the Charter.

Written or in writing. The term "written" or "in writing" includes printing, engraving, lithographing and any other mode of representing words and letters. In all cases where a written signature is required by law, it shall be in a proper handwriting or in a proper mark.

Year. The term "year" means each calendar year.

State law references—Similar definitions and rules of statutory construction, G.S. 12-3; similar provisions, G.S. 1-593, 1A-1, 159-2, Rules of Civil Procedure, Rule 6(a).

Sec. 1-3. Catchlines of sections.

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

Sec. 1-4. Severability of parts of Code.

It is hereby declared to be the intention of the board of commissioners 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 by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality 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 town board without the incorporation in this Code of any such unconstitutional phrase, clause, sentence, paragraph or section.

State law reference—Rules of construction, G.S. 12-3.

Sec. 1-5. Supplementation of Code.

(a) By contract or by municipal personnel, supplements to this Code shall be prepared and printed whenever authorized or directed by the town board. A supplement to the Code shall include all substantive permanent and general parts of ordinances passed by the town board

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 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 which have become obsolete or partially obsolete, and the new pages shall be so prepared that, when they have been inserted, the Code will be current through the date of the adoption of the latest ordinance included in the supplement.

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

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

- (1) Organize the ordinance material into appropriate subdivisions;
- (2) Provide appropriate catchlines, headings and titles for sections and other subdivisions of the Code printed in the supplement, and make changes in such catchlines, headings and titles;
- (3) Assign appropriate numbers to sections and other subdivisions to be inserted in this Code and, where necessary to accommodate new material, change existing section or other subdivision numbers;
- (4) Change the words "this ordinance" or words of the same meaning to "this chapter," "this article," "this division," etc., as the case may be, or to "section ___ to ___" (inserting section numbers to indicate the sections of the Code which 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.

State law reference—Construction of amended statute, G.S. 12-4.

Sec. 1-6. Repeal, expiration and revival of ordinances.

(a) The repeal of an ordinance, or its expiration by virtue of any provisions contained therein, shall not affect any right accrued, any offense committed, any penalty or punishment incurred or any proceeding commenced before the repeal took effect or the ordinance expired.

(b) When an ordinance which repealed another shall itself be repealed, the previous ordinance shall not be revived without express words to that effect.

State law reference—Effect of repeal, G.S. 12-2.

Sec. 1-7. Altering Code.

No person shall change or amend, by additions or deletions, any part or portion of this Code. No person shall insert or delete pages, or any portions thereof, or alter or tamper with such Code in any manner except pursuant to ordinance or resolution or other official act of the town board, which will cause the law of the town to be misrepresented thereby.

Sec. 1-8. General penalty for violation of Code.

(a) Any act constituting a violation of the provisions of the ordinances of the town, including the zoning ordinances, or a failure to comply with any of its requirements shall subject each violator to a civil penalty of \$100.00 for each separate offense. If the violator fails to pay this penalty within ten days after being notified of a violation, the penalty may be recovered by the town in a civil action in the nature of a debt. Each day that any violation continues after notification shall be considered a separate offense for purposes of the penalties and remedies specified in this section. In addition to this civil penalty, the violator remains subject to civil and injunctive remedies as permitted by law and ordinance. This chapter shall be and remains in full force and effect from and after the date of its adoption.

(b) Whenever in this Code or in any ordinance of the town, any act is prohibited or is declared to be unlawful or an offense, or whenever in such Code or ordinance the doing of any act is required or the failure to do such act is declared to be unlawful, where no specific penalty is provided therefor, the violation of any such provision of this Code or other ordinance shall be punished by a civil penalty.

(c) If any violation is designated as a nuisance, such nuisance may be summarily abated by the town in addition to the imposition of a civil penalty.

(d) The imposition of a penalty under the provisions of this Code shall not prevent the revocation of any permit, license or franchise granted pursuant to any town ordinance.

(e) Any violation of a town ordinance by any officer, agent or other person acting for or employed by any corporation or unincorporated association or organization, while acting within the scope of his office or employment, shall in every case also be deemed to be a violation by such corporation, association or organization.

(f) Any officer, agent or other person acting for or employed by any corporation or unincorporated association or organization shall be subject and liable to punishment as well as such corporation or unincorporated association or organization for the violation by it of any provisions of a town ordinance, where such violation was the act or omission, or the result of the act, omission or order, of any such person.

(g) Each day that any violation of this Code or of any ordinance shall continue shall constitute a separate offense. Nothing contained in this section or this Code shall relieve any offender of any civil penalty for repeated violations on any one day.

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

(Ord. of 3-13-2000)

State law references—Violation of ordinance, G.S. 14-4; authority to enforce ordinances, G.S. 160A-174 et seq.; authority to abate public health nuisance, G.S. 160A-193.

Sec. 1-9. Provisions reserved from repeal.

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 ordinances in effect at the time of adoption of this Code:

- (1) Any offense or act committed or done or any penalty or forfeiture incurred or any contract or right established or accruing before the effective date of this Code;
- (2) Any ordinance or resolution promising or guaranteeing the payment of money for the town or authorizing the issuance of any bonds of the town or any evidence of the town's indebtedness;
- (3) Any contract or obligation assumed by the town;
- (4) Any ordinance fixing the salary of any town officer or employee;
- (5) Any right or franchise granted by the town;
- (6) Any ordinance dedicating, naming, establishing, locating, relocating, opening, widening, paving, etc., any street or public way in the town;
- (7) Any appropriation ordinance;
- (8) Any ordinance which, by its own terms, is effective for a stated or limited term;
- (9) Any ordinance providing for local improvements and assessing taxes for such improvements;
- (10) Any zoning ordinance;
- (11) Any ordinance dedicating or accepting any subdivision plat;
- (12) Any ordinance describing or altering the boundaries of the town;
- (13) Any ordinance relating to social security and retirement benefits for town officers and employees;
- (14) Any administrative ordinances or resolutions of the town not in conflict or inconsistent with the provisions of this Code;
- (15) Any ordinance levying or imposing taxes not included in this Code;
- (16) Any ordinance establishing or prescribing street grades in the town; nor shall such ordinance be construed to revive any ordinance or part thereof that has been repealed by a subsequent ordinance which is repealed.

All such ordinances are hereby recognized as continuing in full force and effect to the same extent as if set forth at length in this Code.

State law reference—Governing body may omit ordinances of limited interest or transitory nature from code, G.S. 160A-77(a).

Sec. 1-10. Ordinances codified by entries on official map books or official lists and schedules.

(a) The following ordinances are codified by appropriate entries on official map books, as retained in the clerk's office or such other office designated by the commission:

- (1) Establishing or amending boundaries of zoning districts;
- (2) Designating the location of traffic control devices;
- (3) Designating areas or zone where regulations are applied to parking, loading, bus stops, or taxicab stands;
- (4) Establishing speed limits;
- (5) Restricting or regulating traffic at certain times on certain streets, or to certain types, weights or sizes of vehicles;
- (6) Designating the location of through streets, stop intersections, yield right-of-way intersections, waiting lanes, one-way streets, or truck traffic routes;
- (7) Establishing regulations upon vehicle turns at designated locations.

(b) Ordinances establishing utility rates, fees for public enterprise services, and all other fees shall be codified by entry upon official lists or schedules maintained by the town, and retained in the office of the clerk.

State law reference—Ordinances which may be codified by entries on maps, lists and schedules, G.S. 160A-77(b), (b)(1).

Sec. 1-11. Parenthetical and reference matter.

The matter in parentheses at the ends of sections is for information only and is not a part of the Code. Citations to the previous code (Code of Ordinances) indicate only the source; and the text may or may not be changed by this Code. Reference matter not in parentheses is for information only and is not a part of this Code.

Sec. 1-12. Amendments to Code; effect of new ordinances; amendatory language.

(a) All ordinances passed subsequent to this Code which amend, repeal or in any way affect this Code may be numbered in accordance with the numbering system of this Code and printed for inclusion herein, or in the case of repealed chapters, sections and subsections or any part thereof by subsequent ordinances, the repealed portions may be excluded from the Code by omission from reprinted pages affected thereby and the subsequent ordinances as numbered and printed or omitted, in the case of repeal, shall be prima facie evidence of the subsequent ordinances until the time that this Code and subsequent ordinances numbered or omitted are readopted as a new Code of Ordinances.

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

(c) In the event a new section not heretofore existing in the Code is to be added, the following language may be used: "That the Code of Ordinances, Town of Vass, North Carolina, is hereby amended by adding a section, to be numbered _____, which section reads as follows: _____ ." The new section shall then be set out in full as enacted.

(d) In lieu of the foregoing subsection, when the governing authority desires to enact an ordinance of a general and permanent nature embracing a subject not previously existing in this Code, but which the governing authority desires to incorporate into this Code, a provision in substantially the following language may be made a part of the ordinance: "It is the intention of the council, and it is hereby ordained, that the provisions of this ordinance shall become and be made part of the Code of Ordinances of the Town of Vass, North Carolina, and the sections of this ordinance may be renumbered to accomplish that intention."

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

Chapter 2

ADMINISTRATION*

Article I. In General

Sec. 2-1. Extraterritorial jurisdiction.
Secs. 2-2—2-20. Reserved.

Article II. Officials

Sec. 2-21. Town clerk.
Secs. 2-22—2-45. Reserved.

Article III. Personnel Policy (Reserved)

Secs. 2-46—2-63. Reserved.

Article IV. Boards and Commissions (Reserved)

***Editor's note**—Readers are encouraged to refer to the town Charter, set forth in Part I, for many administrative provisions.

State law references—Government and general management of municipality vested in governing body, G.S. 160A-67; governing body has authority to organize and reorganize municipal government, G.S. 160A-146; general ordinance-making power, G.S. 160A-174.

ARTICLE I. IN GENERAL**Sec. 2-1. Extraterritorial jurisdiction.**

(a) The town hereby establishes boundaries for the eventual extraterritorial enforcement of the following:

- (1) Land use plan.
- (2) Zoning regulations.
- (3) Subdivision regulations.
- (4) Building codes.

Said boundaries are delineated on the face of the map, entitled Extraterritorial Jurisdiction of the Town of Vass, which is attached hereto and is hereby adopted by reference.

(b) The official copy of this chapter and map shall be on record in the office of the town clerk for public inspection during normal business hours. The town clerk shall cause a certified copy of this chapter (map on file in clerk's office) and any subsequent amendments to be recorded in the office of the register of deeds of the county.

(Ord. of 4-8-1991, §§ 1—3)

Secs. 2-2—2-20. Reserved.

ARTICLE II. OFFICIALS**Sec. 2-21. Town clerk.**

The person appointed from time to time to be town clerk shall have the powers and perform the duties of finance officer as such powers and duties may be prescribed from time to time by the board of commissioners or by law, and any person so appointed shall be known as town clerk and finance officer of the town.

(Prior Code, § 1.10)

Secs. 2-22—2-45. Reserved.

ARTICLE III. PERSONNEL POLICY (RESERVED)*

Secs. 2-46—2-63. Reserved.

ARTICLE IV. BOARDS AND COMMISSIONS (RESERVED)

***State law references**—City may adopt personnel rules and regulations, G.S. 160A-164; city council to fix pay, expense allowance and other compensation of employees, G.S. 160A-162; city council may provide retirement benefits, enroll employees in Local Governmental Employees' Retirement System, G.S. 160A-163.

Chapter 3

RESERVED

Chapter 4

ALCOHOLIC BEVERAGES

Sec. 4-1. Consumption of malt beverages and unfortified wine.

Sec. 4-1. Consumption of malt beverages and unfortified wine.

It shall be unlawful for any person to sell, consume or serve malt beverages and unfortified wines, as defined by G.S. ch. 18B, as amended, upon any public street, alley, sidewalk, park or open lot or in any other public place within the corporate limits of the town. This section shall not apply to sales made in stores or other buildings by holders of permits issued by the alcoholic beverage control commission pursuant to G.S. ch. 18B; G.S. ch. 105, art. 2C, as amended. Any person violating the provisions of this section shall be guilty and upon conviction shall receive a civil penalty of up to \$100.00.

(Ord. of 12-13-1982, § 2.10)

Chapter 5

RESERVED

Chapter 6

AMUSEMENTS AND ENTERTAINMENTS*

- Sec. 6-1. Definitions.
- Sec. 6-2. Permit required.
- Sec. 6-3. Restrictions.
- Sec. 6-4. Prohibited conduct.
- Sec. 6-5. Rules of operation of a place of amusement.
- Sec. 6-6. Revocation of permit.

***State law reference**—City may regulate places of amusement, G.S. 160A-181.

Sec. 6-1. Definitions.

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

Place of amusement means any commercial enterprise that provides games, devices, or activities for amusement or entertainment for which customers pay, directly or indirectly, to participate in or observe, and which can accommodate more than eight people as participants or observers at any one time. The games, devices, and activities include, but are not limited to: pool, billiards, and other table games, electronic, computer, and pinball games; and dancing, carnivals, circuses, and sporting and entertainment events.

(Ord. of 9-8-1997, § 1)

Sec. 6-2. Permit required.

(a) Every operator of a place of amusement shall be required to apply for and obtain a permit from the board of commissioners to operate a place of amusement, unless subject to regulation solely by the state alcoholic beverage control commission.

(b) It shall be unlawful to operate a place of amusement within the town without a permit, and any place of amusement operated unlawfully may be enjoined from further operation in addition to other remedies and penalties.

(Ord. of 9-8-1997, § 2)

Sec. 6-3. Restrictions.

No person may be issued a permit or continue to hold a permit if that person:

- (1) Has been convicted of unlawfully selling or using intoxicating liquors or controlled substances under the laws of the federal or of any state government;
- (2) Has been convicted of any crime which is a felony under the laws of the federal or of any state government;
- (3) Is an association, partnership, or a closely held corporation as defined by state law of which one or more stockholders of a closely held corporation has been convicted of unlawfully selling or using intoxicating liquors or controlled substances under the laws of the federal or of any state government of any crime which is a felony, under the laws of the federal or of any state government; or
- (4) Employs in carrying on the business any person who has been convicted of unlawfully selling or using intoxicating liquors or controlled substances under the laws of the federal or of any state government or of any crime which is a felony under the laws of the federal or of any state government.

(Ord. of 9-8-1997, § 3)

Sec. 6-4. Prohibited conduct.

Operators of places of amusement required to be permitted under this chapter shall not, and neither shall their employees:

- (1) Suffer or permit any gambling on the permitted premises at any time, or the sale or use of any racing, football, or other parlay cards or gambling boards or devices;
- (2) Suffer or permit the permitted premises to become disorderly or permit any profane, obscene, or indecent language thereon;
- (3) Suffer or permit any intoxicating liquors contained within G.S. ch. 18, or controlled substances to be sold or kept or consumed on the permitted premises; and
- (4) Employ in carrying on the business any person who has been convicted of unlawfully selling or using intoxicating liquors contained within chapter 10 or controlled substances, under the laws of the federal or of any state government, or of any crime which is a felony, under the laws of the federal or of any state government.

(Ord. of 9-8-1997, § 4)

Sec. 6-5. Rules of operation of a place of amusement.

(a) All places of amusements shall be closed from 11:00 p.m. until 7:00 a.m. the following morning, Sunday through Thursday, and from 12:00 midnight until 7:00 a.m. the following morning, Fridays and Saturdays.

(b) No play on any games shall be allowed during the times places of amusement are required by this section to remain closed.

(c) All places of amusement located in buildings shall be operated on the ground floor and all areas of the building where the games or activities occur shall be clearly visible from the street.

(d) There shall be a person, 18 years of age or older, managing the business on the premises during the hours of operation at all times.

(e) There shall not be allowed on said premises during the hours when regular classes of the county schools are held any child less than 16 years of age.

(Ord. of 9-8-1997, § 5)

Sec. 6-6. Revocation of permit.

(a) If the town has cause to believe that any provision of this chapter is being violated or that the operator is no longer entitled to hold a permit, it shall notify the operator to either cease operation of the place of amusement or to correct the violation within 60 days and to appear at a hearing before the board at a time and date not less than 15 days nor more than 45 days from the expiration of the 60-day period.

(b) The board shall conduct the hearing and if it determines that the violation has occurred or that the operator may no longer hold the permit, the board shall revoke the permit.
(Ord. of 9-8-1997, § 6)

Chapter 7

RESERVED

Chapter 8

ANIMALS*

- Sec. 8-1. County animal control ordinance adopted by reference.
- Sec. 8-2. Bird sanctuary.

***State law references**—City authority to regulate domestic animals, G.S. 160A-186; city authority to regulate or prohibit animals dangerous to person or property, G.S. 160A-187.

Sec. 8-1. County animal control ordinance adopted by reference.

The county ordinance of October 6, 2008, effective December 1, 2008, establishing animal control regulations is adopted by reference, its provisions to be enforced within town boundaries.

(Res. of 11-10-2008)

Sec. 8-2. Bird sanctuary.

(a) There shall be established within the town limits a sanctuary for birds.

(b) It shall be unlawful for any person to hunt, kill, trap or otherwise take any birds classified as protected by the state wildlife resources commission or by law within the city limits except pursuant to a permit issued under the provisions of G.S. 113-87.

(c) Any person violating any provisions of this chapter shall be guilty of a misdemeanor, and upon conviction shall be punished by a civil penalty of not more than \$100.00 or imprisonment for not more than 30 days.

(Prior Code, § 3.10)

Chapter 9

RESERVED

Chapter 10

BUILDINGS AND BUILDING REGULATIONS*

Article I. In General

Secs. 10-1—10-18. Reserved.

Article II. Abandoned Structures

- Sec. 10-19. Finding; intent.
- Sec. 10-20. Duties of the town administrator.
- Sec. 10-21. Powers of the town administrator.
- Sec. 10-22. Standards for enforcement.
- Sec. 10-23. Procedure for enforcement.
- Sec. 10-24. Methods of service of complaints and orders.
- Sec. 10-25. In rem action by town administrator; placarding.
- Sec. 10-26. Costs of lien on premises.
- Sec. 10-27. Alternative remedies.
- Secs. 10-28—10-56. Reserved.

Article III. Minimum Housing Standards

- Sec. 10-57. Definitions.
- Sec. 10-58. Violations, penalty.
- Sec. 10-59. Finding and purpose.
- Sec. 10-60. Fitness standards for dwellings.
- Sec. 10-61. Structural condition standards.
- Sec. 10-62. Plumbing, heating, and electrical standards.
- Sec. 10-63. Ventilation standards.
- Sec. 10-64. Space, use and location standards.
- Sec. 10-65. Maintenance.
- Sec. 10-66. Rodent control standards.
- Sec. 10-67. Roominghouse standards.
- Sec. 10-68. Owner and occupant responsibilities.
- Sec. 10-69. Powers of housing inspector.
- Sec. 10-70. Inspections.
- Sec. 10-71. Procedure of enforcement.
- Sec. 10-72. Service of complaints and orders.
- Sec. 10-73. In rem action by inspection, placarding.
- Sec. 10-74. Costs, lien on premises.
- Sec. 10-75. Alternative remedies.
- Sec. 10-76. Zoning board of adjustment to hear appeals.
- Sec. 10-77. Conflict with other provisions.

***State law references**—North Carolina State Building Code, G.S. 143-138; effect upon local codes, G.S. 143-138(e); adoption of published technical code by reference, G.S. 160A-76(b); electrical wiring of houses, buildings, and structures, G.S. 143-143.2.

ARTICLE I. IN GENERAL

Secs. 10-1—10-18. Reserved.

ARTICLE II. ABANDONED STRUCTURES*

Sec. 10-19. Finding; intent.

It is hereby found that there exists within the town abandoned structures which the board of commissioners finds to be hazardous to the health, safety and welfare of the residents of the town due to the attraction of insects or rodents, conditions creating a fire hazard, dangerous conditions constituting a threat to children, or frequent use by vagrants as living quarters in the absence of sanitary facilities. Therefore, pursuant to the authority granted by G.S. 160A-441, it is the intent of this article to provide for the repair, closing or demolition of any such abandoned structures in accordance with the same provisions and procedures as are set forth by law for the repair, closing or demolition of dwellings unfit for human habitation. (Ord. of 5-13-1991, § 1)

Sec. 10-20. Duties of the town administrator.

The town administrator, or the administrator's designee, is hereby authorized as the town officer to enforce the provisions of this article. It shall be the duty of the town administrator:

- (1) To locate abandoned structures within the town and determine which structures are in violation of this article;
- (2) To take such action pursuant to this article as may be necessary to provide for the repair, closing or demolition of such structures;
- (3) To keep an accurate record of all enforcement proceedings begun pursuant to the provisions of this article;
- (4) To perform such other duties as may be prescribed herein or assigned to him by the board of commissioners; and
- (5) To perform all such duties in coordination with the county building inspector.

(Ord. of 5-13-1991, § 2)

Sec. 10-21. Powers of the town administrator.

The town administrator 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:

- (1) To investigate the condition of buildings within the town in order to determine which structures are abandoned and in violation of this article;

***State law references**—Exercise of municipal power authorized to provide for repair, closing or demolition of unsafe buildings, G.S. 160A-441; ordinance authorized concerning repair, closing and demolition upon order of public officer, G.S. 160A-443(5)(b).

- (2) To enter upon premises for the purpose of making inspections;
- (3) To administer oaths and affirmations, examine witnesses, and receive evidence; and
- (4) To designate such other officers, agents and employees of the town as he deems necessary to carry out the provisions of this article.

(Ord. of 5-13-1991, § 3)

Sec. 10-22. Standards for enforcement.

(a) Every abandoned structure within the town shall be deemed in 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 town administrator 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 become breeding places for rodents and insects;
- (3) Violations of the state building code, the state electrical code, or the fire prevention code which constitute a fire hazard in such structure;
- (4) The collection of garbage, rubbish or combustible material which constitutes 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 structure by transients and vagrants, in the absence of sanitary facilities, for living, sleeping, cooking or eating.

(Ord. of 5-13-1991, § 4)

Sec. 10-23. Procedure for enforcement.

(a) *Preliminary investigation; notice; hearing.* Whenever a petition is filed with the town administrator by at least five residents of the town charging that any structure exists in violation of this article or whenever it appears to the town administrator, 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 town administrator at a place therein fixed, not less than ten nor more than 30 days after the serving of said complaint. The owner or any party in interest shall have the right to file an answer to the complaint and to appear in person, or otherwise, and give testimony at the place and time fixed in the complaint. Notice of such hearing shall also be given to at least one of the persons signing a petition relating to such 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 town administrator.

(b) *Procedure after hearing.* After such notice and hearing, the town administrator shall state in writing his determination whether such structure violates this article. If the town administrator 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 either to repair, alter and improve such structure or else remove or demolish the same within a specified period of time not to exceed 90 days.

(c) *Failure to comply with order.*

- (1) *In personam remedy.* If the owner of any structure shall fail to comply with an order of the town administrator within the time specified therein, the town administrator may submit to the board of commissioners at its next regular meeting a resolution directing the town attorney to petition the superior court for an order directing such owner to comply with the order of the town administrator as authorized by G.S. 160A-446(g).
- (2) *In rem remedy.* After failure of an owner of a structure to comply with an order of the town administrator within the time specified therein, if injunctive relief has not been sought or has not been granted as provided in subsection (c)(1) of this section, the town administrator shall submit to the board of commissioners an ordinance ordering the town administrator to cause such structure to be removed or demolished, as provided in the original order of the town administrator, and pending such removal or demolition, to placard such dwelling as provided by G.S. 160A-443.

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

(Ord. of 5-13-1991, § 5)

Sec. 10-24. Methods of service of complaints and orders.

Complaints or orders issued by the town administrator 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 town administrator in the exercise of reasonable diligence, the town administrator 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 under section 10-23. 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.

(Ord. of 5-13-1991, § 6)

Sec. 10-25. In rem action by town administrator; placarding.

(a) After failure of an owner of a structure to comply with an order of the town administrator issued pursuant to the provisions of this article, and upon adoption by the board of commissioners of an ordinance authorizing and directing him to do so, as provided by G.S. 160A-443(5) and section 10-23(c), the town administrator shall proceed to cause such structure either to be repaired or else removed or demolished, as directed by the ordinance of the board of commissioners and shall cause to be posted on the main entrance of such structure a placard prohibiting the use or occupation of the structure. Use or occupation of a building so posted shall constitute a misdemeanor.

(b) Each 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).

(Ord. of 5-13-1991, § 7)

Sec. 10-26. 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 town administrator 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. ch. 160A, art. 10.

(Ord. of 5-13-1991, § 8)

Sec. 10-27. Alternative remedies.

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

(Ord. of 5-13-1991, § 9)

Secs. 10-28—10-56. Reserved.

ARTICLE III. MINIMUM HOUSING STANDARDS***Sec. 10-57. Definitions.**

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

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

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

Deteriorated means that a dwelling may be unfit for human habitation and can be repaired, altered, or improved to comply with all of the minimum standards established by this article at a cost not in excess of 50 percent of its value, as determined by finding of the building inspector.

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

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

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

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

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

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

Habitable room means a room or enclosed floorspace 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.

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

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

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

Occupant means any person over one year of age, living, sleeping, cooking or eating in, or having actual possession of a dwelling, 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, jointly, or severally with others:

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

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

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

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

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

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

Rubbish means nonfood waste materials. The term "rubbish" includes items such as: paper, rags, cartons, boxes, wood, excelsior, rubber, leather, tree branches, yard trimmings, tin cans, metals, mineral matter, glass, and dust.

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

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

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

(b) Whenever the terms "dwelling," "dwelling unit," "roominghouse," "rooming unit," or "premises" are used in this article, they shall be construed as though they were followed by the words "or any part thereof."

(Ord. of 5-11-1992, § 2)

Sec. 10-58. Violations, penalty.

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

(b) It shall be unlawful for the owner of any dwelling or dwelling unit, with respect to which an order has been issued to section 10-71, to occupy or permit the occupancy of the same after the time prescribed in such order to its repair, alteration, or improvements of its vacation and closing. Each day that such occupancy continues after such prescribed time shall constitute a separate and distinct offense.

(c) The violation of any provisions of this article shall be punishable by a civil penalty not exceeding \$100.00. Each day of violation shall be considered a separate offense.

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

(Ord. of 5-11-1992, § 21)

Sec. 10-59. Finding and purpose.

(a) Pursuant to G.S. 160A-441, it is hereby declared that there exist in the town, dwellings which are unfit for human habitation due to dilapidation; defects increasing the hazards of fire, accidents and other calamities; lack of ventilation, light and sanitary facilities; and other conditions rendering such dwellings unsafe or unsanitary, dangerous, and detrimental to the health, safety, and morals, and otherwise inimical to the welfare of the residents of the town.

(b) In order to protect the health, safety and welfare of the residents of the town authorized by part of G.S. ch. 160A, art. 19, 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.

(Ord. of 5-11-1992, § 1)

Sec. 10-60. Fitness standards for dwellings.

(a) Every dwelling and dwelling unit used as a human habitation, or held out for use as a human habitation, shall comply with all of the minimum standards of fitness for human habitation and all of the requirements of sections 10-61 through 10-66.

(b) No person shall occupy as owner-occupancy, or let to another for occupancy or use as a human habitation any dwelling or dwelling unit which does not comply with all of the minimum standards of fitness for human habitation and all of the requirements of sections 10-61 through 10-66.

(Ord. of 5-11-1992, § 3)

Sec. 10-61. Structural condition standards.

(a) Walls or partitions or supporting members, sills, joists, rafters, or other structural members shall not list, lean or buckle, and shall not be rotten, 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 appurtenances shall be maintained in such condition that they will not fail 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 furnished of suitable materials, which will, by use of reasonable household methods promote sanitation and cleanliness, and shall be maintained in such a manner so as to enable the occupants to maintain reasonable privacy between various spaces.

(g) The roof, flashings, exterior 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.

(Ord. of 5-11-1992, § 4)

Sec. 10-62. Plumbing, heating, and electrical standards.(a) *Plumbing system.*

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

(b) *Heating system.* Every dwelling and dwelling unit shall have facilities for providing heat in accordance with the following: every central or electrical heating system shall be of sufficient capacity to heat all habitable rooms, bathrooms and water closet compartments in every dwelling unit to which it is connected with a minimum temperature of 60 degrees Fahrenheit measured at a point three 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 floor- or wall-type electric convenience receptacles, connected in such a manner as determined by the state electrical code. There shall be installed in every bathroom, water closet room, laundry room and furnace room at least one supplied ceiling or wall-type electric light fixture.
- (2) Every public hall and stairway in every multiple dwelling shall be adequately lighted by electric lights at all times when natural daylight is not sufficient.
- (3) All fixtures, receptacles, equipment and wiring shall be maintained in a state of good repair, safe, capable of being used, and installed in accordance with the state electrical code.

(Ord. of 5-11-1992, § 5)

Sec. 10-63. Ventilation standards.

(a) *Windows, skylights.* Every habitable room shall have at least one window or skylight facing directly to the outdoors unless approved by the housing inspector.

(b) *Habitable rooms.* Every habitable room shall have at least one window or skylight which can be easily opened, or such other device, such as air conditioning, as will adequately ventilate the room.

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

(Ord. of 5-11-1992, § 6)

Sec. 10-64. Space, use and location standards.

(a) *Room sizes.*

- (1) Every dwelling unit shall contain at least the minimum room size in each habitable room as required by the state residential building code.
- (2) Every dwelling unit shall contain at least 150 square feet of habitable floor area for the first occupant, at least 100 square feet of additional habitable area for each of the next three occupants, and at least 75 square feet of additional habitable floor area for each additional occupant. Under this requirement, a family of four persons would need 450 square feet of habitable floor area.
- (3) In every dwelling unit and in every rooming unit, every room occupied for sleeping purposes by one occupant shall contain at least 70 square feet of floor area, and every room occupied for sleeping purposes by more than one occupant shall contain at least 50 square feet of floor area for each occupant 12 years of age or older and at least 35 square feet of floor area for each occupant under 12 years of age.

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

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

- (1) The floor and walls are substantially watertight.
- (2) Every habitable room shall have at least one window facing directly to the outdoors which can be easily opened. If other ventilation approved by the housing officer, is provided the window need not be openable.
- (3) The window area of every habitable room is entirely above the grade adjoining such window area, except where the window or windows face a stairwell, window well or accessway.

(Ord. of 5-11-1992, § 7)

Sec. 10-65. Maintenance.

(a) *Exterior foundation, walls, and roofs.* Every foundation wall, exterior wall and exterior roof shall be substantially weathertight and rodentproof; shall be capable of affording privacy; shall be safe to use and capable of supporting the load which normal use would cause to be placed thereon.

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

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

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

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

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

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

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

(Ord. of 5-11-1992, § 8)

Sec. 10-66. Rodent control standards.

(a) *Screens.* In every dwelling unit, for protection against mosquitoes, flies and other insects, every door opening directly from a dwelling unit to outdoor space shall be equipped with screens and a self-closing device. If other ventilation, approved by the housing inspector, is used, doors need not be screened. Every window or other device with openings to outdoor space, used or intended to be used for ventilation, shall likewise be equipped with screens.

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

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

(d) *Rubbish storage and disposal.* Every dwelling and every dwelling unit shall be supplied with approved containers and covers for storage of rubbish. 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 approved outside garbage can or an adequate mechanical garbage disposal unit (mechanical sink grinder), in each dwelling unit.

(Ord. of 5-11-1992, § 9)

Sec. 10-67. Roominghouse standards.

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

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

(Ord. of 5-11-1992, § 10)

Sec. 10-68. Owner and occupant responsibilities.

(a) *Public areas.* Every owner of a dwelling containing two or more dwelling units shall be responsible for maintaining in a clean and sanitary condition the shared or public areas of the dwelling and premises thereof.

(b) *Cleanliness.* Every occupant of a dwelling or dwelling unit shall keep in a clean and sanitary condition that part of the dwelling, dwelling unit and premises thereof which he occupies and controls.

(c) *Rubbish and garbage.* Every occupant of a dwelling 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 shall willfully destroy, deface, or impair any of the facilities or equipment, or any part of the structure of a dwelling or dwelling unit. Willful destruction of the premises by the occupant shall be deemed legal grounds for eviction.

(Ord. of 5-11-1992, § 11)

Sec. 10-69. Powers of housing inspector.

The supervisor of the county inspection department or his designee is hereby designated as the housing inspector, the officer to enforce the provisions of this article and to exercise the duties and powers herein described. The housing inspector shall have the following powers and duties:

- (1) To investigate the conditions, and to inspect dwellings and dwelling units located in the town in order to determine which dwellings and dwelling units are unfit for human habitation, and for the purpose of carrying out the objectives of this article with respect to such 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;
- (4) To administer oaths and affirmations, examine witnesses and receive evidence;
- (5) To enter upon premises for the purpose of making examinations and inspections, provided such entries shall be made in accordance with section 10-70, and shall be made in such manner as to cause the least possible inconvenience to the persons in possession;

- (6) To appoint and fix, upon approval of the town mayor and board of commissioners the duties of such officers, agents, and employees as he deems necessary to assist in carrying out the purposes of this article, and to delegate any of his functions and powers to such officers, agents, and employees; and
- (7) To perform such other duties as may be prescribed herein or by the board of commissioners of the town.

(Ord. of 5-11-1992, § 12)

Sec. 10-70. Inspections.

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

(b) Every occupant of a dwelling, dwelling unit, roominghouse or rooming unit shall give the owner thereof, or his agent or employee, access to any part of such dwelling or dwelling unit and its premises at all reasonable times for the purpose of making such repairs or alterations as are necessary to effect compliance with the provisions of this article or with any lawful order issued pursuant to the provisions of this article.

(Ord. of 5-11-1992, § 13)

Sec. 10-71. Procedure of enforcement.

(a) *Preliminary investigations; hearing.* Whenever a petition is filed with the town administrator or the housing inspector by a public authority or by a resident of the town, at least 18 years of age, 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 units a complaint stating the charges and containing a notice that a hearing will be held before the inspector and the town board of commissioners at a place therein fixed, not less than ten nor more than 30 days after the serving of said complaint. The owner or party in interest shall have the right to correct the violation or to file an answer to the complaint and to appear in person, or send a representative, and give testimony at the place and time fixed in the complaint. Notice of such hearing shall be given to at least one of the persons signing a petition relating to such dwelling. Any person desiring to do so may attend such hearing and give evidence relevant to the matter heard. The rules of evidence prevailing in courts of law or equity shall not be controlling in hearings before the inspector.

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

- (1) Deteriorated, he shall state in writing his findings of fact in support of such determination, and shall issue and cause to be served upon the owner thereof an order directing and requiring the owner to repair, alter, or improve such dwelling or dwelling unit to comply with the minimum standards of fitness established by this article within 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) Dilapidated, he shall state in writing his finding of fact to support such determination, and shall issue and cause to be served upon the owner thereof an order directing and requiring the owner either to repair, alter or improve such dwelling or dwelling unit to comply with the minimum standards of fitness established by this article, or else to vacate and demolish and remove same within 90 days. Such order may also direct and require the owner to vacate and close such within 30 days.

(c) *Failure to comply with order.*

- (1) *In person 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 or to vacate and close same within the time specified therein, or if the owner of a dilapidated dwelling or dwelling unit shall fail to comply, alter, or improve or to vacate same within the time specified therein, the inspector shall submit to the board of town commissioners at their 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 or dilapidated dwelling or dwelling unit 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 subsection (c)(1) of this section, the inspector shall submit to the board of town commissioners an ordinance ordering the inspector to cause such dwelling or dwelling unit to be repaired, altered, improved, vacated, closed, removed or demolished and removed, as provided in the original order of the inspector, and pending removal or demolition and removal, to place a placard on such dwelling as provided by G.S. 160A-443 and section 10-73.

(d) *Appeals from orders of the inspector.*

- (1) 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 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 commissioners of the town 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 the appeal is from a decision of the inspector refusing to allow the person aggrieved thereby to do any act, his decision and the decision of the board of commissioners of the town shall remain in force until modified or reversed.

- (2) When an 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 person who is appealing), a suspension of his requirement would cause imminent peril to life or property, in which case the requirement shall not be suspended except for due cause shown upon not less than one day written notice to the inspector, by the board, or by a court of record upon petition made pursuant to G.S. 160A-466(f) and subsection (e) of this section.
- (3) The board shall fix a reasonable time for the hearing of all appeals, shall give due notice to all 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 a 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 three members 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 the case where there are practical difficulties or unnecessary hardships in a way of the application of the article to the necessities of the case to the end that the spirit of the article shall be observed, public safety and welfare secured, and substantial justice done. Every decision of the board shall be subject to review by proceedings in the nature of certiorari instituted within 15 days of the decision of the board, but not otherwise.

(e) *Petition 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 30 days after issuance of the order or rendering of the decision, to petition the superior court for a temporary injunction restraining inspector pending a final disposition of the cause, as provided by G.S. 160A-446(f).

(Ord. of 5-11-1992, § 14)

Sec. 10-72. 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. 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 successive weeks in

a newspaper, having general circulation in the county. 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.

(Ord. of 5-11-1992, § 15)

Sec. 10-73. In rem action by inspection, 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 the ordinance, and upon adoption by the board of town commissioners of an article authorizing and directing him to do so, as provided by G.S. 160A-443(5) and section 10-71(c), 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 and removed, as directed by the ordinance of the board of town commissioners. The inspector shall, immediately upon adoption of said ordinance, 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 is prohibited and unlawful." Occupation of a building so posted shall constitute a misdemeanor.

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

(Ord. of 5-11-1992, § 16)

Sec. 10-74. Costs, lien on premises.

As provided by G.S. 160-446(6), the cost of any repairs, alterations or improvements, or of vacating and closing, or removal or demolition and removal, caused to be made or done by the inspector pursuant to section 10-73 shall be a lien against the real property upon which such costs was incurred. Such lien shall be filed, have priority, and be collected in the same manner as the lien for special assessments established by G.S. ch. 160A, art. 10.

(Ord. of 5-11-1992, § 17)

Sec. 10-75. 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 this article by criminal process as authorized by G.S. 14-4 and section 10-77, 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.

(Ord. of 5-11-1992, § 18)

Sec. 10-76. Zoning board of adjustment to hear appeals.

All appeals which may be taken from decisions or orders of the inspector pursuant to section 10-71(d) shall be heard and determined by the zoning board of adjustments. As the appeals

body, the board shall have the power to fix the times and places of its meetings, to adopt necessary rules of procedure and any other rules and regulations which may be necessary for the proper discharge of its duties. The board shall perform the duties prescribed by section 10-71(d) and shall keep an accurate record of all its proceedings.

(Ord. of 5-11-1992, § 19)

Sec. 10-77. Conflict with other provisions.

In the event any provisions, standards, or requirements of this article is found to be in conflict with any provision of any other ordinance or code set by the county or 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 residences of the town shall prevail.

(Ord. of 5-11-1992, § 20)

Chapter 11

RESERVED

Chapter 12

BUSINESSES AND BUSINESS REGULATIONS*

(RESERVED)

***State law references**—Municipal authority to regulate and license occupations, businesses, trades, etc., G.S. 160A-194; city power to levy privilege license taxes on businesses and other activities, G.S. 160A-211.

Chapter 13

RESERVED

Chapter 14

CIVIL EMERGENCIES*

Sec. 14-1. Powers of mayor during state of emergency.

***Federal law references**—Emergency Planning and Community Right to Know Act of 1986, 42 USC 11011—11050; establishment of local emergency planning committee, 42 USC 11001(c); comprehensive emergency response plans, 42 USC 11003.

State law references—Riots and civil disorders, G.S. 14-288.1—14.288.20; authority of town to enact ordinances dealing with state of emergency, G.S. 14-228.12; local emergency authorizations, G.S. 166A-8; county and municipal emergency management, G.S. 166A-7.

Sec. 14-1. Powers of mayor during state of emergency.

(a) A state of emergency shall be deemed to exist in the town whenever, during times of great public crisis, disaster, rioting, catastrophe, or similar public emergency, for any reason, public safety authorities of the town are unable to maintain public order or afford adequate protection for lives or property.

(b) In the event of an existing or threatened state of emergency endangering the lives, safety, health and welfare of the people within the town, or threatening damage to or destruction of property, the mayor is hereby authorized and empowered to issue a public proclamation declaring to all persons the existence of such a state of emergency, and, in order to more effectively protect the lives and property of the people within the town, to place in effect any or all of the restrictions hereinafter authorized.

(c) The mayor is hereby authorized and empowered to limit by such proclamation 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 or other public employees, doctors, nurses, employees of hospitals and other medical facilities; on-duty military personnel, whether state or federal; on-duty employees of public utilities, 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 shall proclaim 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 of commissioners of the town.

(e) During the existence of a proclaimed state of emergency, the mayor of the town may impose by proclamation any or all of the following restrictions:

- (1) *Explosives, firearms, weapons.* Prohibit or regulate possession off one's own premises of explosives, firearms, ammunition, or dangerous weapons of any kind, and prohibit the purchase, sale, transfer or other disposition thereof;
- (2) *Alcoholic beverages.* Prohibit or regulate the buying and selling of beer, wine, or intoxicating beverages of any kind, and their possession or consumption off one's own premises;
- (3) *Demonstrations, parades, vigils.* 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) *Explosive or inflammable material.* Prohibit or regulate the sale of gasoline, kerosene, naphtha, or any other explosive or inflammable fluids or substances;

(5) *Travel.* Prohibit or regulate travel upon any public street, alley or roadway or upon any other public property, except by those in search of medical assistance, food or other commodity or service necessary to sustain the well being of themselves or their families or some member thereof;

(6) *Business activities.* 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.

(f) Any proclamation may be extended, altered, or repealed in any particular during the continued or threatened existence of a proclaimed state of emergency.

(g) During the existence of a proclaimed state of emergency, it shall be unlawful for any person to violate any provision of any restriction imposed by any proclamation authorized by this article.

(Prior Code, § 9.16; Ord. of 8-11-1969)

Chapter 15

RESERVED

Chapter 16

ELECTIONS*

Sec. 16-1. Nonpartisan plurality method of election.

***Federal law references**—States which are covered jurisdictions under Voting Rights Act of 1965, 28 CFR 51, appendix; covered jurisdictions must obtain federal preclearance of voting changes, 42 USC 1973c; procedure for submitting changes to U.S. attorney general, 28 CFR 51.20 et seq.

Sec. 16-1. Nonpartisan plurality method of election.

Municipal elections shall be conducted using the nonpartisan plurality method.

Chapter 17

RESERVED

Chapter 18

ENVIRONMENT

Article I. In General

Secs. 18-1—18-18. Reserved.

Article II. Junked Motor Vehicles

- Sec. 18-19. Definitions.
- Sec. 18-20. Administration.
- Sec. 18-21. Abandoned vehicle unlawful; removal authorized.
- Sec. 18-22. Nuisance vehicle unlawful; removal authorized.
- Sec. 18-23. Junked motor vehicle regulated; removal authorized.
- Sec. 18-24. Removal of abandoned, nuisance or junked motor vehicles; pretowing notice requirements.
- Sec. 18-25. Exceptions to prior notice requirement.
- Sec. 18-26. Removal of vehicles; post-towing notice requirements.
- Sec. 18-27. Right to probable cause hearing before sale or final disposition of vehicle.
- Sec. 18-28. Redemption of vehicle during proceedings.
- Sec. 18-29. Sale and disposition of unclaimed vehicle.
- Sec. 18-30. Conditions on removal of vehicles from private property.
- Sec. 18-31. Protection against criminal or civil liability.
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- Sec. 18-33. Unlawful removal of impounded vehicle.
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Article III. Noxious Public Nuisances

- Sec. 18-75. Nuisances enumerated.
- Sec. 18-76. Enforcement.
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- Sec. 18-78. Violations; penalties; abatement by town.
- Sec. 18-79. Defects in service of notice.
- Sec. 18-80. Right of entry.
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Article IV. Noise

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- Sec. 18-105. Penalty and enforcement.
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VASS MUNICIPAL CODE

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- Sec. 18-141. Leaf pickup.
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- Sec. 18-145. Nonconforming materials.
- Sec. 18-146. Penalty.

ARTICLE I. IN GENERAL

Secs. 18-1—18-18. Reserved.

ARTICLE II. JUNKED MOTOR VEHICLES***Sec. 18-19. 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:

Abandoned vehicle means, as authorized and defined in G.S. 160A-303, an abandoned motor vehicle which is:

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

Authorizing official means the supervisory employee of the police department or the county building inspector's and/or town administrator's office, respectively, designated to authorize the removal of vehicles under the provisions of this article.

Junked motor vehicle means, as authorized and defined in G.S. 160A-303.2, a vehicle that does not display a current license plate lawfully upon that vehicle and that:

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

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

Nuisance vehicle means a vehicle on public or private property that is determined and declared to be a health or safety hazard, a public nuisance, and unlawful, including a vehicle found to be:

- (1) A breeding ground or harbor for mosquitoes, other insects, rats or other pests;
- (2) A point of heavy growth of weeds or other noxious vegetation over eight inches in height;

***State law references**—City may remove junked and abandoned motor vehicles, G.S. 160A-303; regulation of abandonment of junked motor vehicles, G.S. 160A-303.2.

- (3) A point of collection of pools or ponds of water;
 - (4) A point of concentration of quantities of gasoline, oil or other flammable or explosive materials as evidenced by odor;
 - (5) One which has areas of confinement which cannot be operated from the inside, such as trunks, hoods, etc.;
 - (6) So situated or located that there is danger of it falling or turning over;
 - (7) One which is a point of collection of garbage, food waste, animal waste, or any other rotten or putrescible matter of any kind;
 - (8) One which has sharp parts thereof which are jagged or contain sharp edges of metal or glass; or
 - (9) Any other vehicle specifically declared a health and safety hazard and a public nuisance by the board of commissioners.
- (Ord. of 7-9-1990, § 2)

Sec. 18-20. Administration.

The police department and county building inspector and/or town administrator 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 public streets and highways within the town, and on property owned by the town. The county building inspector and/or town administrator shall be responsible for administering the removal and disposition of abandoned, nuisance or junked motor vehicles located on private property. The town may, on an annual basis, contract with private tow truck operators or towing businesses to remove, store, and dispose of abandoned vehicles, nuisance vehicles and junked motor vehicles in compliance with this article and applicable state laws. Nothing in this article shall be construed to limit the legal authority or powers of officers of the town police department and fire department in enforcing other laws or in otherwise carrying out their duties.

(Ord. of 7-9-1990, § 1)

Sec. 18-21. Abandoned vehicle unlawful; removal authorized.

(a) It shall be unlawful for the registered owner or person entitled to possession of a vehicle to cause or allow such vehicle to be abandoned as the term is defined in section 18-19.

(b) Upon investigation, proper authorizing officials of the town may determine that a vehicle is an abandoned vehicle and order the vehicle removed.

(Ord. of 7-9-1990, § 3)

Sec. 18-22. Nuisance vehicle unlawful; removal authorized.

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

(b) Upon investigation, the county building inspector and/or town administrator may determine and declare that a vehicle is a health or safety hazard and a nuisance vehicle as defined in subsection (a) of this section, and order the vehicle removed.

(Ord. of 7-9-1990, § 4)

Sec. 18-23. 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 vehicle is located to leave or allow the vehicle to remain on the property after the vehicle has been ordered removed.

(b) Upon investigation, the county building inspector and/or town administrator may order the removal of a junked motor vehicle as defined in this article 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 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.

(Ord. of 7-9-1990, § 5)

Sec. 18-24. Removal of abandoned, nuisance or junked motor vehicles; pretowing notice requirements.

(a) Except as set forth in section 18-25, an abandoned, nuisance or junked vehicle which is to be removed shall be towed only after notice to the registered owner or person entitled to possession of the vehicle. In the case of nuisance 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 shall retain a written record to show the names and addresses 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 specific date, no sooner than seven days after the notice is affixed, or mailed, unless the vehicle is moved by the owner or legal possessor prior to that time.

(b) With respect to abandoned vehicles on private property, nuisance vehicles and junked 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 nuisance vehicle or in the case of a junked motor vehicle that the aesthetic benefits of removing the vehicle outweigh the burdens, such appeal shall be made to the board of commissioners in writing, heard at the next regularly scheduled meeting of the board of commissioners, and further proceedings to remove the vehicle shall be stayed until the appeal is heard and decided.

(Ord. of 7-9-1990, § 6)

Sec. 18-25. Exceptions to prior notice requirement.

The requirement that notice be given prior to the removal of an abandoned, nuisance or junked motor vehicle may, as determined by the authorizing official, be omitted in those circumstances where there is special need for prompt action to eliminate traffic constrictions 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 includes:

- (1) *Vehicles abandoned on the streets.* For vehicles left on the public streets and highways, the board of commissioners hereby determines that immediate removal of such vehicles may be warranted when they are:
 - a. Obstructing traffic;
 - b. Parked in violation of an ordinance prohibiting or restricting parking;
 - c. Parked in a no stopping or standing zone;
 - d. Parked in loading zones;
 - e. Parked in bus zones; or
 - f. Parked in violation of temporary parking restrictions imposed under Code sections.
- (2) *Other abandoned or nuisance vehicles.* With respect to abandoned or nuisance 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.

(Ord. of 7-9-1990, § 7)

Sec. 18-26. Removal of vehicles; post-towing notice requirements.

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

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

(b) The town shall attempt to give notice to the vehicle owner by telephone; however, whether or not the owner is reached by telephone, written notice, including the information set forth in subsections (a)(1) through (5) 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.

(c) If the vehicle is registered in the state, 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 of the removal of the vehicle.

(d) 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 effort, including checking the vehicle identification number, to determine the last known registered owner of the vehicle and to notify him of the information set forth in subsections (a)(1) through (5) of this section.

(Ord. of 7-9-1990, § 8)

Sec. 18-27. 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. 20-219.11, as amended.

(Ord. of 7-9-1990, § 9)

Sec. 18-28. 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 article.

(Ord. of 7-9-1990, § 10)

Sec. 18-29. 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 article G.S. ch. 44A, art. 1.

(Ord. of 7-9-1990, § 11)

Sec. 18-30. 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 county building inspector and/or town administrator. The town may require any person requesting the removal of an abandoned, nuisance or junked motor vehicle from private property to indemnify the town against any loss, expense or liability incurred because of the removal, storage, or sale thereof.

(Ord. of 7-9-1990, § 12)

Sec. 18-31. 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.

(Ord. of 7-9-1990, § 13)

Sec. 18-32. Exceptions.

Nothing in this article shall apply to any vehicle:

- (1) Which is located in a bona fide automobile graveyard or junkyard, as defined in G.S. 136.143, in accordance with the Junkyard Control Act, G.S. 136-141 et seq.;
- (2) Which is in an enclosed building;

- (3) Which is on the premises of a business enterprise being operated in a lawful place and manner if the vehicle is necessary to operation of the enterprise; or
 - (4) Which is in an appropriate storage place or depository maintained in a lawful place and manner by the town.
- (Ord. of 7-9-1990, § 14)

Sec. 18-33. Unlawful removal of impounded vehicle.

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

(Ord. of 7-9-1990, § 15)

Secs. 18-34—18-74. Reserved.

ARTICLE III. NOXIOUS PUBLIC NUISANCES

Sec. 18-75. Nuisances enumerated.

The existence of any of the following conditions on any lot or parcel of land, whether improved or unimproved, occupied or unoccupied, within the town limits or within a distance of one mile beyond the town limits, is hereby declared to be dangerous and prejudicial to the public health or safety and to constitute a public nuisance:

- (1) The uncontrolled growth of noxious weeds or grass, not grown for agricultural purposes, to a height in excess of eight inches on the average:
 - a. On any lot of one acre or less that is not covered in trees; or
 - b. Within ten feet from the property lines on any other lot, if a structure on an adjacent parcel is within 50 feet of the lot.
- (2) Any accumulation, including burial of animal or vegetable matter that is offensive by virtue of odors or vapors or by the inhabitation therein of rats, mice, snakes or vermin of any kind;
- (3) Any accumulation of rubbish, trash, junk, glass or building materials causing, or threatening to cause, a fire hazard;
- (4) The accumulation of stagnant water or the inhabitation therein of rats, mice, snakes or vermin of any kind;
- (5) The outside storage of any appliance such as a refrigerator, freezer, range, washer, dryer or any inside furniture left outside;
- (6) Any ditches, drains or culverts which are not kept properly clean;

- (7) Any sinkhole whereby unclean or stagnant water may stand or be conveyed into the streets or alleys, or keeping or permitting to be kept, any bucket, can, barrel or any other receptacle whereby unclean or stagnant water may accumulate or stand;
 - (8) Automobiles dismantled for the purpose of salvaging for personal use and/or selling the parts thereof, or unserviceable automobiles, or parts thereof, stored in areas on the outside of buildings or on open lots;
 - (9) Any condition detrimental to the public health, which violates the rules and regulations of the county health department.
- (Ord. of 11-26-2007, § 1)

Sec. 18-76. Enforcement.

The enforcement of this article shall be under the supervision of the town administrator.
(Ord. of 11-26-2007, § 2)

Sec. 18-77. Investigation.

Upon notice from any person of the existence of any of the conditions described in section 18-75, the town administrator shall cause to be made such investigation as may be necessary to determine whether, in fact, such conditions constitute a public nuisance as declared in section 18-75.
(Ord. of 11-26-2007, § 3)

Sec. 18-78. Violations; penalties; abatement by town.

(a) Upon investigation and finding by the town administrator that any premises is being maintained in violation of section 18-75, the town administrator is hereby vested with authority to give written notice, which may be served personally, by regular mail or in any other manner authorized by law to the owner, occupant or person in charge of such premises or to any two or all of such persons believed to be responsible for such violation. The notice shall specify the condition, which constitutes the violation and shall direct the addressee to abate such violation in a lawful manner within ten days from the date of the notice. The notice shall also warn the addressee that failure to comply with such notice shall render him liable to the town for any costs and expenses which may be incurred by the town in the abatement of such violation under the provisions of subsection (b) of this section, and that such costs and expenses shall constitute a lien upon the property involved.

(b) If, upon the expiration of the time specified in any such notice, the condition which constitutes the violation has not been abated in a lawful manner, the town administrator shall provide for the abatement of such condition by the most expedient means, and the costs and expenses thereby incurred, including any cost incurred in service of the notice, shall be collected by the town administrator from any one or more of the addressees served with notice and, if such costs and expenses are not paid within 30 days, the town administrator shall make

collection thereof in any other manner authorized by law, and the amount of such costs and expense shall constitute a lien in favor of the town upon the property upon which the violation occurred.

(c) In addition to the sanctions imposed in subsection (b) of this section, a violation of this article or any order issued under this article shall also be a civil offense and shall subject the offender to a civil penalty in the amount of \$100.00 per day for every day the nuisance remains unabated.

(Ord. of 11-26-2007, § 4)

Sec. 18-79. Defects in service of notice.

Defects in the method of giving the notice as specified in section 18-78 or in the form thereof or the giving of such notice to an improper person shall not prevent the town, in any case where the work of abating any violation of this article is actually done by the town, from collecting the cost thereof from the owner of the premises upon which the violation occurred, nor shall it affect the validity of the lien on such premises for such cost.

(Ord. of 11-26-2007, § 5)

Sec. 18-80. Right of entry.

An agent of the town shall have the right to enter any premises at any reasonable time for the purpose of making the inspections or investigations required by this article.

(Ord. of 11-26-2007, § 6)

Sec. 18-81. Hindering, obstructing and delaying agents.

It shall be unlawful for any person to hinder, obstruct or delay any agent of the town in the lawful discharge of their duties.

(Ord. of 11-26-2007, § 7)

Sec. 18-82. Article to be additional remedy.

The procedures set forth in this article shall be in addition to any other remedies that may exist under law for the abatement of public nuisances.

(Ord. of 11-26-2007, § 8)

Secs. 18-83—18-103. Reserved.

ARTICLE IV. NOISE***Sec. 18-104. 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:

Emergency work means any work performed for the purpose of preventing or alleviating physical trauma or property damage threatened or caused by an existing or imminent peril. (Ord. of 11-13-1995, § I)

Sec. 18-105. Penalty and enforcement.

Any person that violates any provision of this article is subject to a civil penalty as outlined in section 1-8. The term "violation," for the purpose of this section, shall mean the person creating or allowing to be created any unlawful noise, the operator and/or owner of any device creating any unlawful noise, or the person who has legal or actual control over devices, premises, or properties from which an unlawful noise emanates.

Sec. 18-106. Excessive noise prohibited.

(a) It is unlawful for any person to make, continue, or cause to be made any unreasonable and excessive noise which injures, endangers, or disturbs the comfort, repose, health, peace or safety of others within the town limits.

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

- (1) The play at any time of any day or night any radio, phonograph, musical instrument, television, "boom box" or any electronic sound producing device with a volume louder than is necessary for the convenience of the person or persons who are specifically listening to or operating the sound producing device, or playing or operating said device in such a manner or with such volume as to disturb the quiet, comfort or repose of any person or persons within the town limits.
- (2) To keep, harbor or authorize to keep or harbor any animal or fowl which causes any type of frequent or continual noise for ten minutes or more that disturbs the comfort, quiet, or repose of any person or persons. Types of animal or fowl noises include, but are not limited to, barking, crying, howling, meowing, singing, chirping, crowing and scratching.

(c) Noise caused by the following may not be regarded as unreasonable and excessive:

- (1) Loading and unloading, opening, closing or other handling of boxes, equipment, building materials, garbage cans or similar objects, construction or demolition work or operating of lawn or garden tools between the hours of 6:00 a.m. and 9:00 p.m. on weekdays and 7:00 a.m. and 9:00 p.m. on weekends.

***State law reference**—City may regulate noise, G.S. 160A-184.

- (2) Emergency work performed for the purpose of preventing or alleviating physical trauma or property damage threatened or caused by an existing or imminent peril.
- (3) Any special event sponsored by the town or an organization for which the town has issued a special permit.

Sec. 18-107. Barking dogs.

(a) It shall be unlawful for anyone to permit a dog, under his exercise or control, to bark, bay, cry, howl or make any other noise continuously and/or excessively for a period of ten minutes or more, or who barks, bays, cries, howls or makes any other noise intermittently for one-half hour or more to the disturbance of any person at any time.

(b) It shall not be a violation of this section if at the time the dog is barking, baying, crying, howling or making any other noise a person is trespassing or threatening to trespass upon private property in or upon which the dog is situated or for any legitimate cause which teased or provoked the dog.

(c) Any resident, owner, occupant, or tenant of property upon which the dog is situated shall be deemed a person in charge or otherwise exercising control over said dog.
(Ord. of 11-13-1995, § V)

Secs. 18-108—18-140. Reserved.

ARTICLE V. YARD DEBRIS

Sec. 18-141. Leaf pickup.

(a) Leaves, pine straw and pine cones must be placed in plastic bags and brought to the street no earlier than three days prior to scheduled pickup.

(b) Leaves, pine straw and pine cones will be picked up once a week, May through October.

(c) During the months of November through April, there will be no public pickup. During these months only, residents may burn yard debris if they follow the rules of the state department of environmental and natural resources and there is no burning ban in effect by the state forest service.

(Ord. of 2-22-2005, § 1)

Sec. 18-142. Tree trimmings and brush placement.

(a) Place brush and tree trimmings at the edge of the street with all of the cut ends turned toward the street and stacked neatly into a pile and not scattered. Keep other debris out of the brush such as trash, leaves, vines, rocks and metal which can severely damage the equipment. Brush and tree trimmings shall be placed at the edge of the street no earlier than three days prior to scheduled pickup.

(b) No tree trimmings or brush should exceed three inches in diameter or four feet in length.

(c) Tree trimmings and brush should be placed so as not to interfere with or obstruct the flow of traffic.

(d) Tree trimmings and brush will be picked up once a week, May through October.

(e) Tree trimmings and brush shall not exceed three cubic yards or the equivalent of one pickup truck load. The homeowner must dispose of anything in excess of this amount.

(f) During the months of November through April, there will be no public pickup. During these months only, residents may burn yard debris if they follow the rules of the state department of environmental and natural resources and there is no burning ban in effect by the state forest service.

(Ord. of 2-22-2005, § 2)

Sec. 18-143. No collection of contracted work.

(a) Tree and shrubbery branches, limbs, trimmings and yard waste cut by landscapers, tree service contractors, commercial workmen, day laborers or resulting from land being cleared by a contractor shall not be collected by the town. This applies to large acreage tracts or vacant lots being developed within the town as well as residential property. It is the responsibility of the homeowner/occupant and/or contractor to remove such trimmings.

(b) The town shall not collect any yard debris collected by a contractor in the course of his business even though he resides in the town.

(Ord. of 2-22-2005, § 4)

Sec. 18-144. Prohibited collections.

(a) Heavy bulk accumulations such as brick, broken concrete, lumber, ashes, dirt, plaster, sand, gravel, automobile frames and parts, and dead trees shall not be collected by the town, but disposed of by the owner or person controlling the premises.

(b) No waste building materials or lot clearings shall be collected from houses or other structures under construction or recently completed.

(c) No collection shall be made from vacant lots, nor shall any large rocks, tree trunks or stumps be collected by the town.

(Ord. of 2-22-2005, § 5)

Sec. 18-145. Nonconforming materials.

(a) Any materials that do not conform to the requirements set forth in this section shall not be allowed to remain along the streets of the town for more than seven days.

(b) In the event that any materials that do not conform to the requirements of this section are allowed to remain along the streets of the town for more than seven days, the town shall have the authority to collect said nonconforming materials and to assess a \$50.00 administrative fee plus the cost (including, but not limited to, manpower, equipment, vehicles, landfill fees, etc.) to remove and properly dispose of the nonconforming materials.

(c) Prior to collection of nonconforming materials, the town, or its contractor, shall cause a notice to be posted upon the premises of the customer notifying said customer that he is in violation of the town's ordinance and that the town shall collect the materials pursuant to this section and assess a civil penalty in the amount set forth herein in addition to any other applicable charges (i.e., disposal costs) unless said nonconforming materials are removed prior to the expiration date documented on the notice.

(Ord. of 2-22-2005, § 6)

Sec. 18-146. Penalty.

Violation of any provision of this article shall subject the offender to a civil penalty in the amount of \$100.00 per day to be recovered by the town. Violators shall be issued a written citation, which must be paid within 72 hours.

(Ord. of 2-22-2005, § 7)

Chapter 19

RESERVED

Chapter 20

FIRE PREVENTION AND PROTECTION*

- Sec. 20-1. Penalties.
- Sec. 20-2. Adoption of fire prevention code.
- Sec. 20-3. Enforcement.

***State law references**—City authority to establish fire department and appoint chief, G.S. 160A-291; duties of chief, G.S. 160A-292; municipalities authorized to install and maintain water mains and hydrants, G.S. 160A-293; municipal authority to regulate or prohibit explosive and corrosive substances, G.S. 160A-183.

Sec. 20-1. Penalties.

(a) Any person who shall violate any of the provisions of the fire prevention code hereby adopted or fail to comply therewith, or who shall violate or fail to comply with any order made thereunder, or who shall build in violation of any detailed statement of specifications or plans submitted and approved thereunder, or any certificate or permit issued thereunder, and from which no appeal has been taken, or who shall fail to comply with such order as affirmed and modified by the board of commissioners or by a court of competent jurisdiction, within the time fixed herein, shall severally for each and every such violation and noncompliance respectively, be punishable by a civil penalty of not less than \$100.00. The imposition of one penalty for any violation shall not excuse the violation or permit it to continue; and all such persons shall be required to correct or remedy such violations or defects within a reasonable time; and when not otherwise specified, each ten days that prohibited conditions are maintained shall constitute a separate offense.

(b) The application of the penalty provided in subsection (a) of this section shall not be held to prevent the enforced removal of prohibited conditions.

(Prior Code, § 7.19)

Sec. 20-2. Adoption of fire prevention code.

The town, and county, shall enforce and adopts by reference the most recent North Carolina Fire Code within the town limits.

Sec. 20-3. Enforcement.

The fire prevention code adopted by this chapter shall be enforced by the town and by county authorities.

(Prior Code, § 7.11)

Chapter 21

RESERVED

Chapter 22

LAND DEVELOPMENT

(RESERVED)

Chapter 23

RESERVED

Chapter 24

LAW ENFORCEMENT*

Article I. In General

Secs. 24-1—24-18. Reserved.

Article II. Auxiliary Police

- Sec. 24-19. Auxiliary police division established.
- Sec. 24-20. Training required.
- Sec. 24-21. Eligibility for benefits under state law.
- Sec. 24-22. Operational rank of volunteers.
- Sec. 24-23. Uniforms and equipment.
- Sec. 24-24. Restricted right to serve.
- Sec. 24-25. Article of limited effect.

***State law reference**—Municipal authority to establish police department, G.S. 160A-281.

ARTICLE I. IN GENERAL

Secs. 24-1—24-18. Reserved.

ARTICLE II. AUXILIARY POLICE*

Sec. 24-19. Auxiliary police division established.

There is hereby established within the town police department, as a division thereof, an auxiliary police division. The auxiliary police division shall be a volunteer organization, whose members shall serve without compensation, composed of as many members as may from time to time be determined by the chief of police.

(Ord. of 5-10-2004, § 1)

Sec. 24-20. Training required.

All police officers of the auxiliary police force of the town shall complete, within the required time interval, any in-service training or qualifications as may be required.

(Ord. of 5-10-2004, § 2)

Sec. 24-21. Eligibility for benefits under state law.

While undergoing official training and while performing duties on behalf of the town, pursuant to the orders or instructions of the chief of police, volunteer police officers of the auxiliary police force of the town shall be entitled to benefits under the North Carolina Worker's Compensation Act and to any fringe benefits for which such persons qualify.

(Ord. of 5-10-2004, § 3)

Sec. 24-22. Operational rank of volunteers.

The operational rank of all volunteer police officers shall be police officer, and all such volunteer officers shall be subject to any and all lawful operational commands of the chain of command of the town police department.

(Ord. of 5-10-2004, § 4)

Sec. 24-23. Uniforms and equipment.

Volunteer police officers of the auxiliary police force of the town shall be issued or allowed to retain such uniforms and equipment as the chief of police may allow.

(Ord. of 5-10-2004, § 5)

Sec. 24-24. Restricted right to serve.

Notwithstanding the language of G.S. 160A-284 or G.S. 128-1.1, the public office of volunteer police officer of the auxiliary police force of the town may not be held concurrently

***State law reference**—Auxiliary police forces, G.S. 160A-282.

with any elected office and may not be held concurrently with such public-appointed offices or private employment as the chief of police may approve. Any volunteer police officer of the auxiliary police force of the town shall be deemed to have resigned from the auxiliary police force of the town upon taking the oath of office of any elected office or the acceptance of a public-appointed office or private employment not approved by the chief of police.

(Ord. of 5-10-2004, § 6)

Sec. 24-25. Article of limited effect.

This article shall not be interpreted or deemed to have any force or effect upon any person who holds dual employment as a police officer and any other position within the town at the time of the adoption of the ordinance from which this article is derived.

(Ord. of 5-10-2004, § 7)

Chapter 25

RESERVED

Chapter 26

OFFENSES AND MISCELLANEOUS PROVISIONS*

Article I. In General

- Sec. 26-1. Unlawful obstruction by assembly.
- Sec. 26-2. Games of chance.
- Sec. 26-3. Concealed weapons.
- Sec. 26-4. Discharge of gun.
- Sec. 26-5. Indecent exposure.
- Sec. 26-6. Damage to plants and trees.
- Sec. 26-7. Streets, obstructing.
- Sec. 26-8. Trespassing on town property.
- Sec. 26-9. Begging, panhandling, or soliciting contributions.
- Secs. 26-10—26-36. Reserved.

Article II. Minors

Division 1. Generally

Secs. 26-37—26-60. Reserved.

Division 2. Curfew

- Sec. 26-61. Definitions.
- Sec. 26-62. Purpose.
- Sec. 26-63. Establishment and enforcement.

***Federal law reference**—Active and honorably retired law enforcement officers may carry concealed weapons nationwide if certain conditions met, Law Enforcement Officers Safety Act of 2004, 18 USC 926B-926C.

State law reference—Violation of local ordinance, G.S. 14-4.

ARTICLE I. IN GENERAL**Sec. 26-1. Unlawful obstruction by assembly.**

The assembling together of persons on the sidewalks so as to obstruct the free passage of persons along the same is forbidden.

(Prior Code, § 9.10)

Sec. 26-2. Games of chance.

It shall be unlawful for any person to engage in any game of chance or hazard for money, goods or other things of value upon streets of the town, or in any lot, building, or place within the corporate limits of the town, unless such gaming is permitted under state law.

(Prior Code, § 9.11)

Sec. 26-3. Concealed weapons.

It shall be unlawful for any person to carry concealed weapons of any description within the town, unless permitted under state or federal law.

(Prior Code, § 9.12)

Sec. 26-4. Discharge of gun.

It shall be unlawful for any person in wantonness, sport or mischief to discharge a gun, pistol or other firearm in the streets of the town or in any vacant or occupied lot within the town. Violation of this section shall be a misdemeanor.

(Prior Code, § 9.17)

State law reference—Municipal power to regulate discharge of firearms, G.S. 160A-189.

Sec. 26-5. Indecent exposure.

It shall be unlawful for any person to make any indecent exposure of his person in public within the corporate limits of the town.

(Prior Code, § 9.19)

Sec. 26-6. Damage to plants and trees.

It shall be unlawful for any person to willfully damage any shade tree along any street or sidewalk of the town, or to willfully damage any shrub or plant in any public park or garden in the town.

(Prior Code, § 9.24)

Sec. 26-7. Streets, obstructing.

It shall be unlawful for any person in wantonness, mischief, sport or malice to create or place any obstruction in or across any of the streets or sidewalks of the town.

(Prior Code, § 9.27)

Sec. 26-8. Trespassing on town property.

All persons are forbidden to trespass upon, to climb upon or to go on in any manner, any properties owned by or in the custody of the town without the express permission of the board of commissioners.

(Prior Code, § 9.29)

Sec. 26-9. Begging, panhandling, or soliciting contributions.

(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:

Accosting another person means approaching or speaking to someone in such a manner as would cause a reasonable person to fear imminent bodily harm or the commission of a criminal act or damage to property in his immediate possession.

Beg, panhandle, or solicit contributions includes, without limitation, the spoken, written, or printed word or such other acts as are conducted in furtherance of the purpose of obtaining contributions.

Direct written appeal means as begging, panhandling, or solicitation by handing to a person or attempting to hand to a person a written solicitation for immediate contributions.

Forcing oneself upon the company of another person means:

- (1) Continuing to request or solicit contributions in close proximity to the person addressed after that person has responded negatively;
- (2) Blocking the passage of the person addressed; or
- (3) Otherwise engaging in conduct, which reasonably could be understood as intended to force a person to accede to demands.

Intimidate another person means acting in such a way as would cause a reasonable person to fear bodily harm and therefore to do something he would not otherwise have done.

Nighttime means the time from dusk to dawn.

Public place includes streets, highways, and roadways, including the shoulders and medians, sidewalks, alleys, and other public property, as well as town-owned and town-controlled property and private property open to the public. It shall be an affirmative defense that permission to solicit has been obtained from the town or from the property owner or other person in authority.

Vocal appeal means begging, panhandling, or solicitation of contributions by spoken word or other verbal request. The term "vocal appeal" shall not include the act of performing music with a sign or other indication that a contribution is being sought, without any vocal request other than in response to an inquiry.

(b) No person shall beg, panhandle, or solicit contributions in a public place in a manner so as to intimidate another person or by accosting another person, or by forcing oneself upon the company of another person.

(c) No person shall beg, panhandle, or solicit contributions from another person within 20 feet of an entrance or exit of any bank or financial institution or within 20 feet of any automated teller machine.

(d) No person shall beg, panhandle, or solicit contributions while sitting or standing on a roadway or the shoulder or median of a roadway.

(e) No person shall beg, panhandle, or solicit contributions in a public place by vocal appeal or direct written appeal during nighttime.

(f) Violation of this section shall subject the violator to a civil penalty of not more than \$50.00.

(Ord. of 5-14-2007)

Secs. 26-10—26-36. Reserved.

ARTICLE II. MINORS

DIVISION 1. GENERALLY

Secs. 26-37—26-60. Reserved.

DIVISION 2. CURFEW

Sec. 26-61. Definitions.

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

Emergency means an unforeseen combination of circumstances or the resulting state that calls for immediate action. The term "emergency" 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 includes 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.

First offender means a minor on account of whom written warning has previously been issued in accordance with section 26-63(7)a.

Guardian means one who legally has the care and management of the person of a child defined as a minor by this section.

Minor means a person who has not reached his 18th birthday and is not married, emancipated, or a member of the armed services of the United States.

Parent means a person who is a natural parent, adoptive parent, foster parent or stepparent of another person, or a person to whom legal custody has been given by court order.

Public place means areas such as, but not limited to, all common areas open to all for common use; alleys, streets, public places, or places of business and amusements, public vehicular areas, highways and parks, or establishments open to the public for the conduct of business.

Remain means 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.

(Ord. of 7-21-1997, § (b))

Sec. 26-62. Purpose.

The purpose of this division shall be to establish a curfew for minors in the town, thus assisting the parents and guardians of minors in the increasingly difficult task of child rearing, and to promote the health, safety, and welfare of both minors and adults in the town by creating an environment offering protection and security for all concerned.

(Ord. of 7-21-1997, § (a))

Sec. 26-63. Establishment and enforcement.

A curfew applicable to minors is established and shall be enforced as follows:

- (1) *Time limits.* It is unlawful for any minor to be in or remain upon any public place in the town between 11:00 p.m. of any day and 5:00 a.m. of the following morning.
- (2) *Out of school suspension time limit.* It is unlawful for any minor under the age of 18 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 in or remain upon any public place in the town between the hours of 7:30 a.m. and 3:30 p.m. on any school day
- (3) *Exception.* The restrictions provided by subsections (1) and (2) of this section shall not apply if the minor is:
 - a. Accompanied by his parent or guardian;
 - b. Accompanied by an adult 18 years of age or older authorized by the parent or guardian of such minor to take the parent's or guardian's place in accompanying the minor for a designated period of time and purpose within a specified area;
 - c. Engaged in a lawful employment activity, or using a direct route to or from a place of employment;
 - d. Reacting or responding to an emergency;

- e. 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 or other governmental entity, or a civic organization or another similar entity that accepts responsibility for the minor;
 - f. Exercising First Amendment rights 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;
 - g. 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;
 - h. On an errand at the direction of the minor's parent or guardian, without any detour or stop; or
 - i. On the sidewalk abutting the minor's residence.
- (4) *Responsibility of minor.* It is unlawful for any minor to be in or upon, or remain in or upon a public place within the town within the curfew hours set by subsections (1) and (2) of this section, except as otherwise provided in subsection (3) of this section.
- (5) *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 within the town within the curfew hours set by subsections (1) and (2) of this section, except as otherwise provided in subsection (3) of this section.
- (6) *Responsibility of business establishments.* It is unlawful for any person 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 curfew hours set by subsections (1) and (2) of this section, except as otherwise provided in subsection (3) of this section.
- (7) *Enforcement.*
- a. When a minor is found to be in violation of this section, the officer will determine if the minor is a first offender. If the minor is a first offender, he/she will be issued a written warning and taken to the residence of his/her parent or guardian. In addition to this action, a written warning will be given to that adult and an incident report taken by the officer to include the name of the minor and adult, and the time, date, and location of the offense. This shall apply in all cases where a written warning is issued. A copy of the report will be maintained in the records of the police department.
 - b. If the minor is found to be a repeat offender, he will be taken to the residence of his/her parent or guardian and will be subject to having a juvenile petition filed against him for the violation. In addition, the adult (parent/guardian) will be

subject to a criminal citation, pursuant to subsection (5) of this section. A report will be prepared and a copy of the report will be maintained in the records division of the police department.

- (8) *Refusal of guardian or parent to take custody of a minor.* If any guardian or parent refuses to take custody of his/her minor child found in violation of this section, the officers with custody of the minor shall contact the county department of social services and release the minor to that agency, pending further investigation by the police department and the department of social services. The adult will be subject to a criminal citation, pursuant to subsection (5) of this section.
 - (9) *Emergency curfew.* Under the authority of G.S. 14-288.12, whenever the mayor of the town deems that an emergency exists, and there is a clear and present danger to the preservation of the public peace, health, life, or safety, or to public or private property in the town necessitating expansion of the curfew provisions set forth in subsection (1) of this section, the mayor may effect such expansion, effective for the period of the emergency, by proclamation. The proclamation shall contain a statement of the reasons for such necessity and the period of the expanded curfew, and shall provide that no minor under the age of 18 years shall be upon or about or remain upon or about, public places in the town between the hours of 8:00 p.m. and 6:00 a.m. on the following morning, unless accompanied by his parent or guardian. Said proclamation may further provide that no parent or guardian of any minor under the age of 18 years shall allow the child to be upon or about, or remain upon or about, any public place in the town between the hours of 8:00 p.m. and 6:00 a.m. of the following morning unless the child is under direction or protection of some adult person with authority and consent of such parent or guardian for his being there. Said proclamation shall become effective 30 minutes after being publicly announced by the mayor for the said period, or until rescinded by the mayor or repealed by the board of commissioners in the manner in which ordinances are repealed. As soon as is reasonably possible, the proclamation shall be published and reported in the local media and posted conspicuously about the town.
 - (10) *Punishment.* The punishment for violation of this section shall be according to section 1-8.
- (Ord. of 7-21-1997, § (c))

Chapter 27

RESERVED

Chapter 28

PARKS AND RECREATION*

Article I. In General

- Sec. 28-1. Purpose.
- Sec. 28-2. Hours of operation.
- Sec. 28-3. Closing when necessary.
- Sec. 28-4. Reservation of park facilities.
- Sec. 28-5. Facility rental fees.
- Secs. 28-6—28-26. Reserved.

Article II. Prohibited Conduct, Uses and Activities

- Sec. 28-27. Advertising, etc.
- Sec. 28-28. Alcoholic beverages and controlled substances, etc.
- Sec. 28-29. Animals running at large.
- Sec. 28-30. Bicycles, skates, skateboards and similar devices.
- Sec. 28-31. Destruction of recreation area property.
- Sec. 28-32. Dumping and littering.
- Sec. 28-33. Firearms, fireworks, golf balls, etc.
- Sec. 28-34. Fires; grills.
- Sec. 28-35. Personal conduct.
- Sec. 28-36. Selling, peddling, etc.
- Sec. 28-37. Unattended minors.
- Sec. 28-38. Vehicles in recreation areas.
- Sec. 28-39. Wildlife.
- Secs. 28-40—28-66. Reserved.

Article III. General Rules and Regulations

- Sec. 28-67. Established.
- Secs. 28-68—28-92. Reserved.

Article IV. Enforcement

- Sec. 28-93. Authority to eject persons.
- Sec. 28-94. Civil penalty.

***State law references**—Town may create parks and recreation commission to operate system, G.S. 160A-354; local government may establish parks, playgrounds, and recreational facilities, G.S. 160A-353.

ARTICLE I. IN GENERAL**Sec. 28-1. Purpose.**

This chapter shall regulate the use and occupancy and the conduct of persons in all public parks and recreation areas owned by the town.

(Ord. of 4-26-2004, art. I, § 1)

Sec. 28-2. Hours of operation.

All town parks and recreation areas shall be open to the public between 8:00 a.m. and dark. No organized activities are to start before 1:00 p.m. on Sundays. It shall be unlawful for any person to use or inhabit any town park or recreation area at any time other than hours that the park or recreation area is open to the public, unless the town board of commissioners grants special permission.

(Ord. of 4-26-2004, art. I, § 2)

Sec. 28-3. Closing when necessary.

Any section or part of any public recreation area may be declared closed to the public by any town employee at any time and for any interval of time, either temporarily or at regular and stated intervals and to certain uses.

(Ord. of 4-26-2004, art. I, § 3)

Sec. 28-4. Reservation of park facilities.

(a) Park facilities that may be reserved include: baseball field, picnic shelter, basketball courts, tennis court and concession stand. The playground area may not be reserved and must remain open to the public during hours of park operation. The county parks and recreation will have priority on use of the baseball field during the conduct of their youth-related baseball and softball practices and games, to the extent provided by an annual agreement between the town and county.

(b) Information regarding facility reservations, policies and rules can be obtained at the town hall.

(Ord. of 4-26-2004, art. I, § 4)

Sec. 28-5. Facility rental fees.

The town board of commissioners shall annually establish rental fees for the use of recreation facilities and may adjust such fees when necessary. A copy of the rental fees can be obtained at the town hall.

(Ord. of 4-26-2004, art. V, § 1)

Secs. 28-6—28-26. Reserved.

ARTICLE II. PROHIBITED CONDUCT, USES AND ACTIVITIES**Sec. 28-27. Advertising, etc.**

It shall be unlawful for any person to place or erect any structure, sign, poster or advertising device of any kind whatever in any recreation facility, or to attach any notice, sign, poster, wire, rod, chain or cord to any tree, shrub, fence or structure within any park, unless special permission is granted by the town board of commissioners.

(Ord. of 4-26-2004, art. II, § 1)

Sec. 28-28. Alcoholic beverages and controlled substances, etc.

It shall be unlawful for any person to bring upon, possess, consume, display or sell any beer, wine, malt beverage, or alcoholic beverage containing more than one percent of alcohol, or controlled substances in any town park or recreation area; and it shall be unlawful for any person under the influence of any of the above to enter or remain within any town park or recreation area.

(Ord. of 4-26-2004, art. II, § 2)

Sec. 28-29. Animals running at large.

It shall be unlawful for anyone to allow or permit dogs or other animals to run at large in any park or recreation facility or to fail to clean up after their dogs or other pets.

(Ord. of 4-26-2004, art. II, § 3)

Sec. 28-30. Bicycles, skates, skateboards and similar devices.

No person shall operate, ride or use any motive device propelled or designed for propulsion by human power upon the tennis court, basketball courts, picnic shelter or handicapped parking area and sidewalks. The term "motive device, propelled or designed for propulsion by human power" includes bicycles, tricycles, coasters, scooters, roller skates, roller blades, sleds, skateboards and wagons; but shall not include wheelchairs or other devices operated or used by handicapped or disabled individuals. Skateboards are prohibited in the park.

(Ord. of 4-26-2004, art. II, § 4)

Sec. 28-31. Destruction of recreation area property.

It shall be unlawful for any person to remove, destroy, mutilate, or deface any structure, monument, planter, fountain, wall, fence, railing, vehicle, bench, picnic table, tree, plant, paving or paving materials, signs, notices or placards, whether temporary or permanent, stakes, posts, or other boundary markers, or other structures or equipment, facilities or property or appurtenances whatsoever, either real or personal. It shall also be unlawful for any person to dig or otherwise disturb grass areas, or in any other way injure or impair the natural beauty or usefulness of any area.

(Ord. of 4-26-2004, art. II, § 5)

Sec. 28-32. Dumping and littering.

It shall be unlawful for any person to bring in, dump, deposit or leave any bottles, broken glass, ashes, paper, boxes, cans, dirt, rubbish, garbage or refuse, or other trash in a public recreation area. Such refuse, rubbish and waste shall be deposited in receptacles so provided. Where receptacles are not provided, all such refuse, rubbish or waste shall be carried away from the public recreation area by the person responsible for its presence and properly disposed of elsewhere.

(Ord. of 4-26-2004, art. II, § 6)

Sec. 28-33. Firearms, fireworks, golf balls, etc.

It shall be unlawful for any person, except duly authorized law enforcement officers in the course of their duty to carry any firearms or dangerous weapons of any nature, including but not limited to archery equipment, air rifles, toy pistols, toy guns, or other toy arms designed to forcibly hurl a projectile or missile at any time or under any circumstances, within a public recreation area. The use of fireworks of any type is expressly prohibited. It shall be unlawful for any person to hit golf balls within any public recreation area.

(Ord. of 4-26-2004, art. II, § 7)

Sec. 28-34. Fires; grills.

It shall be unlawful for any person to make a fire in any park except in a regularly constructed fireplace or grill provided by the town, unless the town board of commissioners grants special permission. Gas-operated grills are prohibited. It shall be unlawful for any person to leave any fire unattended, or to fail to completely extinguish a fire and all the embers before leaving such fire.

(Ord. of 4-26-2004, art. II, § 8)

Sec. 28-35. Personal conduct.

It shall be unlawful for any person to use any profane, boisterous, or insulting language or to be guilty of disorderly conduct of any kind in any town park or recreation area. It shall be unlawful for any person to make or cause to be made any loud, disturbing or unnecessary noises in any park or recreation area except normal cheering and applauding during the progress of a duly authorized activity.

(Ord. of 4-26-2004, art. II, § 9)

Sec. 28-36. Selling, peddling, etc.

It shall be unlawful for any person to engage in soliciting, peddling, begging or selling of any description in any park or recreation facility, unless specifically authorized by the town board of commissioners.

(Ord. of 4-26-2004, art. II, § 10)

Sec. 28-37. Unattended minors.

It shall be unlawful for any child age 12 years or under to be in any public park without the supervision of an adult.

(Ord. of 4-26-2004, art. II, § 11)

Sec. 28-38. Vehicles in recreation areas.

It is unlawful for any person to drive or propel any motor vehicle, minibike, motorcycle, or other vehicle in, over or through any recreational area, except in the designated parking lot. It shall be unlawful for any person to park or permit any vehicle to be parked in any recreation areas, unless the town board of commissioners grants special permission.

(Ord. of 4-26-2004, art. II, § 12)

Sec. 28-39. Wildlife.

It shall be unlawful for any person to trap, catch, wound or kill or cause to be injured, treat cruelly, or tease or attempt to trap, catch, wound or kill or tease any wildlife in any park or recreation area owned by the town.

(Ord. of 4-26-2004, art. II, § 13)

Secs. 28-40—28-66. Reserved.

ARTICLE III. GENERAL RULES AND REGULATIONS

Sec. 28-67. Established.

(a) The town board of commissioners has the authority and responsibility to establish rules and regulations governing the use and/or rental of public recreational facilities.

(b) A copy of the ordinance from which this chapter is derived and any rules and regulations governing the use and/or rental of public recreational facilities may be obtained at the town hall. A violation of any rules and regulations shall constitute a violation of this chapter.

(Ord. of 4-26-2004, art. III, § 1)

Secs. 28-68—28-92. Reserved.

ARTICLE IV. ENFORCEMENT

Sec. 28-93. Authority to eject persons.

Violation of park rules or abuse of property may result in expulsion with denial of future use and reservation privileges and assessment of costs to clean and repair. Any law enforcement

officer, town employee or elected town official shall have the authority to eject from any public recreation area any person acting in violation of this chapter or in violation of any rules and regulations enacted pursuant to this chapter.

(Ord. of 4-26-2004, art. IV, § 1)

Sec. 28-94. Civil penalty.

Any person who shall violate the provisions of this chapter shall be subject to a civil penalty of \$100.00 for each separate offense. In the case of a violation by a minor, the parent or guardian shall be responsible for the penalty.

(Ord. of 4-26-2004, art. IV, § 3)

Chapter 29

RESERVED

Chapter 30

PEDDLERS AND SOLICITORS

(RESERVED)

Chapter 31

RESERVED

Chapter 32

SECONDHAND GOODS

Article I. In General

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Article II. Garage and Yard Sales

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ARTICLE I. IN GENERAL**Secs. 32-1—32-16. Reserved.****ARTICLE II. GARAGE AND YARD SALES****Sec. 32-17. 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:

Personally used property means property which is owned, utilized, and maintained by an individual or members of his residence and acquired in a normal course of living in or maintaining a residence. The term "personally used property" excludes merchandise which was purchased for resale, or obtained on consignment, or made specifically for sale at a yard sale.

Yard sales means all general sales open to the public for the purpose of disposing of personally used property.
(Prior Code, § 8.1)

Sec. 32-18. Penalty.

The violation of any provision of this article is punishable by a civil penalty not exceeding \$100.00.
(Prior Code, § 8.12)

Sec. 32-19. Prohibition of yard sales.

Except for yard sales conducted as provided in this chapter, no person may conduct a sale open to the public unless that sale is in the course of a lawful business at the regular location of that business.
(Prior Code, § 8.2)

Sec. 32-20. Hours of yard sales.

Yard sales shall be limited in time to no more than the daylight hours of two consecutive days. If the sale is not held because of inclement weather on that date for which the permit is issued, as set forth in section 32-21, or is terminated during the first day of the sale because of inclement weather conditions, and an affidavit by the permit holder to this effect is presented, the town clerk may issue another permit to the applicant for a sale to be conducted at the same location within 30 days from the date the first sale was to be held. In this case, if fees are required, no additional permit fee is required.
(Prior Code, § 8.3)

Sec. 32-21. Permit and fee required.

(a) No yard sales shall be conducted unless and until an individual desiring to conduct the sale obtains a permit therefor from the town clerk. Prior to issuance of any sale permit, an individual desiring to conduct the sale shall file written application with the tax collector at least five days in advance of the proposed sale, setting forth the following information:

- (1) Full name and address of applicant;
- (2) The location at which the proposed sale is to be held;
- (3) The date on which the sale shall be held;
- (4) The date of any other sale by the applicant within the current calendar year;
- (5) An affirmative statement that property to be sold is personally used property of the applicants and was neither acquired nor consigned for the purpose of resale.

(b) The town clerk shall issue a permit only if the clerk determines that the applicant is in all respects proper and that the applicant is qualified under this article for a permit.

(c) The permit shall set forth and restrict the time and location of the sale. No more than two such permits may be issued to one resident or family household during the calendar year. If members of more than one residence join in requesting a permit, the permit shall be considered as having been issued for each and all of the residences. A permit fee may be set annually by the board of commissioners.

(Prior Code, § 8.4)

Sec. 32-22. Revocation and refusal of permit.

Any permit issued under this article may be revoked or any application for issuance of a permit may be refused by the town clerk if the application submitted by the applicant or permit holder contains any false, fraudulent, or misleading statements. If the town clerk determines that any individual has violated the requirements of this article, the town tax collector shall cancel any existing sale permit held by the individual convicted and shall not issue that individual another sale permit for a period of two years from the cancellation.

(Prior Code, § 8.5)

Sec. 32-23. Display of permit.

The permit for a sale hereunder shall be posted on the premises where the sale is authorized in a conspicuous place so as to be seen from the street in front of the premises by the public.

(Prior Code, § 8.6)

Sec. 32-24. Property permitted to be sold.

(a) No person may sell, or offer for sale, under authority granted by this article, property other than personally used property.

(b) Personal property offered for sale may be displayed within a residence, in a garage, on the same premises, in a carport, or in the rear, side or front yard, but not on any public right-of-way. A vehicle offered for sale may be displayed on a permanently constructed driveway within the front or side yard.

(Prior Code, § 8.7)

Sec. 32-25. Advertising and signs.

(a) No sign or other form of advertisement, except media advertising, shall be exhibited for more than two days before the day the sale is to commence.

(b) Signs must be removed each day at the close of the sale activities or by the end of daylight, whichever occurs first.

(Prior Code, § 8.8)

Sec. 32-26. Inspections and arrest authority.

A police officer or any other official designated by any town ordinance to make inspections under the licensing or regulating ordinance or to enforce such ordinances, may enter any premises showing evidence of a sale for the purpose of enforcement or inspection and may summarily stop the sale and take those steps as are necessary against any individual who violates the provisions of this article.

(Prior Code, § 8.9)

Sec. 32-27. Parking controls.

The police department shall have authority to enforce temporary controls to alleviate any special hazard or congestion created by any sale.

(Prior Code, § 8.10)

Sec. 32-28. Exemptions.

The following are exempted from the provisions of this article:

- (1) Any person selling goods pursuant to an order of process of a court of competent jurisdiction;
- (2) Any public official acting in accordance with that official's duties;
- (3) Any bona fide charitable, educational, cultural, or governmental organization when the proceeds from the sale are used directly for the organization's charitable purposes and the goods and articles are not sold on a consignment basis.

(Prior Code, § 8.11)

Chapter 33

RESERVED

Chapter 34

SOLID WASTE*

- Sec. 34-1. General regulations.
- Sec. 34-2. Residential and small business collection required.
- Sec. 34-3. Designated schedule of collections.
- Sec. 34-4. Container requirements.
- Sec. 34-5. Preparation of waste placed in receptacles.
- Sec. 34-6. Placement of container for collection.
- Sec. 34-7. Industrial, commercial and business collection.
- Sec. 34-8. Items to be disposed of by resident.
- Sec. 34-9. Solid waste disposal user fee.

***State law references**—Municipality may regulate illegal disposal of solid waste, littering, G.S. 160A-185; authority to regulate disposal of trash and garbage within municipal limits, G.S. 160A-303.1; municipal power to require use of solid waste services and to regulate accordingly, G.S. 160A-317(b); requirements for municipal solid waste landfill facilities, 15A N.C. Admin. Code 13B.1601 et seq.

Sec. 34-1. General regulations.

(a) It shall be unlawful for any person to violate any provision of this chapter. Violators will be subject to a civil penalty of \$100.00 per day.

(b) It shall be unlawful to dispose of or discard any solid waste on private or public property, unless such disposal occurs with the owner's permission and conforms to all applicable local, state, and federal regulations.

(c) It shall be unlawful for any person to put, place or throw any garbage, trash, yard waste, or bulky items on any sidewalk or in a public street, public alley or other public place in the town. Such materials shall be disposed of legally as specified in this chapter.

(d) It shall be unlawful for any construction and/or demolition contractor or property owner to fail to provide on-site containers for loose debris, material waste, scrap, building materials, and other trash produced by those working on the site.

(Ord. of 9-8-2003, § 1)

Sec. 34-2. Residential and small business collection required.

Every residence, apartment and small business within the town shall be provided with solid waste services as set forth in this chapter and shall be subject to solid waste collection fees as adopted by the town board of commissioners, regardless of whether such services are accepted by the owner or occupant of said premises.

(Ord. of 9-8-2003, § 2)

Sec. 34-3. Designated schedule of collections.

(a) All residential customers and small businesses will receive once-per-week curbside collection of garbage.

(b) Each business customer with a weekly collection of more than one 96-gallon container can contract with a private solid waste contractor.

(c) Interruptions in service may occur in any of the normal collection schedules due to extreme weather conditions, holidays, equipment breakdowns, or due to other unusual circumstances. In the case of holidays, collection will always be the next day following the holiday.

(Ord. of 9-8-2003, § 3)

Sec. 34-4. Container requirements.

(a) The contractor shall provide one 96-gallon container, on wheels, to each residential customer and small business customer, for the purpose of garbage and trash collection. Serial numbers on the container are recorded as assigned to each address. When a customer moves, either within the town limits or away, he must leave the container at the residence or business

where it has been used prior to the move. If the move is within the town, another container will be provided at the new location. Customers who take their containers with them upon moving will be charged the current replacement cost of the container.

(b) All containers provided by the contractor, shall be kept on the private premises of the customer, property owner, resident, or occupant.

(c) Every container required by this section shall be maintained in a sanitary condition and shall be cleaned (i.e., washing or otherwise) by the customer, property owner, resident, or occupant.

(d) Each customer shall be responsible for the care and custody of their container. It shall be the customer's responsibility to have replaced at their expense any container damaged or destroyed by improper use or neglect and shall care for the container as though it were their own. It shall be the responsibility of the contractor to replace those containers which are damaged or destroyed as a result of neglect or improper handling by the contractor. The contractor shall also be responsible for replacing all old, broken-down containers.

(e) Customer-owned trash containers are not allowed.
(Ord. of 9-8-2003, § 4)

Sec. 34-5. Preparation of waste placed in receptacles.

(a) Garbage, trash and other household refuse shall be contained with the container provided by the contractor, with the lid closed at all times. Waste materials shall be placed in a plastic bag that is properly secured at the top before the materials are placed in the container provided by the contractor for use with the automated garbage collection truck. Customers who consistently have more than one 96-gallon container of garbage will be required to purchase another container at the rate specified for an additional container, said rate as determined from time to time by the board of commissioners.

(b) The following materials shall not be placed on or within the containers:

- (1) Rocks;
- (2) Dirt;
- (3) Yard debris;
- (4) Hazardous or flammable liquids or chemicals;
- (5) Paint;
- (6) Hot coals or ashes; or
- (7) Heavy building materials.

(Ord. of 9-8-2003, § 5)

Sec. 34-6. Placement of container for collection.

(a) It shall be the responsibility of each customer of the town to place said containers beside the street, behind the curb or edge of pavement, on or prior to their scheduled collection day. Containers shall be placed within two feet of a curb and at least four feet from any object, such as fences, utility poles, mailboxes and the like. Handles of the carts must be facing away from the street.

(b) Containers may be placed at curbside after 5:00 p.m. on the day before the scheduled collection day. The container must then be removed from the curbside no later than 8:00 a.m. on the day following the scheduled collection day. The container must be returned to the principal structure or moved out of the street right-of-way and obscured from the street by an acceptable visual buffer. Any customer found to be in violation of this requirement will be subject to a \$100.00 civil penalty by the town.

(Ord. of 9-8-2003, § 6)

Sec. 34-7. Industrial, commercial and business collection.

(a) Industrial, commercial and small business establishments that consistently require more than one 96-gallon container per week can purchase additional containers at the rate specified for an additional container or may contract individually for bulk container service.

(b) Bulk containers must be of such size and quantity to accommodate the needs of the establishment.

(c) Doors of bulk containers must be kept closed and the container kept in good condition by the users. Bulk containers shall at all times be kept clean, neat, painted, in good state of repair and shall be easily accessible to collection personnel. The container site must be kept free of litter by the users and washed down periodically to eliminate odor. Cleaning up spilled material shall be the responsibility of the property owner or occupant.

(Ord. of 9-8-2003, § 7)

Sec. 34-8. Items to be disposed of by resident.

The following items may not be disposed curbside by the resident:

- (1) Bulky items and white goods such as furniture, mattresses, carpeting and appliances.
- (2) Used oil and batteries.
- (3) Paint in liquid form.
- (4) Pesticide containers and other hazardous chemicals.
- (5) Tires.

(Ord. of 9-8-2003, § 8)

Sec. 34-9. Solid waste disposal user fee.

(a) A monthly fee, set annually by the board of commissioners, shall be added to the utility bill of each resident and business within the corporate limits of the town.

(b) This fee shall be at least sufficient to cover the cost of services provided through the annual contract with outside vendors and the county public utilities.
(Ord. of 9-8-2003, § 9)

Chapter 35

RESERVED

Chapter 36

STREETS, SIDEWALKS AND OTHER PUBLIC PLACES*

Sec. 36-1. Bicycles, skates, skateboards and similar devices on property.

***State law references**—General city authority over all public streets, sidewalks and public passages in city limits, G.S. 160A-296; city may regulate direction of traffic flow and construction of driveway connections to streets, G.S. 160A-307.

Sec. 36-1. Bicycles, skates, skateboards and similar devices on property.

(a) No person shall operate, ride or use any motive device propelled or designed for propulsion by human power upon any public street, public sidewalk, public park or public vehicular area, business or church property located in the town unless specific permission has been granted in writing by the property owner. The term "motive device, propelled or designed for propulsion by human power" includes: tricycles, coasters, scooters, skateboards, roller skates, roller blades, sleds and wagons, but shall not include bicycles and wheelchairs or other devices operated or used by handicapped or disabled persons.

(b) It shall be unlawful for any person to ride a bicycle on the sidewalk in the central business section within the corporate limits of the town. All bicycles must be ridden in accordance with state regulations.

(c) Notwithstanding the foregoing, the chief of police is hereby authorized and empowered to specifically designate from time to time certain public streets or portions thereof upon which persons may be permitted to operate, ride or use any motive device propelled or designed for propulsion by human power under such rules and regulations as may be prescribed by the chief of police to ensure the public safety.

(d) Any person found guilty of violating this chapter shall be punished for each offense as follows:

(1) First offense: \$50.00.

(2) Second offense: \$100.00.

(3) Third offense and each offense thereafter: \$500.00.

(Prior Code, § 9.11)

Chapter 37

RESERVED

Chapter 38

TELECOMMUNICATIONS*

Article I. In General

Secs. 38-1—38-18. Reserved.

Article II. Cable Communications

Division 1. Generally

- Sec. 38-19. Statement of intent and purpose.
- Sec. 38-20. Short title.
- Sec. 38-21. Definitions.
- Secs. 38-22—38-45. Reserved.

Division 2. Franchise Requirements

- Sec. 38-46. Unlawful to operate without a franchise.
- Sec. 38-47. Franchises non-exclusive.
- Sec. 38-48. Term of the franchise.
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- Sec. 38-50. Rights reserved to grantor.
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- Sec. 38-58. Application and renewal fees.
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Division 3. Design Provisions

- Sec. 38-90. System design.
- Sec. 38-91. System service.
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- Sec. 38-95. Nondiscriminatory access to cable system.
- Secs. 38-96—38-118. Reserved.

Division 4. Institutional Network and Access

- Sec. 38-119. Institutional network, access channels.

***Editor's note**—Not printed within this chapter are customer service standards in Appendix A to Ordinance of Feb. 10, 2003, the ordinance from which this chapter's sections are derived.

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Secs. 38-120—38-136. Reserved.

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- Sec. 38-137. General technical standards and customer service practices.
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- Sec. 38-144. Cable system office hours and telephone availability.
- Sec. 38-145. Parental control.
- Sec. 38-146. Installations exceeding standard installation.
- Sec. 38-147. Service area and line extension policy.
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- Sec. 38-149. Access to inside wiring.
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Division 6. Construction Standards

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- Sec. 38-170. Compliance with laws.
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- Sec. 38-172. Repair of property.
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Division 9. Foreclosure, Receivership and Abandonment

- Sec. 38-252. Foreclosure.

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Sec. 38-253. Receivership.
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Division 10. Purchase of System

Sec. 38-285. Purchase by grantor upon termination of franchise term or revocation of franchise.
Secs. 38-286—38-303. Reserved.

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Division 12. Rights of Individuals Protected

Sec. 38-327. Discriminatory practices prohibited.
Sec. 38-328. Subscriber privacy.
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Sec. 38-360. Rate regulation.
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Sec. 38-362. Non-enforcement by the town.
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Sec. 38-364. Severability.
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Sec. 38-366. System construction capabilities and schedule.

ARTICLE I. IN GENERAL

Secs. 38-1—38-18. Reserved.

ARTICLE II. CABLE COMMUNICATIONS*

DIVISION 1. GENERALLY

Sec. 38-19. Statement of intent and purpose.

(a) The town, pursuant to applicable federal and state law, is authorized to grant one or more nonexclusive franchises to construct, operate, maintain, and reconstruct cable systems within the incorporated areas of the town.

(b) The board of commissioners finds that cable service has become an integral part of its citizens' lives, and that evolving cable systems have the potential to play an even more dramatic role in the future, providing great benefits and advanced capabilities to the town. At the same time, the board further finds that the public convenience, safety, and general welfare can best be served by establishing regulatory powers that are vested in the town or such persons as the town designates.

(c) In order to ensure that the town and its residents receive state-of-the-art cable services and capabilities as this technology further evolves, all franchises granted pursuant to this article will be subject to periodic review and modifications to keep current with changing law, technology, and services. It is the intent of this article to help ensure that local cable operators provide the best possible cable service to residents of the town, and any franchises issued pursuant to this article shall be deemed to include this finding as an integral part thereof.

(d) Further, it is recognized that cable systems have the capacity to provide entertainment and information services to the town's residents, and may have the capacity to provide a variety of broadband, interactive communications services to institutions and individuals. For these purposes, the following goals underlie the regulations contained herein:

- (1) Cable television services should be made available to all of the town's residents at the lowest reasonable cost.
- (2) The system should be capable of accommodating both the present and reasonably foreseeable future state-of-the-art cable television needs of the town.
- (3) The systems authorized by this article shall be responsive to the needs and interests of the local community, and shall provide the widest possible diversity of information sources and services to the public.

***State law references**—Statewide franchise for television service, G.S. 66-350 et seq.; effect of state law on existing local franchise agreements, G.S. 66-355; city may not grant or renew cable franchise after January 1, 2007, G.S. 66-351(a).

(4) Each of the above-enumerated goals shall be sought to the maximum extent, taking into account the costs and benefits to the residents of the town.

(e) The board further finds that on-going industry consolidation could result in less local accountability, and that, therefore, stringent customer service standards, including liquidated damages provisions, may be the only practical means of ensuring compliance and approximating the costs of franchise agreement noncompliance to the town and its residents.

(Ord. of 2-10-2003, § 34-81)

Sec. 38-20. Short title.

This article shall be known and may be cited as the Town of Vass Master Cable Services Regulatory Ordinance, and it shall become a part of this Code. This article shall take effect and be in force from and after its adoption for the grant of any new franchise agreement or renewal of any franchise existing at the time of adoption. All ordinances or parts of this Code in conflict with the provisions of this article are hereby repealed.

(Ord. of 2-10-2003, div. 2)

Sec. 38-21. Definitions.

For the purpose of this article, the following terms, phrases, words and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number. The words "shall" and "will" are mandatory and "may" is permissive. Terms not defined shall be given their common and ordinary meaning.

Additional service means any cable service other than basic service provided over the system.

Basic cable service means any cable service tier that includes the lawful retransmission of local television broadcast signals and any public, educational, and governmental access programming required by this article or a franchise agreement to be carried on the basic tier. Basic cable service as defined herein shall be consistent with 47 USC 543(b)(7)(1997), and shall include any signal of any television broadcast station that is provided by a grantee to any subscriber, except a signal which is secondarily transmitted by a satellite carrier beyond the local service area of such station. Additional signals may be added to the basic tier by the grantee.

Board means the Board of Commissioners of the Town of Vass, North Carolina or its delegates.

Cable act means the Cable Communications Policy Act of 1984, Pub. L. No. 98-549, codified at 47 USC 521-611 (1982 and Supp. V. 1987) as amended by the Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, and the Telecommunications Act of 1996, Pub. L. No. 104-104 (1996), as may, from time to time, be amended.

Cable internet service means any service offered by a grantee whereby persons receive access to the internet or high-speed data information services through the cable system.

Cable service or service means:

- (1) The one-way transmission to subscribers of video programming or other programming service;
- (2) Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service; and
- (3) For purposes of this article, cable internet service shall be considered cable service unless determined otherwise by applicable state or federal law.

Cable television system or cable system means a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable service to multiple subscribers within the franchise area, but such term does not include:

- (1) A facility that serves only to retransmit the television signals of one or more television broadcast stations;
- (2) A facility that serves subscribers without using any public right-of-way; or
- (3) A facility of a common carrier which is subject, in whole or in part, to the provisions of 47 USC 201—226, except that such facility shall be considered a cable system to the extent such facility, whether on a common carrier basis or otherwise, is used in the transmission of video programming directly to subscribers.

Capital contribution means a contribution provided by a grantee as determined in a franchise agreement that may at the town's discretion be utilized for the capital costs of the municipal access channel facilities, or to help defray the costs of an I-Net.

Capital costs means costs associated with the purchase of assets, products or other resources that are designed to provide service for more than one year, whether incurred during initial construction or throughout the life of the system.

Channel means a portion of the electromagnetic frequency spectrum that is capable of carrying one standard video signal, in either analog or digital form. Consistent with future changes in technology and/or applicable law, the parties may mutually agree to a different definition in an individual franchise agreement.

Complaint means any written or electronic inquiry, allegation, or assertion, made by a person regarding service.

Control means the holding of legal or financial control of or over the holder of the franchise, regardless of whether such control is direct or indirect, or is exercised or is permitted to be exercised directly or indirectly through other persons, holdings or entities. Control shall always be deemed to rest in the hands of any person that has the right or authority to establish or change any policy or practice of the holder of the franchise, whether such control may be exercised directly, or indirectly through other persons.

Converter means an electronic device that converts signals to a frequency not susceptible to interference within the television receiver of a subscriber and, through the use of an appropriate channel selector, permits a subscriber to view all authorized subscriber signals delivered at designated converter dial locations.

Direct incremental costs means the costs actually incurred by grantee in meeting an obligation under its franchise which grantee would not otherwise have incurred in order to either operate and conduct the business of its cable system or meet another obligation of the franchise.

Downstream signal means a signal originating from or provided by a system to a subscriber terminal or other terminal including video, audio, or digital signals or any other type of data or information for either programs or other uses such as security alert services, etc.

Drop means the cable or cables that connect users of the system to the distribution system in order to receive service.

Educational access channels means channels specially designated for locally produced noncommercial educational access programming use.

Effective date means the date a franchise becomes effective in accordance with the franchise and the rules and procedures of the town.

Fair market value means the price that a willing buyer would pay to a willing seller for a going concern based on the system valuation prevailing in the industry at the time.

FCC means the Federal Communications Commission or its designated representative.

Franchise means the rights and obligations extended by the town pursuant to an initial authorization or a renewal thereof, to a person to own, lease, construct, maintain, or operate a cable system in the right-of-way within the franchise area for the purpose of providing cable services. Any such authorization, in whatever form granted, shall not mean or include:

- (1) Any other permit or authorization required for the privilege of transacting and carrying on a business within the town required by the ordinances and laws of the town, including the provision of telecommunications services;
- (2) Any generally applicable nondiscriminatory permit, agreement, or authorization required in connection with operations in the right-of-way including, without limitation, permits and agreements for placing devices on or in poles, conduits, or other structures, whether owned by the town or a private entity, or for excavating or performing other work in or along the right-of-way.

Franchise agreement means that document which grants a franchise pursuant to this article.

Franchise area means the geographic area for which a franchise is granted under the authority of this article. If not otherwise specifically stated in the franchise agreement, the franchise area shall be the entire geographic area within the town as it is now, or may in the future be, constituted.

Franchise fee includes any tax, fee, or assessment of any kind imposed by the town or other governmental entity on a grantee or cable subscriber or both solely because of their status as such. The term "franchise fee" does not include:

- (1) Any tax, fee, or assessment of general applicability (including any such tax, fee, or assessment imposed on both utilities and cable operators or their services but not including a tax, fee, or assessment that is unduly discriminatory against cable operators or cable subscribers);
- (2) Capital costs that are required by a franchise agreement to be incurred by a grantee for public access channels equipment and facilities;
- (3) Requirements or charges incidental to the award or enforcement of a franchise, including payments for bonds, security funds, letters of credit, insurance, indemnification, penalties, or liquidated damages; or
- (4) Any fee imposed under title 17 of the United States Code.

Government access channels means channels specially designated for locally produced noncommercial governmental access programming use.

Grantee means a person who is granted a franchise or that person's lawful successors, transferees, or assignees.

Grantor means the town.

Gross revenues means any and all revenue, whether received in the form of cash, credits, barter, trade, property or consideration of any kind or nature, arising from, attributable to, or in any way derived by the grantee from the operation of a grantee's system to provide cable service, whether such revenue is received by the grantee, its affiliates, or any person in which the grantee has a financial interest, or by any other person who operates the system, directly or indirectly. This definition is intended to reach as broadly as possible to encompass all revenue. The term "gross revenue" includes, by way of illustration and not limitation, amounts charged for basic service; optional premium, per-channel, per-program services; cable programming services; audio services; launch fees; channel guide subscriptions; installation, disconnection, reconnection, and changes-in-service; equipment sales or rentals; leased channel fees; late fees and administrative charges of any type; consideration received from programmers; advertising revenue; and revenue from the sale of subscriber names and addresses. To the extent that grantee receives revenue from cable services provided to a subscriber for a fixed price that also includes non-cable services (i.e., those services are bundled), grantee shall allocate an appropriate portion of those revenues for inclusion in gross revenues. If the fixed price of the bundled services is lower than the aggregate of the prices of those services if purchased individually, then the appropriate amount of the revenue to be allocated to each service shall be proportional to the individual price of that service when compared to the aggregate of the individual prices of those services when unbundled. The term "gross revenue" shall not include:

- (1) Bad debt except to the extent that bad debt is recovered.

- (2) The revenue of any person including, without limitation, a supplier of programming to the grantee to the extent that said revenue is also included in gross revenue of the grantee.
- (3) Pass-through payments received by the grantee from third-party programmers to purchase services from persons other than the grantee, which services benefit only the third-party programmers and for which the grantee neither received nor provides any consideration.
- (4) Any taxes on services furnished by the grantee which are imposed directly on any subscriber by the state, the town or other governmental unit and which are collected by the grantee on behalf of said governmental unit. A franchise fee is not such a tax.

To the extent the scope of gross revenues is limited by federal law or judicial action, the definitions herein shall be so amended.

Headend means the electronic control center of the system including components that amplify, filter, and convert incoming broadcast and other television and electronic signals for distribution over the cable system.

Institutional network or *I-Net* means capacity fibers or both, from both within the primary cable network and/or separately constructed networks that are dedicated to municipal users or other governmental and educational users as determined by the town for two-way, broadband, noncommercial, noncompetitive, not for profit communications. The term "I-Net" includes all equipment and maintenance of equipment required to make the capacity available including but not limited to fiber, cable modems, coaxial cable, and all switching, routing, transmitting and receiving equipment necessary for the use of the I-Net as determined in the individual franchise agreement.

Institutional network services means the provision of an I-Net by a grantee to municipal users and other governmental and educational users as determined by the town, pursuant to the terms of a franchise agreement for noncommercial, noncompetitive, not-for-profit applications including but not limited to, two-way dedicated voice, data, video, internet and telephony channels connecting and interconnecting user facilities; computerized traffic control systems; GIS systems; and the interconnection of facilities serving police, fire and other public safety systems.

Lockout device means a mechanical or electrical accessory to a subscriber's terminal that inhibits the video or audio portions of a certain program or certain channel provided by way of a cable system.

Noncommercial means channels or programming that is operated on a not-for-profit basis.

Normal business hours means those hours during which most similar businesses in the community are open to serve customers. In all cases, the term "normal business hours" must include some evening hours at least one night per week and/or some weekend hours.

Normal operating conditions means those service conditions which are within the control of the franchisee. Those conditions which are not within the control of the franchisee include, but

are not limited to, natural disasters, civil disturbances, power outages, telephone network outages and severe or unusual weather conditions. Those conditions which are ordinarily within the control of the franchisee include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance or upgrade of the cable system.

Other programming service means information that a grantee makes available to all subscribers generally.

Person means any corporation, partnership, proprietorship, individual, organization, company, governmental entity or any natural person.

Public building means a building, or any portion thereof, owned, leased, or otherwise occupied, by the town.

Reasonable notice means written notice addressed to the town or grantee at such location as the parties have designated in the franchise agreement as the address to which notice shall be transmitted to it, which notice shall be sent by certified mail and postmarked not less than seven business days prior to that day in which the party giving such notice shall commence any action which requires the giving of notice. In computing said seven days, holidays recognized by the town shall be excluded.

Resident means any person residing in the town.

Right-of-way means each of the following which have been, or are hereafter, dedicated to the public and maintained by any public authority or by others and located within the town, including without limitation, the surface and space within, above and below any real property in which the town has an interest in law or equity, whether held in fee, or other estate or interest, or as a trustee for the public, including, but not limited to, any public street, boulevard, road, highway, freeway, lane, alley, court, sidewalk, parkway, swale, river, tunnel, viaduct, bridge, park, or any other place, area, easements, rights-of-way and similar public property and areas, or real property owned by or under the control of the town.

School means any state-accredited public or nonprofit educational institution including primary and secondary schools, both public and private.

Service interruption means the loss of picture or sound on one or more cable channels.

Standard installation means any service drop not exceeding 150 feet from a single point or pedestal attachment to the subscriber's residence.

State-of-the-art means the addition of new services and associated equipment as they are developed, available and when economically feasible and marketable to subscribers as specifically required under the terms of a franchise agreement.

Subscriber means any person who or which elects to subscribe for any purpose to cable service provided by a grantee by means of, or in connection with, the cable system, and whose premises or facilities are physically wired and lawfully activated to receive cable service from grantee's cable system.

System means a grantee's cable system operated pursuant to a franchise agreement within the franchise area.

Town means the Town of Vass, North Carolina, as it is now, or may in the future be, constituted.

Town administrator means a person designated by the board to represent the town in all business with the grantee.

Trained representative means employees of the grantee who have the authority and capability while speaking with a subscriber to, among other things, answer billing questions, adjust bills, and schedule service and installation calls.

Upstream signal means a signal originating from a subscriber's terminal to the headend of the system including video, audio, or digital signals or any other type of data or information for either programs or other uses such as security alert services, etc.
(Ord. of 2-10-2003, §§ 34-82—34-135)

Secs. 38-22—38-45. Reserved.

DIVISION 2. FRANCHISE REQUIREMENTS

Sec. 38-46. Unlawful to operate without a franchise.

It shall be unlawful for any person to construct, operate or maintain a cable system or to provide cable service in the town without a franchise. Any such person shall be subject to a fine of \$500.00 per day. The payment of such fine notwithstanding, all such violators shall be subject to all other applicable provisions of this division, including but not limited to the payment of a franchise fee.

(Ord. of 2-10-2003, § 34-136)

Sec. 38-47. Franchises non-exclusive.

Any franchise granted pursuant to this division shall be nonexclusive. The grantor specifically reserves the right to grant, at any time, such additional franchises for a cable system or any component thereof, to any other person including itself, as it deems appropriate, subject to applicable federal and state law.

(Ord. of 2-10-2003, § 34-137)

Sec. 38-48. Term of the franchise.

A franchise agreement shall establish the term of each individual franchise.

(Ord. of 2-10-2003, § 34-139)

Sec. 38-49. Federal, state, and town jurisdiction.

(a) The town shall exercise appropriate regulatory authority under the provisions of this division, the Cable Act, and all applicable laws. This authority shall be vested in the town board of commissioners and administered through the town clerk or his designee in order to provide day-to-day administration and enforcement of the provisions of this division and any franchise granted hereunder, and to carry out the town's responsibilities with regard to cable service.

(b) This division shall be construed in a manner consistent with all applicable federal and state laws.

(c) In the event that the federal or state government discontinues preemption in any area of cable communications over which it currently exercises jurisdiction in such manner as to expand rather than limit municipal regulatory authority, grantor may, if it so elects, adopt rules and regulations in these areas to the extent permitted by law, provided the same do not materially alter the rights and obligations of a grantee under any existing franchise.

(d) Grantee's rights are subject to the police powers of the town to adopt and enforce ordinances necessary to the health, safety, and welfare of the public. Grantee shall comply with all applicable general laws and ordinances enacted by the town pursuant to that power.

(e) The provisions of this division shall apply to all franchises granted or renewed after the effective date of the ordinance from which this article is derived. This division shall also apply to all existing franchises, to the extent not inconsistent with the terms of any such franchise or applicable law. In the event of any conflict between the terms and conditions of a franchise agreement and the provisions of this division, and other generally applicable regulatory ordinances of the town, the specific terms of the franchise agreement shall control. A franchise agreement (including all of grantee's particular rights, powers, protections, privileges, immunities and obligations associated therewith as the same exist on the date hereof) shall constitute a legally binding contract between the town and grantee, and as such, cannot be amended, modified or changed by the town without the consent of grantee in any manner whatsoever, whether by ordinance, rule, regulation or otherwise, to impose on grantee more stringent or burdensome requirements or conditions; provided, however, that nothing herein contained shall preclude the town from the proper exercise of its police powers, or its powers of eminent domain.

(f) In the event of a change in state or federal law which by its terms would require the town to amend this article, the parties shall modify the existing franchise in a mutually agreed upon manner.

(g) The grantee shall not be relieved of its obligation to comply with any of the provisions of this division or a franchise agreement by reason of any failure of the town to enforce prompt compliance.

(Ord. of 2-10-2003, § 34-140)

Sec. 38-50. Rights reserved to grantor.

In addition to any rights specifically reserved to grantor by this division or a franchise agreement, grantor reserves to itself every right and power that is required to be reserved by a provision of any other ordinance or under any other franchise.

(Ord. of 2-10-2003, § 34-141)

Sec. 38-51. Franchise agreement.

(a) Every grantee shall agree to the terms and provisions of a franchise agreement as negotiated between the grantee and the grantor.

(b) In addition to those matters required elsewhere in this division to be included in the franchise agreement, each franchise agreement must contain the following express representations by each grantee:

- (1) The grantee has examined all of the provisions of this article and accepts and agrees to all of the provisions of this article, as it exists as of the effective date of the grantee's franchise agreement, except as set forth in this chapter and any supplementary specifications as to construction, operation, or maintenance of the system which the town may include in the franchise agreement, unless otherwise agreed in the applicable franchise agreement.
- (2) The grantee recognizes, unless otherwise agreed in the applicable franchise agreement, the right of the town to adopt such additional regulations of general applicability as it shall find necessary in the exercise of its police power.

(c) Every franchise agreement shall contain such further conditions or provisions as may be negotiated between the town and a grantee, except that no such conditions or provisions shall be such as to conflict with any provisions of state or federal law. In case of any conflict or of any ambiguity between any terms or provisions of a franchise agreement and this division, the provisions of the franchise agreement shall control.

(Ord. of 2-10-2003, § 34-142)

Sec. 38-52. Initial franchise applications.

Any person desiring an initial franchise for a cable system shall file an application with the town. An application for an initial franchise for a cable television system shall contain, where applicable:

- (1) A statement as to the proposed franchise area;
- (2) Resume of prior history of applicant, including the legal, technical, and financial expertise of applicant in the cable television field;
- (3) List of the partners, general and limited, of the applicant, if a partnership, or a list of the principals of the applicant, if a limited liability company, or the percentage of stock owned or controlled by shareholders holding ten percent or greater, if a corporation;

- (4) List of officers, directors, and managing employees of applicant, together with a description of the background of each such person;
 - (5) The names and addresses of any parent or subsidiary of applicant or any other business entity owning or in control of applicant, in whole or in part, or owned or controlled in whole or in part by applicant;
 - (6) A current financial statement of applicant verified by a CPA audit or otherwise certified to be true, complete, and correct to the reasonable satisfaction of the town;
 - (7) Proposed preliminary construction and cable service schedule; and
 - (8) Any additional information that the town may require for the administration of the franchise.
- (Ord. of 2-10-2003, § 34-143)

Sec. 38-53. Consideration of initial applications.

Upon receipt of any application and application fee for an initial franchise, the town administrator shall prepare a report and make his recommendations respecting such application to the board.

(Ord. of 2-10-2003, § 34-144)

Sec. 38-54. Franchise renewal.

Franchise renewals shall be in accordance with applicable law including, but not limited to, the Cable Communications Policy Act of 1984, as amended. Grantor and a grantee, by mutual consent, may enter into renewal negotiations at any time during the term of the franchise.

(Ord. of 2-10-2003, § 34-145)

Sec. 38-55. Grant of additional franchise and competing service.

Competing or overlapping franchises may have an adverse impact on the public rights-of-way and on the quality and availability of services to the public. In considering whether to grant one or more additional franchises, the town shall specifically consider, and address in a written report or in provisions of the franchise agreement, the following issues:

- (1) The positive and/or negative impact of an additional franchise on the community.
- (2) The ability and willingness of the specific applicant in question to provide cable services to the franchise area.
- (3) The amount of time it will take the applicant to complete construction of the proposed system and activate service in the franchise area; and, whether the applicant can complete construction and activation of its system in a timely manner.
- (4) The financial capabilities of the applicant and its guaranteed commitment to make the necessary investment to erect, maintain, and operate the proposed cable system for the duration of the franchise term. In order to ensure that any prospective grantee does have the requisite current financial capabilities, the town may request equity and debt

financing commitment letters, current audited financial statements, bonds, letters of credit, or other documentation to demonstrate to the town's satisfaction that the requisite funds to construct and operate the proposed system are available.

- (5) The quality and technical reliability of the proposed system, based upon the applicant's plan of construction and the method of distribution of signals, and the applicant's technical qualifications to construct and operate such system.
- (6) The experience of the applicant in the erection, maintenance, and operation of a cable system.
- (7) The capacity of the public rights-of-way to accommodate one or more additional cable systems and the potential disruption of those public rights-of-way and private property that may occur if one or more additional franchises are granted.
- (8) The likelihood and ability of the applicant to continue to provide competing cable service to subscribers within the franchise area for the duration of the franchise.
- (9) Such other information as the town may deem appropriate to be considered prior to granting any competing or overlapping franchise.
- (10) The purpose of this section is to ensure that any competition which may occur among grantees will be on terms which when taken as a whole are non-discriminatory according to federal law.

(Ord. of 2-10-2003, § 34-146)

Sec. 38-56. Permits for non-franchised entities.

(a) The town may issue a license, easement, or other permit to a person other than the grantee to permit that person to traverse any portion of the grantee's franchise area within the town in order to provide service outside, but not within the town. Such license or easement, absent a grant of a franchise in accordance with this division, shall not authorize nor permit said person to provide cable service to any subscriber within the town nor render any other service within the town.

(b) The granting of such license, easement or permit shall be conditioned upon the payment of fee for occupancy of the public right-of-way to the extent permitted by applicable law.

(Ord. of 2-10-2003, § 34-147)

Sec. 38-57. Review for competition.

The town recognizes that the cable television and telecommunications industries are in a period of convergence, that the technologies and services provided by these industries are rapidly changing, and that the Telecommunications Act of 1996 promoted and encouraged competition between and among these formally discrete industries. At this time it is premature to know fully the extent to which there will be changes in law, technology or services that may impact entities that have been or may be granted franchises or licenses to use the town's rights-of-way. It is the desire of the town to be a communications friendly town that encourages the development of competitive advanced communications capabilities for the benefit of all its

citizens. For this reason the regulatory ordinances and franchises of the town should not impede or restrict the fair opportunity to compete, but rather are intended to provide uniform and consistent requirements for all similarly situated providers.

(Ord. of 2-10-2003, § 34-148)

Sec. 38-58. Application and renewal fees.

(a) An application fee shall not be deemed to be franchise fees within the meaning of section 622 of the Cable Act (47 USC 542), and such payments shall not be deemed to be:

- (1) Payments in kind or any involuntary payments chargeable against the compensation to be paid to the town by grantee; or
- (2) Part of the compensation to be paid to the town by grantee pursuant to this division or a franchise agreement.

(b) All applicants for an initial franchise grant shall submit an application fee of \$6,500.00 to compensate the town for its costs in reviewing, preparing and awarding a franchise, including the costs of outside consultants. Upon grant of a franchise the town may request the payment of an additional fee to the extent that the reasonable costs of the franchise review and negotiation process exceed the initial application fee amount. Consistent with the Cable Act, all such fees shall not constitute or be credited towards a grantee's franchise fee obligations. Reasonable costs include staff time, professional fees, and administrative costs as determined by the town to be necessary.

(c) The town reserves the right, unless prohibited by applicable law, to require a grantee to pay the reasonable costs of the franchise renewal and negotiation process. Reasonable costs include staff time, professional fees, and administrative costs determined by the town to be necessary and shall generally not exceed \$2,500.00.

(Ord. of 2-10-2003, § 34-149)

Secs. 38-59—38-89. Reserved.

DIVISION 3. DESIGN PROVISIONS

Sec. 38-90. System design.

(a) Every grantee shall offer service that meets the current and future needs of the town, taking into account the costs of meeting those needs. The franchise agreement shall incorporate a description of the grantee's proposal including the general design and capabilities of the system to identify for the town how the system will meet the current and future cable service needs of the town.

(b) State-of-the-art review. Grantee agrees to maintain the cable service and cable system compatible with changes in law, technology, and programming and services to maintain a state-of-the-art system throughout the franchise term.

(Ord. of 2-10-2003, § 34-150)

Sec. 38-91. System service.

Every system shall pass by every single-family dwelling unit and multiple-family dwelling unit within the franchise area in accordance with line extension policies set forth in this division. Service shall be provided to subscribers in accordance with the schedules and line extension policies. Unless specified otherwise, service shall also be extended to commercial buildings on a consistent basis with the residential line extension policies.

(Ord. of 2-10-2003, § 34-151)

Sec. 38-92. Drops to public buildings.

(a) Every grantee shall provide installation of at least one cable drop, and provide monthly basic cable service, without charge, to public buildings in accordance with the line extension policies of this division, or as otherwise specified in the applicable franchise agreement. Schools shall also receive one cable drop and basic cable service at no charge. Following the town's designation of additional public buildings to receive cable service, and upon the town's request, a grantee shall complete construction of the drop and outlet within 30 days.

(b) All such cable service outlets shall not be utilized for commercial purposes.

(c) In instances where the drop to the public building exceeds 150 feet, the grantee may charge for the actual and reasonable cost of its labor and materials.

(Ord. of 2-10-2003, § 34-152)

Sec. 38-93. Use of grantee facilities.

The town shall have the right to install and maintain town equipment upon the poles and conduit owned by the grantee, at the actual cost of the space and on terms mutually agreeable to the town and the grantee. Installed town equipment shall not unreasonably interfere with the operation of the cable system. The town shall relinquish its use of such poles and conduit upon 90 days' notice from grantee that town's use interferes with the grantee's actual or anticipated use of same.

(Ord. of 2-10-2003, § 34-153)

Sec. 38-94. Upgrade of system.

Every grantee shall upgrade its system (herein referred to as the system upgrade), if required, as set forth in its respective franchise agreement.

(Ord. of 2-10-2003, § 34-154)

Sec. 38-95. Nondiscriminatory access to cable system.

The grantee may be required to allow nondiscriminatory access to its cable system if such shall be required by federal law. Prior to the enactment of any such requirement, a grantee shall be provided with reasonable notice and an opportunity to be heard, including the right

to present evidence with respect to the need for such a requirement. The grantee reserves, and has not waived, and right it may have, or may later be determined to have, to challenge the town's implementation of an open access requirement.

(Ord. of 2-10-2003, § 34-155)

Secs. 38-96—38-118. Reserved.

DIVISION 4. INSTITUTIONAL NETWORK AND ACCESS

Sec. 38-119. Institutional network, access channels.

(a) Every grantee shall, to the extent required by the franchise agreement, provide institutional networks as a condition of an initial grant or renewal, or transfer of a franchise. To the extent that a grantee is obligated to provide such support pursuant to its franchise agreement, such obligation will be implemented in a competitively neutral manner, on a per subscriber basis with respect to any other franchises granted after the adoption of the ordinance from which this article is derived. Costs associated with construction and operation of an I-Net shall not be a franchise fee, unless otherwise specified in the franchise agreement.

(b) Every grantee shall provide a channel, bandwidth capacity, service, and funding for separate access channels, as specified in its franchise agreement. All such access channels shall be available to all subscribers as part of basic cable service.

(Ord. of 2-10-2003, § 34-156)

Secs. 38-120—38-136. Reserved.

DIVISION 5. TECHNICAL STANDARDS AND CUSTOMER SERVICE PRACTICES

Sec. 38-137. General technical standards and customer service practices.

(a) This division incorporates technical standards and establishes customer service practices with which a grantee must comply. In addition, a grantee shall comply with any additional or stricter requirements established by FCC regulations, or other federal regulation that may be adopted or amended from time to time.

(b) A grantee shall maintain such equipment and keep such records as are required to enable the grantor to determine whether the grantee is in compliance with all standards required by these regulations and other applicable laws.

(Ord. of 2-10-2003, § 34-157)

Sec. 38-138. Books and records available to the grantor.

(a) The grantee shall maintain a maintenance office with a reasonable proximity to the town. The town shall have the right, upon reasonable request, to inspect and copy or transcribe at any time during normal business hours, all books, records, maps, plans, financial records, service complaint logs, performance test results and other like materials of the grantee kept or

maintained by grantee or under its control concerning the operations, finances, affairs, transactions or property of grantee when necessary to ascertain the grantee's compliance with this division or the franchise agreement. Access to the aforementioned records shall not be denied by the grantee on the basis that said records contain proprietary information.

(b) If any of such maps or records are not kept in the town, or upon reasonable request made available in the town, and if the town shall determine that an examination of such records is necessary or appropriate, all reasonable expenses necessarily incurred in making such examination shall be paid by grantee.

(Ord. of 2-10-2003, § 34-158)

Sec. 38-139. Reports required.

The grantee shall file with the town, upon reasonable request, unless otherwise noted:

- (1) *Regulatory communications.* All reports required by the Federal Communications Commission (FCC) including, but not limited to, annual proof of performance tests and results, Equal Employment Opportunity (EEO) reports, and all petitions, applications and communications of all types submitted by grantee to the FCC, the Security and Exchange Commission (SEC), or any other federal or state regulatory commission or agency, having jurisdiction over any matter affecting operation of the grantee's system.
- (2) *Facilities report.* An annual report setting forth the physical miles of plant construction and plant in operation at the end of the fiscal year will be made available at the local office of the grantee for review by the town.
- (3) *Rebuild / upgrade / construction reports.* Such reports shall be sent to the town 30 days after the initial franchise agreement is awarded and monthly thereafter until construction is completed as specified in this article or the franchise agreement.
- (4) *Proof of performance tests.* Proof of performance test results performed as required by the FCC shall be supplied to the town.
- (5) *Test required by town.* Tests required by town as specified in this article shall be submitted within 30 days of notification.
- (6) *Grantee rules.* The grantee's schedule of charges, regular subscriber service policy regarding the processing of subscriber complaints, delinquent subscriber disconnect and reconnect procedures and any other terms and conditions adopted as the grantee's policy in connection with its subscribers. All such charges and policies shall be in accordance with applicable state and federal laws, rules or regulations.
- (7) *Proof of bonds and insurance.* The grantee shall submit to the town the required performance bond, or a certified copy thereof, and insurance certificates as required under the terms and conditions described in this division.

- (8) *Financial and ownership reports.* The following financial reports for the franchise area shall be submitted to the town, upon reasonable notice and as required by the town:
- a. A statement verifying the amount of gross annual revenues derived from the franchise, certified by the vice president for finance or a duly authorized officer or manager of the grantee.
 - b. An annual list of officers and members of the board of directors of the grantee and of the grantee's parent corporation, if applicable.
- (9) *Additional reports.* The grantee shall prepare and furnish to the town at the times and in the form prepared in the normal course of business, such additional reports with respect to its operation, affairs, transactions or property, as may be reasonably necessary and appropriate to ascertain the grantee's compliance with this division or the franchise agreement.
- (Ord. of 2-10-2003, § 34-159)

Sec. 38-140. Technical standards.

The technical standards used in the operation of a system shall comply, at a minimum, with the technical standards promulgated by the FCC relating to cable systems pursuant to the FCC's rules and regulations found in title 47, sections 76.601 to 76.617, as may be amended or modified from time to time, which regulations are expressly incorporated herein by reference. The results of any tests required by the FCC, or a franchise agreement shall be made available to the town within 30 days of written request.

(Ord. of 2-10-2003, § 34-160)

Sec. 38-141. Test and compliance procedure.

(a) *Performance.* Tests for a system shall be performed periodically in a manner so as to conform with FCC specifications. The town shall notify the grantee of its desire to witness such tests for a period of 90 days beyond the date of request. The grantee shall notify the town at least three business days prior to conducting such tests. Representatives of the town may witness the tests and written test reports shall be made available to the town upon request. If any test locations fail to meet such specifications, the grantee shall be required to indicate what corrective measures have been or will be taken. The grantee shall have the site re-tested on a timely basis as needed.

(b) *Complaints.* Whenever there has been similar complaints made or when there exists other evidence, which, in the reasonable judgment of the town, casts doubt on the reliability or quality of the grantee's system, the town shall have the right and authority to compel the grantee to test, analyze, and report on the performance of its system. The town may require additional tests, full or partial repeat tests, different test procedures, or tests involving a specific subscriber's terminal. Reports on such tests shall be delivered to the town no later than 30 days after the town formally requests the tests and shall include the following information: the nature of the complaints which precipitated the special tests; what system component was tested; the equipment used, and procedures employed in said testing; the results of such tests;

and methods by which said complaints were resolved. Said tests and analyses shall be supervised by an engineer or other trained technical specialist who shall sign all records of the special tests and forward same to the town with a report interpreting the results of the tests and recommending what actions should be taken by the town. All such tests conducted by grantee shall be at the expense of the grantee.

(c) *Consultants.* The town shall have the right to employ or contract with qualified consultants and attorneys if necessary or desirable, to assist in the administration of this, or any other section of this article or the franchise agreement. If an independent qualified consultant makes a finding that grantee's test results differ by more than ten percent from the FCC technical standard, the grantee shall reimburse the town for its reasonable costs associated with the testing.

(Ord. of 2-10-2003, § 34-161)

Sec. 38-142. Emergency requirements.

Each grantee must provide emergency alert override capabilities in a manner consistent with the FCC's emergency alert system (EAS) rules and consistent with any state and/or regional emergency alert system plans adopted in response to the FCC's EAS rules that are applicable to the franchise area.

(Ord. of 2-10-2003, § 34-162)

Sec. 38-143. Programming decisions.

Each grantee shall provide programming from each of the broad programming categories identified in its franchise agreement. All programming decisions remain within the sole discretion of each grantee provided that each grantee complies with federal law regarding notice to grantor and subscribers prior to any channel additions, deletions, or realignments, and further subject to the grantee's signal carriage obligations pursuant to 47 USC 531—536, as may be amended and subject to the town's rights pursuant to 47 USC 545, as may be amended. The grantee shall use its good faith efforts to ensure diversity of programming.

(Ord. of 2-10-2003, § 34-163)

Sec. 38-144. Cable system office hours and telephone availability.

Attached as appendix A are the Federal Communication Commission (FCC) Customer Service Standards with which the grantee must comply.

(Ord. of 2-10-2003, § 34-145)

Sec. 38-145. Parental control.

Every grantee shall make available to any subscriber upon request a lockout device for blocking both video and audio portions of any channel of programming entering the subscriber's premises. Such device shall be provided at a reasonable charge, except to the extent that federal law specifically provides otherwise. The grantee may, however, require a reasonable

security deposit for the use of such a device. This section shall not apply to channels that are on the basic or expanded basic tier of programming unless the subscriber receives service via a programmable terminal device, such as a converter.

(Ord. of 2-10-2003, § 34-165)

Sec. 38-146. Installations exceeding standard installation.

Service drops in excess of 150 feet and concealed wiring in the home shall be charged to the subscriber based upon time and material. The desire of the subscriber as to the point of entry into the residence shall be observed whenever possible. Runs in building interiors shall be as unobtrusive as possible. The grantee shall use due care in the process of installation and shall repair any damage to the subscriber's property caused by said installation. Such restoration shall be undertaken within no more than ten days after the damage is incurred and shall be completed as soon as possible thereafter.

(Ord. of 2-10-2003, § 34-167)

Sec. 38-147. Service area and line extension policy.

(a) No grantee may discriminate in the build-out of its system to a particular area of the town in providing service to an individual or groups of residents on the basis of race, creed, religion or economic condition. Unless the franchise agreement provides otherwise, every grantee shall serve all areas of the town equally. In areas annexed with populations of at least 20 residential dwelling units per cable mile as measured from a grantee's existing distribution system, grantee shall build plant and extend service within 12 months of the date of annexation. The franchise agreement shall provide a schedule of the areas to be served, and the specific build-out requirements of the grantee, and shall also describe the process for extending service to areas that will meet minimum density requirements at some future date. Unless the franchise agreement provides otherwise, every grantee shall extend service to commercial areas at no additional cost.

(b) During the initial construction phase of a new system, a grantee may implement its system in stages pursuant to a schedule and line extension policy established in its franchise agreement that serves all areas of the town equally, provided that any deviation from the service and line extension requirements of this division do not discriminate between different areas of the town on the basis of race, creed, religion or economic condition. A grantee of any such new franchise shall comply with all customer service obligations with respect to customers whose premises are passed by portions of the grantee's network which are fully activated, tested and available for service.

(c) Cost-sharing. In areas with less than 20 homes per proposed cable mile, grantee shall offer a cost-sharing arrangement to residents. The grantee shall bear its pro rata share of the current construction costs based upon the actual number of homes per mile. The cost-sharing arrangement shall consist of the following: On the request of a resident desiring service, grantee shall prepare, at its cost, an engineering survey and cost analysis to determine the cost of the plant extension required to provide service to the resident from the closest usable point

on the cable system. The cost of construction shall be allocated based on the following formula: If a request for extension into a residential area requires the construction of cable plant which does not pass at least 20 homes per cable mile, a proportionate share of construction costs shall be borne by grantee and by the subscribers. For example, if there are ten dwelling units per mile, grantee's share will equal 10/20ths of the construction cost. The remaining cost will be shared equally by each subscriber in the area to be constructed. The line extension formula shall also be applied to a portion of a cable mile meeting proportionate density requirements. For example, if there are ten dwelling units per one-half mile, the grantee shall construct the plant. The cost sharing described above would be utilized if there were less than the proportionate share of dwelling units per the portion of a mile needed to reach the dwelling units. Should additional subscribers request cable service, subscribers utilizing the cost-sharing plan for extension shall be reimbursed pro-rata for their contribution or a proportional share thereof. In such case, the pro-rata shares shall be recalculated and each new subscriber shall pay the new pro-rata share, and all prior subscribers shall receive refunds. In any event, at the end of 24 months from completion of the project, the subscribers are no longer eligible for refunds, and the amounts paid by subscribers will be credited to the plant account of the grantee. The average cost of the line extension shall be recalculated annually based upon the current costs of labor and material. Each subscriber contributing toward the direct cost of the line extension shall waive all ownership interest in the line extension. All equipment and components of the line extension, including, but not limited to, cable wire, electronics and pedestals shall at all times remain the exclusive property of the grantee.

(Ord. of 2-10-2003, § 34-168)

Sec. 38-148. Town monitoring.

In addition to free cable service required by the division, grantee shall provide one service feed to town hall (unless otherwise specified by town) that shall receive without charge all basic and expanded basic cable programming provided by grantee. Such service shall be provided in such a manner that the town may monitor the programming and use of the cable system for compliance with the franchise agreement and this division. The service provided pursuant to this requirement shall be in a secure office location, and not in a location open to public viewing.

(Ord. of 2-10-2003, § 34-169)

Sec. 38-149. Access to inside wiring.

Access to, and ownership of, inside wiring shall be in accordance with section 76.800 et seq. of the FCC rules and regulations as the same may be amended from time to time.

(Ord. of 2-10-2003, § 34-170)

Secs. 38-150—38-168. Reserved.

DIVISION 6. CONSTRUCTION STANDARDS

Sec. 38-169. Right-of-way construction.

Prior to commencing any construction in the town, a grantee must obtain all necessary permits and licenses required by federal, state and generally applicable town laws, ordinances

and rules, and pay all associated nondiscriminatory fees. Further, a grantee shall comply with all applicable laws, ordinances, rules, and standards relating to the construction, operation and maintenance of a cable system.

(Ord. of 2-10-2003, § 34-171)

Sec. 38-170. Compliance with laws.

The construction, installation, and maintenance of the cable system shall be effectuated by grantee in a manner that is consistent with the laws, ordinances and construction standards of the state, the Occupational Safety and Health Administration, the National Electrical Safety Code, National Electrical Code and the FCC, to the extent applicable, as well as all other laws, rules, regulations and ordinances that are generally applicable and promulgated pursuant to the town's lawful police power. All open connections on splitters, couplers and other devices shall be properly terminated.

(Ord. of 2-10-2003, § 34-172)

Sec. 38-171. Minimum interference.

All of the grantee's construction, installation, operation, repair and maintenance, and the arrangement of its lines, cables and other appurtenances, on public or private property, shall be conducted in such a manner as to not unreasonably interfere with the rights and reasonable convenience of property owners that may be affected. In the event such work is not in accordance with applicable rules and regulations, the town may require the removal, within such period of time after notice as is reasonable under the circumstances, of the grantee's lines, cables and appurtenances from the rights-of-way in question, at the sole expense of the grantee.

(Ord. of 2-10-2003, § 34-173)

Sec. 38-172. Repair of property.

The grantee shall promptly repair and restore any town or private property which may be damaged as a result of the construction, installation, operation, repair, maintenance or removal of the cable system. Any such property damaged or destroyed shall be promptly repaired and restored by the grantee, at the grantee's sole cost and expense to the reasonable satisfaction of the town, to its condition prior to being damaged, or shall be replaced by grantee with equivalent property. The town may inspect and approve the condition of the right-of-ways and cables, wires, attachments, and poles after restoration. The liability, indemnity, insurance and performance bond as provided herein shall continue in full force and effect during the period of any removal and until the grantee has fully complied with the terms and conditions of this division and the franchise agreement. In the event of a failure by the grantee to complete any restoration work required by the town within the time as may be established by the town and to the reasonable satisfaction of the town, the town may, following reasonable notice to the grantee, cause such work to be done and the grantee shall reimburse the town the

cost thereof within 30 days after receipt of an itemized list of such costs, or the town may at its option recover such costs through the performance bond provided by the grantee. The town shall be permitted to seek legal and equitable relief to enforce the provisions of this section. (Ord. of 2-10-2003, § 34-174)

Sec. 38-173. Erection of poles.

The grantee shall not erect any pole on or along any right-of-way in an existing aerial utility system without the advance written approval of the town. If additional poles in an existing aerial route are required, the grantee shall negotiate, as needed, with the owners thereof for the installation of the needed poles. The grantee shall negotiate the lease of pole space and facilities from the existing pole owners for all aerial construction, under mutually acceptable terms and conditions.

(Ord. of 2-10-2003, § 34-175)

Sec. 38-174. Reservations of street rights.

Nothing in this division shall be construed to prevent the town from constructing storm or sanitary sewers, grading, paving, repairing or altering any right-of-way, or laying down, repairing or removing water mains, traffic signal control systems, town fiber plant, or constructing or establishing any public utility, service or other public work that the town may operate or undertake now or in the future. All such work shall be done, insofar as practicable, in such manner as not to obstruct, injure or prevent the free use and operation of poles, wires, conduits, conductors, pipes or appurtenances of the grantee. If town in its reasonable judgment shall determine that grantee's facilities interfere with the construction location or repair of any right-of-way or public improvement, then all such facilities of the grantee shall be removed or replaced, or temporarily disconnected, in such manner as shall be directed by the town so that the same shall not interfere with the public works of the town. Such removal or replacement shall be at the expense of the grantee; provided, however, that nothing in this division shall preclude the grantee from seeking reimbursement for removal or replacement costs from any public funds generally available to right-of-way users for the reimbursement of such costs.

(Ord. of 2-10-2003, § 34-176)

Sec. 38-175. Underground installation.

In those areas within the town where cable television, telephone, or electrical facilities are currently placed underground, all cable system facilities shall remain or be placed underground. In areas where either telephone or electric utility facilities are above ground at the time of installation, the grantee may install its cable system facilities above ground, provided that at such time as both electric and telephone utility facilities are placed underground, the grantee shall likewise place its cable system facilities underground without cost to the town. Nothing contained in this section shall require a grantee to construct, operate and maintain underground any ground-mounted appurtenances, except that grantee shall take steps to minimize the number and visual impact of such facilities. If the grantor reimburses any utility

for such relocation, the grantee shall be similarly reimbursed. This section shall not prevent the town or any of its agencies or joint agencies from requiring the installation or relocation of cable services facilities underground pursuant to a separate ordinance or regulation or requirement imposed in accordance with the exercise of the general police power or regulatory function of such agency or joint agency.

(Ord. of 2-10-2003, § 34-177)

Sec. 38-176. Conduit.

(a) The town shall not be responsible for any cuts or damage to buried or underground facilities of a grantee that are not clearly marked or cannot be located through the state one-call service.

(b) The grantee shall provide strand and trench maps without detailed measurement calculations in a format mutually agreeable to both the town and the grantee. Such information shall be subject to and not restrict any other town ordinances. The town agrees to treat the maps as proprietary information to the extent provided under law, or as may be indicated in town ordinances.

(c) The grantee shall provide a contact number for the town to call in emergency situations requiring an immediate response on the part of the town. If the grantee does not properly and effectively identify the precise location of its facilities within a reasonable period of time taking into account the circumstances of an emergency call from the town, the town shall not be responsible for damage to the grantee's facilities.

(Ord. of 2-10-2003, § 34-178)

Sec. 38-177. Clearing poles and cables.

The grantee shall have the right to remove, trim, cut and to keep clear of its poles, cables, underground conduits and related equipment the trees in and along the right-of-way, but, in the exercise of such right, grantee shall not cut such trees to any greater extent that is reasonably necessary for the construction, erection, installation, maintenance and use of cable system equipment. Except in emergency situations, grantee shall not remove, trim or cut such trees from any right-of-way without first providing reasonable notice to the town of its intention to do so, such notice to be delivered not less than ten days in advance. The grantee shall compensate the town or any private owners of such trees for any damage proximately caused by the grantee's negligent conduct.

(Ord. of 2-10-2003, § 34-179)

Sec. 38-178. Moving facilities.

The grantee, on the request of the town, or any person holding a building permit issued by the town, or any permit issued by an appropriate state agency, shall temporarily move its wires, cables, poles or other cable system facilities to permit the moving of large objects, vehicles, buildings or other structures. The expense of such temporary moves shall be paid to

the grantee by the person requesting the same and grantee shall have the authority to require such payment in advance. The grantee shall be given not less than 30 days advance notice to arrange for such temporary moves.

(Ord. of 2-10-2003, § 34-180)

Sec. 38-179. Work performed by others.

To the extent applicable, all provisions of this division shall apply to any subcontractors or others performing any work or services pursuant to the provisions of a franchise agreement on behalf of a grantee.

(Ord. of 2-10-2003, § 34-181)

Sec. 38-180. Duty to grantee.

Nothing contained in this division shall relieve any person from liability arising out of the failure to exercise reasonable care to avoid injuring grantee's facilities while performing any work connected with grading, regrading or changing the line of any right-of-way or with the construction or reconstruction of any sewer or water system or utility system.

(Ord. of 2-10-2003, § 34-182)

Secs. 38-181—38-198. Reserved.

DIVISION 7. GENERAL FINANCIAL AND INSURANCE PROVISIONS

Sec. 38-199. Franchise fee.

(a) The administration of this division or the franchise agreement imposes upon the town additional regulatory responsibility and expense, and in consideration of permission to use the right-of-way of the town for the construction, operation and maintenance, of a cable system within the town, a grantee of any franchise hereunder shall pay to the town a franchise fee in an amount as designated in the franchise agreement, up to the maximum amount allowed by applicable law. To the extent that applicable law changes the maximum authorized franchise fee, the town reserves the right to change the franchise fee as stated in the franchise agreement, by adopting an ordinance establishing the new franchise fee rate and allowing reasonable notice to the grantee for administration of the change. The town shall hold a public hearing prior to adopting any change in the franchise fee.

(b) Payments due grantor under this section shall be computed quarterly, for the preceding quarter. Each quarterly payment shall be due and payable no later than 30 days after the end of the preceding quarter. Each payment shall be accompanied by a brief report by a grantee showing the basis for the computation and a franchise fee worksheet listing all of the sources of revenues attributable to the operation of franchise's system in the town. All such payments shall be certified as correct by an officer of the grantee.

(c) No acceptance of any payment shall be construed as an accord that the amount paid is in fact the correct amount, nor shall such acceptance of payment be construed as a release of any claim grantor may have for further sums payable under the provisions of this division or a franchise agreement. All amounts paid shall be subject to audit and recomputation by grantor or its designee at any time during any calendar year (but not more than once per calendar year) upon 20 calendar days notice, which shall include a request for any documents sought to be reviewed. Audits shall be at the expense of the grantee if the additional amount due is greater than two percent of the amount paid. Any additional amount due to the town as a result of the audit shall be paid within 60 days following written notice to the grantee by the town which notice shall include a copy of the audit report. The grantor's right to audit and grantee's obligation to retain records related to the franchise fee audit shall expire three years from the date on which the most recent franchise fee payment by the grantee was due from the time of written notice of request of audit.

(d) In the event that any franchise payment or recomputed amount is not made on or before the dates specified herein, the grantee shall pay as additional compensation an interest charge, computed from such due date, at the annual rate equal to the commercial prime interest rate of the town's primary depository bank during the period that such unpaid amount is owed.

(Ord. of 2-10-2003, § 34-183)

Sec. 38-200. Security fund.

Each grantee shall maintain a security fund with the town to ensure compliance with this division and the applicable franchise agreement, in an amount and in a manner as set forth in the grantee's franchise agreement.

(Ord. of 2-10-2003, § 34-184)

Sec. 38-201. Penalties procedure.

(a) Whenever the grantor has reason to believe that a grantee has violated any material provision of a franchise agreement or this division, grantor shall first notify the grantee of the material violation and demand correction within a reasonable time, which shall not be less than 20 days in the case of the failure of a grantee to pay any sum or other amount due the grantor under a franchise agreement, and 30 days in all other cases. If a grantee fails to correct the violation within the time prescribed, or if a grantee is unable to correct the violation and fails to commence corrective action within the time prescribed and to diligently remedy such violation thereafter, the grantee shall then be given written notice of not less than 20 days for public comment. Said notice shall indicate with reasonable specificity the violation alleged to have occurred.

(b) At the public hearing, the board shall hear and consider all relevant evidence and thereafter render findings and a decision based upon the evidence. Any such hearing must, at a minimum, provide the grantee a full and fair opportunity to be heard by the board.

(c) In the event the board finds that a grantee has corrected the violation or promptly commenced correction of such violation after notice thereof from grantor and is diligently proceeding to fully remedy the violation, or that no violation has occurred, the proceedings shall terminate and no penalty or other sanction shall be imposed.

(d) In the event the board finds that a violation exists and that a grantee has not corrected the same in a satisfactory manner or did not promptly commence and diligently proceed to correct the violation, the board may impose liquidated damages to be collected from the security fund, as set out in the franchise agreement.

(e) If the board elects to assess liquidated damages, then such election shall constitute the grantor's exclusive remedy for a period of 60 days. Thereafter, if a grantee remains in non-compliance, the grantor may pursue any other available remedy.

(f) In the event that a franchise is cancelled or terminated by reason of the default of a grantee, the security fund deposited pursuant to a franchise agreement shall remain in effect and available to the grantor until all pending claims or penalties are resolved or settled, after which point any remaining amounts in the security fund shall revert to the grantee.

(g) The rights reserved to grantor with respect to the security fund are in addition to all other rights of the grantor, whether reserved by a franchise agreement, this division, or authorized by law, and no action, proceeding, or exercise of a right with respect to such security fund shall affect any other right a grantor may have.

(h) In instances of repeated violations, whether remedied or not, the grantor shall serve special notice outlining additional remediation requirements. Failure to cure, as measured by repeated instances of the same violation, is evidence of an evasive practice and may lead to revocation under division 8 of this article.

(i) The grantee acknowledges that noncompliance with the provisions of the franchise agreement and this division will harm subscribers and the town and the amounts of actual damages will be difficult or impossible to ascertain. The town may therefore assess the following liquidated damages against grantee for unexcused noncompliance with the requirements of the franchise agreement and this article. The grantee acknowledges that the liquidated damages set forth below are a reasonable approximation of actual damages and that this provision is intended to provide compensation and is not a penalty. All damages provided shall be cumulative, unless expressly stated.

- (1) For failure to materially complete construction or extend service in accordance with this division and the franchise agreement: \$250.00/calendar day for each day the violation continues;
- (2) For failure to materially comply with requirements for public access channels: \$250.00/calendar day for each day the violation continues;
- (3) For failure to comply with the material requirements of the I-Net provisions of the ordinance/franchise agreement: \$250.00/calendar day for each day the violation continues;

- (4) For repeated, willful or continuing failure to submit reports, maintain records, provide documents or information: \$250.00/calendar day for each day the violation continues;
 - (5) For failure to comply with the material requirements of the customer service standards: \$250.00/calendar day for each day the violation continues;
 - (6) For failure to comply with the transfer provisions: \$250.00/calendar day for each day the violation continues;
 - (7) For violation of other material provisions of this article and the franchise agreement: up to \$250.00/calendar day for each day the violation continues.
- (Ord. of 2-10-2003, § 34-185)

Sec. 38-202. Bonds, indemnification, and insurance.

Each grantee shall maintain bonds and insurance with the town in amounts and in a manner as set forth in the grantee's franchise agreement. Each grantee also shall be required to indemnify the town in a manner as set forth in the grantee's franchise agreement.

(Ord. of 2-10-2003, § 34-186)

Secs. 38-203—38-227. Reserved.

DIVISION 8. REVOCATION

Sec. 38-228. Grounds for revocation.

The grantor reserves the right to revoke the franchise, and all rights and privileges pertaining thereto, in the event that:

- (1) A grantee substantially violates any material provision of this article or a franchise agreement;
- (2) A grantee attempts to evade any of the material provisions of this article or a franchise agreement;
- (3) A grantee practices an act of fraud or deceit upon the grantor;
- (4) A grantee becomes insolvent, unable or unwilling to pay its debts, or is adjudged bankrupt;
- (5) A grantee fails to provide or maintain in full force and effect the liability and indemnification coverage or the performance bond as required pursuant to its franchise; or
- (6) A grantee violates any orders or rulings of any regulatory body having jurisdiction over the grantee relative to this article or the franchise and after notice thereof, shall continue the violation and not remedy the same within 60 days.

(Ord. of 2-10-2003, § 34-187)

Sec. 38-229. Procedure.

(a) Whenever grantor has reason to believe that there may be grounds for revocation of a franchise, grantor shall first notify the grantee in writing of its basis for believing grounds for revocation exist. Such notice shall indicate with reasonable specificity the grounds for revocation that are believed to exist so that the grantee may have a reasonable opportunity to cure or otherwise address the same. If a grantee fails to adequately cure or address the purported grounds for revocation within 30 days of such notice, then the grantor may, upon 30 days written notice to the grantee, commence a public administrative hearing to determine whether there exists any ground for revocation.

(b) The administrative hearing shall be conducted so as to protect the full due process rights of the parties and provide for, at a minimum, the right to have counsel, the right to call and cross examine witnesses, and the right to a full transcript of the proceedings.

(c) After the close of the hearing, grantor or the designated hearing officer shall issue a written decision based on the record of the proceedings, stating with specificity the findings and reasons supporting the decision.

(d) Upon revocation, a grantee shall have a period of 120 days subsequent to the date of the formal adoption of a revocation of the franchise by the town within which to file an appeal with a court of competent jurisdiction.

(e) During the appeal period, the franchise shall remain in full force and effect.
(Ord. of 2-10-2003, § 34-188)

Secs. 38-230—38-251. Reserved.

DIVISION 9. FORECLOSURE, RECEIVERSHIP AND ABANDONMENT

Sec. 38-252. Foreclosure.

Upon the foreclosure or other judicial sale of all or a part of a system, a grantee shall notify grantor of such fact and such notification shall be treated as a notification that a change in control of the grantee has taken place, and the provisions of this division governing the consent to transfer or change in ownership shall apply without regard to how such transfer or change in ownership occurred.

(Ord. of 2-10-2003, § 34-189)

Sec. 38-253. Receivership.

Apart from and supplemental to the right to revoke a franchise, grantor shall have the right to cancel a franchise agreement 120 days after the appointment of a receiver or trustee to take

over and conduct the business of a grantee, whether in receivership, reorganization, bankruptcy, or other action or proceeding, unless such receivership or trusteeship shall have been vacated prior to the expiration of said 120 days, or unless:

- (1) Within 120 days after its election or appointment, the receiver or trustee has fully complied with all the provisions of grantee's franchise agreement and this division and remedied all defaults thereunder; and
 - (2) Such receiver or trustee, within said 120 days, has executed an agreement, duly approved by a court having jurisdiction, whereby such receiver or trustee assumes and agrees to be bound by each and every provision of this division and the applicable franchise agreement.
- (Ord. of 2-10-2003, § 34-190)

Secs. 38-254—38-284. Reserved.

DIVISION 10. PURCHASE OF SYSTEM

Sec. 38-285. Purchase by grantor upon termination of franchise term or revocation of franchise.

The grantor may, in accordance with and to the extent permitted by 47 USC 547, upon the payment of a fair valuation, purchase, condemn, acquire, take over, and hold the property and plant of a grantee, in whole or in part, on the following conditions:

- (1) Upon revocation of a franchise, a fair valuation shall be an equitable value that shall not include any sum attributable to the value of the franchise itself, and plant and property shall be valued according to its book value at the time of revocation, or the system's initial cost less depreciation and salvage.
- (2) At the expiration of a franchise agreement and following a denial of renewal of the franchise agreement, a fair valuation shall be the fair market value of the plant and property, exclusive of the value attributed to the franchise itself.
- (3) In the event grantor shall acquire a franchise pursuant to the provisions of this division or a franchise agreement, and commenced operation of the system, the grantor shall reimburse the grantee for the fair market value of the system.

(Ord. of 2-10-2003, § 34-191)

Secs. 38-286—38-303. Reserved.

DIVISION 11. SALE OR TRANSFER

Sec. 38-304. Sale or transfer of franchise.

(a) No grantee shall sell, transfer, lease, assign, sublet, or dispose of, in whole or in part, an interest in or control of a franchise or cable system or any of the rights or privileges granted by a franchise agreement, without the prior consent of the grantor, which consent shall not be

unreasonably denied or delayed and may be denied only upon a good-faith finding by the grantor that the proposed transferee lacks the legal, technical, or financial qualifications to consummate the transaction and operate the system so as to perform its obligations under this division and the applicable franchise agreement. This section shall not apply to sales of property or equipment in the normal course of business. Consent from the grantor shall not be required for a transfer in trust, mortgage, or other instrument of hypothecation, in whole or in part, to secure indebtedness, or for a transfer to a person controlling, controlled by, or under common control with a grantee.

(b) The following additional events shall be deemed to be a sale, assignment, or other transfer of an interest in or control of a grantee or its franchise or cable system requiring compliance with this section:

- (1) The sale, assignment, or other transfer of all or a majority of a grantee's assets;
- (2) The sale, assignment, or other transfer of capital stock or partnership, membership, or other equity interests in a grantee by one or more of its existing shareholders, partners, members, or other equity owners so as to create a new controlling interest in a grantee;
- (3) The issuance of additional capital stock or partnership, membership or other equity interest by a grantee so as to create a new controlling interest in a grantee; and
- (4) A grantee's agreement to transfer management or operation of the grantee or the system. The term "controlling interest" as used herein is not limited to major stockholders but includes actual working control in whatever manner exercised.

(c) In the case of any sale or transfer of ownership of an interest in or control of a grantee or its franchise or cable system, the town shall have 120 days to act upon any request for approval of such sale or transfer that contains or is accompanied by such information as is required in accordance with FCC regulations and the requirements of this division and the applicable franchise agreement, including information related to the legal, technical and financial qualifications, and the proposed transferee's ability to operate the system in accord with this division and the franchise agreement. Failure to provide all information reasonably requested by the town as part of its review may be grounds for a denial of the proposed transfer. If the town fails to render a final decision on the request within 120 days after receipt by the town of all required information, such request shall be deemed granted unless the grantee and the town agree to an extension of the 120-day period.

(d) The consent or approval of the town to any transfer of the grantee shall not constitute a waiver or release of the rights of the town in and to the right-of-way, and any transfer shall, by its terms, be expressly subject to the terms and conditions of this article and the franchise agreement.

(e) In the absence of extraordinary circumstances, the town will not approve any transfer or assignment of the franchise prior to completion of construction of the proposed initial system.

(f) Any approval by the town of a transfer shall be contingent upon the prospective new grantee becoming a signatory to the franchise agreement.
(Ord. of 2-10-2003, § 34-192)

Secs. 38-305—38-326. Reserved.

DIVISION 12. RIGHTS OF INDIVIDUALS PROTECTED

Sec. 38-327. Discriminatory practices prohibited.

No grantee shall deny service, deny access, or otherwise discriminate against subscribers, programmers, or general citizens on the basis of race, color, religion, national origin, sex, disability, or age. Every grantee shall strictly adhere to the equal employment opportunity requirements of state and federal law. Each grantee shall comply at all times with all other applicable federal, state, and local laws, and all executive and administrative orders relating to nondiscrimination.

(Ord. of 2-10-2003, § 34-193)

Sec. 38-328. Subscriber privacy.

Grantees shall at all times comply with the federal subscriber privacy requirements codified at 47 USC 551.

(Ord. of 2-10-2003, § 34-194)

Secs. 38-329—38-359. Reserved.

DIVISION 13. MISCELLANEOUS PROVISIONS

Sec. 38-360. Rate regulation.

The town reserves the right to regulate rates for basic cable service and any other services offered over the cable system, to the extent permitted by federal or state law. A grantee shall be subject to the rate regulation provisions provided for herein, and those of the Federal Communications Commission (FCC) at 47 CFR part 76.900, subpart N. The town shall follow the rules relating to cable rate regulation promulgated by the FCC at 47 CFR part 76.900, subpart N. To the extent required by applicable federal or state law, the grantee shall establish rates that are nondiscriminatory within the same general class of subscribers and which must be applied fairly and uniformly to all subscribers in the franchise area for all services. Nothing contained herein shall prohibit the grantee from offering:

- (1) Discounts to commercial and multiple family dwelling subscribers billed on a bulk basis;
- (2) Promotional discounts;
- (3) Reduced installation rates for subscribers who have multiple services;

- (4) Discounts for senior citizens and/or low income residents; or
- (5) Reduced rates to subscribers who receive noncable services in addition to cable services.

(Ord. of 2-10-2003, § 34-195)

Sec. 38-361. Rights reserved to grantor.

(a) Upon either the expiration or revocation of a franchise, the grantor may permit and/or require a grantee to continue to operate the cable system for an extended period of time not to exceed three months from the date of such expiration or revocation. A grantee shall continue to operate the system under the terms and conditions of this division and the applicable franchise agreement and to provide cable service and any and all other services which the grantee had been providing.

(b) The grantor shall have the right to compel continued operation of the cable system whether by the grantee or a trustee or receiver or by the grantor, and to ensure that such operation is consistent with public interest as determined by a court of competent jurisdiction. The grantee may not remove equipment or documents necessary for continued operation of the system.

(c) At all reasonable times, grantee shall permit examination by the town of the system, together with any appurtenant property of grantee situated within or without the town when necessary to ascertain the grantee's compliance with this division, the franchise agreement, and all applicable laws.

(d) The town shall have the right of intervention in any suit or proceeding to which the grantee is a party relative to grantee's operations in the town, and the grantee shall not oppose such intervention by the town.

(e) Except as otherwise provided by applicable law, the grantee shall have no recourse whatsoever against the town or its officials, boards, commissions, agents, or employees for any loss, cost, expense, or damage arising out of any provision or requirements of this division or the franchise agreement, or of their enforcement.

(Ord. of 2-10-2003, § 34-196)

Sec. 38-362. Non-enforcement by the town.

The grantee shall not be relieved of its obligation to comply with any of the provisions of this division or the franchise agreement by reason of any failure of the town to enforce prompt compliance.

(Ord. of 2-10-2003, § 34-197)

Sec. 38-363. Governing law and choice of forum.

Any dispute arising with respect to this division or a franchise agreement granted pursuant to it shall be subject to review by the state and federal courts having primary jurisdiction in the town.

(Ord. of 2-10-2003, § 34-198)

Sec. 38-364. Severability.

If any material portion of this article, or a franchise agreement adopted pursuant to it, is held by an authority of competent jurisdiction, to be invalid or unlawful as conflicting with applicable laws now or hereafter in effect, or is held by a court or competent governmental authority to be modified in any way in order to conform to the requirements of any such applicable laws, such provision shall be considered a separate, distinct, and independent part of this article or franchise agreement, and, to the extent possible, such holding shall not affect the validity and enforceability of all other provisions thereof.

(Ord. of 2-10-2003, § 34-199)

Sec. 38-365. Publication of notices.

All public notices required to be published by grantor under this article or any franchise agreement shall be published in a manner consistent with the public notice laws of the state.

(Ord. of 2-10-2003, § 34-200)

Sec. 38-366. System construction capabilities and schedule.

(a) The cable system shall generally conform to the system design and channel capacity specifications set forth by the grantee in its application for a franchise submitted to the town. At a minimum, the grantee shall construct a system with equivalent technical capabilities to a hybrid fiber coax (HFC) 750 MHz cable system. The grantee is permitted to modify its design and implementation plan, pursuant to the conditions provided herein, to accommodate technological innovations and refinements, which enhance system reliability and capacity.

(b) The initial construction required under the initial franchise agreement shall be completed in compliance with a schedule specified therein. If the grantee shows that, notwithstanding its due diligence, it has been unable to extend service to a specified area because the acts or omissions of a third party, excluding the grantee's subcontractors or agents, or other factors have caused a delay in construction beyond that reasonably expected during the course of construction, and the grantee proposes a reasonable alternative deadline for extension of service to that area, the town shall grant reasonable extensions of time to complete construction.

(Ord. of 2-10-2003, § 34-201)

Chapter 39

RESERVED

Chapter 40

TRAFFIC AND MOTOR VEHICLES*

Article I. In General

Secs. 40-1—40-22. Reserved.

Article II. Stopping, Standing and Parking

Sec. 40-23. General parking restrictions.

Sec. 40-24. Specific parking restrictions.

Secs. 40-25—40-51. Reserved.

Article III. Speed Regulations

Sec. 40-52. General speed limit on town streets.

Sec. 40-53. Specific lower speed limit zones.

***State law references**—Traffic powers of local authorities, G.S. 30-169; city may regulate and control pedestrian and vehicular traffic on public streets, sidewalks, alleys and bridges, G.S. 160A-300; cities may adopt ordinances for civil enforcement by means of traffic control photographic system, G.S. 160A-300.1.

ARTICLE I. IN GENERAL**Secs. 40-1—40-22. Reserved.****ARTICLE II. STOPPING, STANDING AND PARKING*****Sec. 40-23. General parking restrictions.**

At any time it shall be unlawful to permit any vehicle to stand in any of the following places, except when necessary to avoid conflict with other traffic or in compliance with the directions of a police officer or a traffic control device:

- (1) In any intersection.
- (2) In a crosswalk.
- (3) Upon any bridge or the approach thereto.
- (4) Within eight feet of a fire hydrant.
- (5) Within 20 feet of the drive entrance to the fire department station.
- (6) On any sidewalk in the business district.
- (7) At any place where official signs prohibit parking.

(Prior Code, § 12.10)

Sec. 40-24. Specific parking restrictions.

(a) At any time, it shall be unlawful to permit any vehicle to stand in any of the following places, except when necessary to avoid conflict with other traffic, or in compliance with the directions of a police officer or traffic control device.

- (1) Both sides of U.S. Highway #1 from its intersection with Union Church Road (SR 1805) southward to its intersection with Maple Street.
- (2) Carthage Road (SR 1803): On both sides of Carthage Road (SR 1803) from its intersection with Holly Street eastward to its intersection with U.S. Highway #1.
- (3) Holly Street: On the west side of Holly Street from its intersection with Carthage Road (SR 1803) southward to its intersection with Oakwood Drive.
- (4) On the west side of U.S. Highway #1 between Carthage Road and Maple Street.

(b) Any violation of this article shall subject the registered owner or operator to a civil penalty not exceeding \$100.00.

(c) Parking restrictions shall be in full force and effect at the time necessary signs have been erected by the state department of transportation.

(Prior Code, § 12.50; Ord. of 5-12-1980, §§ 1—3; Ord. of 4-13-1998, §§ 1—3)

***State law reference**—City may regulate and prohibit parking on public streets, alleys and bridges, G.S. 160A-301.

Secs. 40-25—40-51. Reserved.

ARTICLE III. SPEED REGULATIONS*

Sec. 40-52. General speed limit on town streets.

At any time, it shall be unlawful for any motor vehicle to exceed a speed limit of 25 miles per hour on any town owned and maintained street, so designated on the official Vass Street Map on file in the clerk's office.

(Ord. of 10-10-1994)

Sec. 40-53. Specific lower speed limit zones.

(a) The speed limit on Seaboard Street from Main Street to West Street is 15 miles per hour.

(b) The speed limit on Short Street is 15 miles per hour.

(c) The speed limit on Alley Street is 15 miles per hour.

(Ord. of 3-10-2003)

*State law reference—Speed restrictions, G.S. 20-141.

Chapter 41

RESERVED

Chapter 42

UTILITIES*

(RESERVED)

***State law references**—Municipalities authorized to operate public enterprises including water and sewer services, G.S. 160A-312; public enterprises defined, G.S. 160A-311.

Chapter 43

RESERVED

Chapter 44

VEHICLES FOR HIRE*

(RESERVED)

***Federal law references**—Federal law preempts local government regulation relating to price, route or service of any motor carrier respecting transportation of property, 49 USC 14501(c)(1); safety regulations by local governments are not preempted, 49 USC 14501(c)(2)(A); regulation of price of for-hire tows performed without prior consent of owner, exempt from preemption, 49 USC 14501(c)(2)(C).

State law reference—City may regulate vehicles for hire, G.S. 160A-304.

Appendix A

COUNTY ANIMAL CONTROL*

Article I. Legal Provisions

- Sec. 1. Enactment and Authority.
- Sec. 2. Title.
- Sec. 3. Separability.
- Sec. 4. Repeal of Previous Ordinance.
- Sec. 5. Effective Date.

Article I. In General

- Sec. 4-1. Definitions.
- Sec. 4-2. Agency Authority and Responsibility.
- Sec. 4-3. Cruelty to Animals.
- Sec. 4-4. Confinement and Control of Vicious or Dangerous Domestic Animals.
- Sec. 4-5. Animals Creating Nuisance Prohibited.
- Sec. 4-6. Luring, Enticing, and Seizing an Animal.
- Sec. 4-7. Immediate Placement for Adoption or Destruction of Animals Surrendered by Owner.
- Sec. 4-8. Non-Domestic Animals Prohibited.
- Sec. 4-9. Interference with Enforcement.
- Sec. 4-10. Penalty for Violation.
- Sec. 4-11. Feral Cats Colonies.
- Secs. 4-12—4-30. Reserved.

Article II. Rabies Control

- Sec. 4-31. Compliance with State Laws; Article is Supplemental to State Rabies Laws.
- Sec. 4-32. Vaccination of Dogs, Cats and Equine.
- Sec. 4-33. Rabies Tag and Certificate.
- Sec. 4-34. Notice to Health Director or Designated Representative when Person Bitten; Confinement of Animal.
- Sec. 4-35. Destruction or Confinement of Animal Bitten by a Known Rabid Animal.
- Sec. 4-36. Area-Wide Emergency Quarantine.
- Sec. 4-37. Postmortem Diagnosis.
- Sec. 4-38. Unlawful Killing or Releasing of Certain Animals.
- Sec. 4-39. Failure to Surrender Animal for Confinement or Destruction.
- Sec. 4-40. Failure to Report/Submit Suspected Rabies Cases for Evaluation.
- Secs. 4-41—4-60. Reserved.

Article III. Impoundment and Redemption

- Sec. 4-61. Impoundment.

***Editor's note**—Set forth herein is the Monroe County animal control ordinance, adopted by the county board of commissioners on October 6, 2008. This county animal control ordinance was adopted by reference, by the Vass board of commissioner, on November 10, 2008.

VASS MUNICIPAL CODE

- Sec. 4-62. Notice to Owner or Keeper.
- Sec. 4-63. Redemption by Owner or Keeper Generally.
- Sec. 4-64. Destruction or Adoption of Unredeemed Animal Generally.
- Sec. 4-65. Procedure for Redemption or Adoption of Unvaccinated Dog or Cat.
- Sec. 4-66. Destruction of Wounded, Diseased or Unweaned Animals.
- Sec. 4-67. Destruction of Animals Which Cannot Be Seized by Reasonable Means.
- Sec. 4-68. Keeping Stray Animals; Requirements; Failure to Surrender.
- Secs. 4-69—4-85. Reserved.

Article IV. Permits

- Sec. 4-86. Security Dogs.
- Sec. 4-87. Collecting Dogs and Cats for Resale.
- Sec. 4-88. Mandatory Spay/Neuter of Adopted Animals.
- Secs. 4-89—4-99. Reserved.

ARTICLE I. LEGAL PROVISIONS**Section 1. Enactment and Authority.**

The Board of Commissioners of Moore County, North Carolina, pursuant to the authority granted by Article 4 of Chapter 153A of the North Carolina General Statutes, does hereby ordain and enact into law the following Articles and Sections.

Section 2. Title.

This Ordinance shall be known as the Animal Control Ordinance of Moore County, North Carolina.

Section 3. Separability.

If any Article, Section, sentence, clause, or phrase of this Ordinance is for any reason held to be invalid by the courts, such decision shall not affect the validity of the remaining portion of this Ordinance. This Board of County Commissioners hereby declares that it has passed this Ordinance and each Article, Section, clause, and phrase thereof, irrespective of the fact that any one (1) or more Articles, Sections, sentences, or phrases be declared invalid by the courts.

Section 4. Repeal of Previous Ordinance.

The Animal Control Ordinance originally adopted May 2, 1988, is hereby repealed on the date the new Ordinance is effective. It is not intended by this Ordinance to repeal, abrogate, annul, or in any way to impair or interfere with any other existing provisions of law or ordinance. Nor is it the intention to stay any action to enforce the previous regulations, as provided for in those regulations, as may be in process or may occur, as appropriate, upon or after the effective date of this Ordinance.

Section 5. Effective Date.

This Ordinance shall be in force from and after its passage and approval on October 1, 2008 with an effective date of December 1, 2008.

ARTICLE I. IN GENERAL**Sec. 4-1. Definitions.**

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

Abandonment means the willful discarding or deserting of a live animal, leaving an animal for a period in excess of twelve (12) hours without providing adequate food, water or shelter for the duration of the absence or releasing or dumping an animal from a vehicle without demonstrating intent to recover the animal.

Animal means every living creature, domestic or nondomestic, but does not include humans.

Animal shelter means any premises designated by the Health Director for the purpose of impounding and caring for animals.

At large means an animal that is off the property of its owner or keeper and not under physical restraint.

Board of Health means the Moore County Board of Health.

Boarding means providing for profit land and/or structure for the care of an animal.

Commercial animal establishment means any for profit pet shop, grooming shop, riding school, stable, zoological park, circus, animal exhibition/show or kennel.

Commercial breeder means one who breeds animals for the primary purpose of offering their offspring for sale to other breeders, pet shops, laboratories, or individuals. [By contrast, a hobby breeder is one who breeds purebred animals occasionally to justifiably improve the breed and not primarily for the purposes of income].

Commission means the North Carolina Health Services Commission.

Confinement means restricted interaction.

Domestic animal means any of various animals, such as dogs, cats, equine, sheep, cattle, goats, hogs, poultry, ferrets, llamas, emus, and/or other animals domesticated by man so as to live and/or breed in a tame condition.

Exotic animal means any living animal, which is strikingly or excitingly different or unusual and not ordinarily kept as a pet or domesticated animal. By way of example, exotic animals shall include, but are not limited to, lions, tigers, apes, monkeys, poisonous reptiles, and poisonous spiders. A hybrid of any animal listed in the example above, regardless of genetic percentages, shall be deemed exotic.

Exotic mammal means any mammal designated by the Centers for Disease Control and Prevention, Department of Agriculture or other National or State public health protection agencies as embargoed or prohibited under legal protection orders.

Exotic reptile means any reptile not native to North Carolina.

Exposed to rabies means an animal that has been bitten by, or been in the presence of, any animal known or suspected to have been infected with rabies.

Feral cat means a cat that is unsocialized to humans and has a temperament of extreme fear of and resistance to contact with humans.

Feral cat caregiver means any person who, in accordance with a trap neuter return program, will trap neuter and return, vaccinate for rabies, ear tip, provide care, including food and water, or has temporary custody of a feral cat(s).

Grooming shop means any establishment, whether operated separately or in connection with another business enterprise that provides hair and nail clipping, bathing and other cosmetic services for animals.

Health department means the Moore County Health Department.

Health director means the Health Director of the Moore County Health Department.

Humanely destroyed means that destruction of an animal must comply with guidelines set forth by American Veterinary Medical Association (AVMA), the Humane Society of the United States (HSUS) or the American Humane Association (AHA).

Impoundment means any animal in custody of a person or animal shelter duly authorized by the health director.

Keeper means a person having custody of an animal, who keeps or harbors an animal, or who knowingly permits an animal to remain on or about any premises occupied or controlled by such person. Keeper does not include a person keeping a feral cat as a feral cat caregiver.

Kennel means any premises wherein a person boards, lets for hire, trains/hunts for a fee, breeds, buys or sells dogs or cats. This shall not include the ownership of dogs/cats which are part of the household or which are maintained adjoining a private residence for commercial hunting.

Law enforcement dog means any dog used by a law enforcement agency in the investigation of crimes or as otherwise necessary in the enforcement of the law. These animals are excluded from general requirements of this Ordinance with the exception that they are regulated by the provisions of Sections 4-31 through 4-39 and 4-61.

Nonprofit animal establishment means therapeutic facility, humane society, animal shelter, The American Society for the Prevention of Cruelty to Animals (ASPCA), animal rescue or welfare groups or assistance animal training facilities. (*Recognized by federal or state law as nonprofit.*)

Nondomestic animal means any carnivore, primate, bird, reptile or other venomous animals, regardless of whether it is indigenous to this State, and not included in the definition of domestic animal, and shall include any hybrid animal.

Nuisance means an animal or group of animals which:

1. Damages, soils, or defiles private or public property; or
2. Interferes with, molests, or attacks persons or other animals; or
3. Is/are repeatedly at large, with the exception of feral cats; or
4. Causes unsanitary, dangerous or offensive conditions; or
5. Chases, snaps at, harasses or impedes pedestrians, bicyclists or vehicles; or
6. By virtue of number of assertive tendencies is offensive or dangerous to the public health, safety, or welfare; or

7. Is diseased or dangerous to the public health; or
8. Habitually makes disturbing noises, including but not limited to, continued and repeated howling, barking, whining or other utterances causing unreasonable annoyance, disturbance or discomfort to reasonable persons of ordinary sensibilities in close proximity to the premises where the animal is kept or harbored.

Owner means any person, group of persons, firm, partnership, corporation, organization or association that keeps or harbors an animal, assumes care of an animal or acts as a custodian of an animal, unless the animal is being boarded for a fee. The owner has the right of property in the animal and is responsible for the care, actions and behavior of his/her animal(s) at all times. Owner does not include a person keeping a feral cat as a feral cat caregiver.

Patrol dog means a dog that is trained or conditioned to attack or otherwise respond aggressively, but only upon command from a handler either off or on lead.

Person means any individual, corporation, partnership, organization, or institution commonly recognized by law as a unit.

Pet means any domestic animal kept for pleasure rather than utility.

Pet shop means any commercial establishment whether operated separately or in connection with another business enterprise, except for a licensed kennel, that buys, sells or boards any species of animal.

Restraint means that the condition or behavior of an animal is:

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

Riding school or stable means any place which has available for hire, boarding and/or riding/driving instruction for any horse, pony, donkey or burro.

Security dog means any dog used, kept or maintained within the County for the purpose of protecting any person or property. Any such dog may be further classified as a patrol dog, sentry dog or watch dog, as defined in this Section.

Sentry dog means a dog that is trained or conditioned to attack or otherwise respond aggressively without command.

Stray means any domestic animal without identification and rabies tags, that is not under restraint, nor on the property of its owner or keeper.

Suspected of having rabies means an animal which is unvaccinated against rabies, has bitten a person or is known or believed to have been exposed to rabies.

Trap Neuter Return (TNR) is a feral cat program that is viewed as a viable alternative to euthanasia.

Veterinary hospital means any establishment maintained and operated by a licensed veterinarian for surgery, diagnosis, treatment of injuries and prevention of diseases in animals.

Vicious dog or other animal means a dog or other animal that constitutes a physical threat to humans, domestic animals or livestock, or that approaches any person in an attitude of attack off the owner's property without being teased, molested, provoked, beaten, tortured or otherwise harmed, or that has a known tendency of unprovoked attack, or that is trained or being trained for fighting.

Watch dog means a dog that barks and/or threatens to bite any intruder and that has been specially trained or conditioned for that purpose.

Sec. 4-2. Agency Authority and Responsibility.

A. The Board of Commissioners shall be responsible for an animal shelter or the designation of an organization to operate a shelter.

B. Authority is hereby granted to the Moore County Health Department to establish and maintain an animal control program, to employ animal control officers and such other employees as shall be determined necessary by the Board of Commissioners and to appoint and compensate animal control officers and such other employees in accordance with policies of the Board of Health.

C. The employees of the animal control program shall:

1. Have the responsibility along with law enforcement agencies to enforce all laws of the State and all Ordinances of the County pertaining to animals and shall cooperate with all law enforcement officers within the County in fulfilling this duty; and
2. Enforce and carry out all laws of the State and all Ordinances of the County pertaining to rabies control; and
3. Be responsible for the investigation of all reported animal bites, the quarantine of any domestic animal involved and suspected of having rabies, for a period of not less than ten (10) days, and for reporting to the Health Director as soon as practical, the occurrence of any such animal bite and the condition of any quarantined animal; and
4. Be responsible for the seizure and impoundment, where deemed necessary, of any dog or other animal in the County involved in a violation of this Ordinance or any other County Ordinance or State law; and
5. Investigate cruelty or abuse with regard to animals; and
6. Make such canvasses of the County, including homes within the County, as necessary for the purpose of ascertaining compliance with this Ordinance or State statute; and

7. Keep, or cause to be kept, accurate and detailed records of the following:
 - a. Seizure, impoundment, and disposition of all animals coming into the custody of the animal control program; and
 - b. Bite cases, violations, complaints and investigations of same; and
 - c. All money belonging to the Health Department and/or County which were derived from fees, penalties, license tags, the sale of animals or sources other than taxes; and
 - d. Any other matters deemed necessary by the Health Director.

8. Be empowered to issue notices of violation of this Ordinance in such form as the Health Director may prescribe.

Sec. 4-3. Cruelty to Animals.

A. It shall be unlawful for any person to maliciously molest, torture, torment, deprive of necessary sustenance, cruelly beat in any manner, mutilate, kill, wound, maim, disfigure, injure, poison, burn or scald with any substance, drown, abandon or subject to conditions detrimental to its health or general welfare, any animal, or to cause or procure such action. The words "torture" and "torment" shall be held to include every act, omission or neglect whereby unjustifiable physical pain, suffering or death is caused or permitted; but such terms shall not be construed to prohibit the lawful taking of animals under the jurisdiction and regulation of the Wildlife Resources Commission, nor to prohibit the animal control officers, or persons duly authorized by the Health Director or veterinarians from destroying dangerous, unwanted or injured animals in a humane manner, nor to prohibit the lawful use of animals for scientific research.

B. It shall be unlawful for any person to in any manner tease, annoy, disturb, molest, or irritate an animal that is confined to the owner's premises.

C. It shall be unlawful for any owner or keeper to fail to provide his/her animal(s), or an animal entrusted to his/her care, with proper shelter and protection from the weather, sufficient and wholesome food and water to keep his/her animals, or an animal entrusted to his/her care, in good health and comfort, with the opportunity for vigorous daily exercise, humane care, veterinary treatment and care when needed to prevent the spread of infectious diseases, injury or suffering.

D. Proper food, drink, shade, shelter and care shall require:

1. That each animal shall, at suitable intervals, and at least once every twenty-four (24) hours, receive a quantity of wholesome foodstuff suitable for the species' physical condition and age, and sufficient to maintain an adequate level of nutrition for the animal; and

2. That each animal shall have continuous access to a supply of clean, fresh, potable water, and such water shall be either free-flowing or in a receptacle. If water pans or dishes are used, such pans or dishes shall have weighted bottoms or be mounted or secured in a manner that prevents tipping; and
3. That each animal shall have convenient access to shelter appropriate to the species throughout the year. Any artificial shelter shall be structurally sound and maintained in good repair to protect the animal from injury and from the elements, and shall be of sufficient size to permit the animal to enter, stand, turn around and lie down in a natural manner. (See Section 4-3 subsection G for details on shelter size requirements.) Any shelter which does not protect the animal from temperature extremes or precipitation, or which does not provide adequate ventilation or drainage, does not comply with this Section. The shelter and any other spaces accessible to the animal and all bedding for the animal shall be dry and maintained in a manner which minimizes the risk of the animal contracting diseases, being injured or becoming infested with parasites. Examples of unacceptable shelter include, but are not limited to, the following: underneath outside steps; decks or stoops; underneath houses; inside or underneath motor vehicles; inside cardboard boxes; inside metal barrels; inside temporary animal carriers or crates; shelters located in floodprone areas; or shelters surrounded by waste, debris, obstructions or impediments that may endanger an animal. Acceptable adequate shelter means an enclosure having at least three solid sides, a roof and a solid floor; and
4. That each animal shall receive care and medical treatment for debilitating injuries, parasites and disease, sufficient to maintain the animal in good health and to minimize suffering; and
5. That the living area for each animal being kept confined or restrained shall have adequate drainage such that the animal shall be free to walk or lie down without coming in contact with standing water.

E. It shall be unlawful for any person to tether, chain or fasten any animal in such a manner as to permit it to be upon any public sidewalk or street, or to leave it unattended while tethered, chained or fastened on public property. It shall be unlawful to tether, chain or fasten an animal in such a manner as to cause it injury or pain, or not permit it to reach shelter, food and water.

Tethers shall be fastened to a collar (not choke chain or pinch collar) or harness on the animal and snapped to a D-Ring on the collar or harness. The tether must have a swivel at the collar to prevent entanglement and shall be of appropriate length and weight for the size of the animal, as determined by the Health Director or his/her designee.

F. Declawed cats (cats with front and/or hind claws removed) shall not be permitted as outdoor pets and shall be kept strictly indoors.

G. An animal's primary enclosure shall be constructed of such material, and in such a manner as to minimize the risk of injury to the animal, and shall encompass sufficient usable space to keep the animal in good condition. When an animal is confined, the following minimum space requirements shall be used:

<i>SIZE OF DOG</i>	<i>PEN SIZE (Square feet)</i>
EXTRA LARGE >26" @ Withers or > 75 lbs.	48
LARGE >20" Up to 26" @ Withers or Not > 75 lbs.	40
MEDIUM >12" Up to 20" @ Withers or Not > 50 lbs.	32
SMALL 12" or Less @ Withers or Not > 20 lbs.	24

Primary enclosures for cats shall be structurally sound, maintained in good repair and in a manner to prevent injury to cats and to keep other animals out. Each feline older than six (6) months housed in any primary enclosure shall be provided a minimum of four (4) square feet of floor space which may include elevated resting surfaces. Each feline younger than six (6) months shall be provided one and one half (1.5) square feet. In all cat enclosures, a receptacle containing clean litter shall be provided for waste. A minimum of one (1) receptacle per three (3) cats is required. No more than twelve (12) cats shall be housed in the same primary enclosure.

H. Equine.

1. Housing.

Each animal shall have reasonable access to shelter appropriate for its state of health. Animals in a normal state of health, as determined by the Health Director or his/her designee, may be maintained in a pasture environment where natural shelter provides sufficient protection from sun, wind, rain and other inclement weather. Where this is not available, or for animals in a debilitated state of health, access to a man-made shelter is required. These shelters are to be maintained so as to minimize the opportunity for injury.

Outdoor shelters shall have a minimum of three (3) sides and a waterproof roof sufficient to allow two (2) feet of clearance from the animal's head in an erect position. Space requirements are one hundred fifty (150) square feet per horse. Drainage must be sufficient to maintain the animal's feet in a dry condition.

2. Fencing. Fencing is to be maintained to ensure that the animal is securely enclosed at all times and that the opportunity for injury is minimized.
3. Food and Water. Each animal shall have unlimited access to a source of clean water. Each animal shall have sufficient hay, grain, pasture or other feedstuff available on a continuous basis to maintain its normal body weight as determined by the Health Director or his/her designee.
4. Preventative Care.
 - a. Each animal's hooves shall be maintained on a regular basis to avoid malformation. Animals with specific hoof conditions requiring specialized treatment shall be provided that service on a regular basis.
 - b. Each animal shall receive deworming products sufficient to avoid malnourishment as a result of parasite infestation.
 - c. Minimum vaccination requirements shall include but are not limited to, rabies vaccination.
 - d. Animals in a debilitated state shall have access to appropriate veterinary care and treatment in order to minimize pain and suffering.
 - e. In the event that it is determined that the animal can no longer live a productive pain free life, it is the responsibility of the owner to ensure that the animal is disposed of, or euthanized, in a humane manner.
 - f. If the animal is euthanized on the owner's property, it is the responsibility of the owner to see that the animal is buried within twenty four (24) hours of its death, at least one hundred (100) feet away from any water source, and that the carcass is covered with at least three (3) feet of earth.
 - g. If the owner of the animal is not able to euthanize and/or dispose of the carcass, Moore County Animal Control may make those arrangements for the owner and bill the owner for expenses incurred.
 - h. The driver of any vehicle which injures or kills an equine domestic animal should inform the owner of the animal or, failing that, should inform local law enforcement or Moore County Animal Control.
 - I. When an animal is transported in a motor vehicle, the owner or driver is responsible for maintaining control of the animal at all times during transport, which shall include having the animal under the owner's or driver's restraint when released from the vehicle in a public place, with the exception of law enforcement dogs or hunting dogs being released on Public Game Lands.
 - J. It shall be unlawful for any person to place or confine or allow such animal to be confined in such a manner that it must remain in a motor vehicle or trailer under such conditions or for such periods of time as may endanger the health or well-being of the animal due to heat, lack of food or water, or any circumstance which might cause suffering, disability or death.

K. An animal found confined in a motor vehicle in a public place under weather conditions that endanger its life, as determined by the supervisor of animal control, an animal control officer, an animal cruelty officer or law enforcement officer, is a violation of this Section. Any law enforcement or animal control officer is hereby authorized to enter such vehicle and rescue such animal and impound it in accordance with Section 4-61. A prominent written notice shall be left on or in the vehicle advising that the animal has been removed under the authority of this Section and impounded in accordance with Section 4-61 at the animal shelter.

L. The driver of any vehicle which injures or kills a domestic animal should inform the owner of the animal or, failing that, should inform local law enforcement or Moore County Animal Control.

M. It shall be unlawful for any person to tether any fowl. Fowl used in the training or demonstration of hunting dogs are exempt from this provision.

N. If any person, firm or corporation shall sell, or offer for sale, barter or give away as premiums living baby chicks, ducklings, or other fowl or rabbits under eight (8) weeks of age as pets or novelties, such person, firm or corporation shall be guilty of a Class 3 misdemeanor, pursuant to N.C.G.S. 14-363.1. However, this Section shall not be construed to prohibit the sale of non-domesticated species of chicks, ducklings, or other fowl, or of other fowl from proper brooder facilities by hatcheries or stores engaged in the business of selling them for purposes other than for pets or novelties.

O. It shall be unlawful to color, dye, stain or otherwise change the natural color of baby chickens, other fowl or rabbits.

P. Trapping:

1. It shall be unlawful to set traps such as Leg Hold, Soft Leg Hold, Offset Leg Hold, Conibear, and Spring Wire Traps within a residential community or within one thousand (1,000) feet of a rural residence where domestic animals might run loose, without the permission of the property owner. The owner of such trap shall have his/her name and contact information permanently affixed to the trap.
2. It shall be unlawful for any person to willfully set a trap for the sole purpose of trapping domestic animals (dogs, cats, puppies, kittens) with the exception of live, humane traps.

Sec. 4-4. Confinement and Control of Vicious or Dangerous Domestic Animals.

A. 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, or is restrained by means of a leash or other like device and firmly under control at all times.

B. A dog is determined to be vicious at the discretion of the Health Director or his/her designee as defined in Section 4-1, "vicious dog."

C. If a dog is determined to be vicious, its owner is required to:

1. Keep the animal in a secure enclosure with a fence at least six (6) feet high, with an enclosed top and a concrete bottom with wire set in concrete and a secure, lockable door or gate; and
2. Post a warning sign with international symbols that is visible on all four (4) sides of the property when there is a vicious dog on the premises; and
3. Notify the animal control officer immediately if the vicious dog gets loose or attacks a person or another animal.

Sec. 4-5. Animals Creating Nuisance Prohibited.

A. It shall be unlawful for an owner or keeper to permit an animal or animals in his/her care to create a nuisance.

B. 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 or keeper will be provided written notification of such violation and be given forty-eight (48) hours from the time of notification to abate the nuisance.
2. Upon receipt of a written detailed and signed complaint being made to the Health Director or the animal control office by any person, that any other person is maintaining an animal which is creating a nuisance as defined in this Ordinance, the Health Director shall cause the owner or keeper of the animal in question to be notified that a complaint has been received, and shall investigate the situation complained of, and a report and findings thereon shall be reduced to writing.
3. If the written findings indicate that the complaint is justified, then the Health Director, or his/her designee, shall notify in writing the owner or keeper of the animal or animals in question, and said owner or keeper shall be ordered to abate such nuisance within forty-eight (48) hours.
4. In the event the owner or keeper of the animal or animals is unknown and cannot be identified, the animal(s) will be impounded.

C. It shall be unlawful for a person to fail or refuse to abate the nuisance as required by this Ordinance. Such person will be subject to penalty as stated in 4-10.

Sec. 4-6. Luring, Enticing, and Seizing an Animal.

It shall be unlawful for any person to entice or lure any animal out of an enclosure or off the property of its owner or keeper, or to seize any animal while the animal is held or controlled by its owner or keeper or while the animal is on the property of its owner or keeper.

Sec. 4-7. Immediate Placement for Adoption or Destruction of Animals Surrendered by Owner.

A. Any animal surrendered by its owner to Moore County Animal Control, the Moore County Health Department, or Moore County Animal Shelter, or its designee, may be immediately placed for adoption or humanely destroyed when:

1. The owner affirmatively represents in writing that he/she is in fact the legal owner of such animal; and
2. The owner directs in writing that the animal may be placed for adoption or humanely destroyed; and
3. The owner agrees to hold the animal control officer, the Health Director, Moore County Health Department, and Moore County, its designee or animal shelter harmless from any loss or damage it may sustain, including attorney's fees, by reason of the destruction or placement for adoption of such animal; and
4. The owner transfers ownership of such animal to animal control or its designee or animal shelter, and the owner releases animal control, its designee, or animal shelter from any and all future claims with respect to the animal; and
5. The owner shall certify in writing that the animal has not bitten any person within the preceding ten (10) days.

B. Upon receiving such assurances, the animal shelter may rely on the same and place such animal for adoption, or destroy such animal, as it sees fit. The waiting periods provided in Sections 4-62 through 4-64 shall not apply to immediate adoption or destruction as provided for in this Section.

Sec. 4-8. Nondomestic Animals Prohibited.

A. No person shall possess or harbor any non-domestic animal that is dangerous to persons or property or which has the potential for being dangerous to persons or property. This Section shall not apply to bona fide circuses or petting zoos.

B. No person shall possess a wolf or wolf hybrid or a coyote or coyote hybrid except as permitted by the North Carolina Wildlife Commission.

C. All animals under our dominion, whether kept as household pets or service companions or as animals raised for food, work or sport, shall be maintained in accordance with the requirements of this Ordinance for each species regarding sufficient food, water, shelter and space; and in such instances in which this Ordinance does not address a specific species, shall be maintained in accordance with accepted veterinary standards for that species.

Sec. 4-9. Interference with Enforcement.

It shall be unlawful for any person to interfere with, hinder or molest the employees of the Health Department or persons duly authorized by this Ordinance in performing their duties, or to release any animal in the custody of such persons.

Sec. 4-10. Penalty for Violation.

A. The violation of any provision of this Ordinance shall be a misdemeanor and any such violation shall be punishable as provided in N.C.G.S. 14-4. Each day's violation of this Ordinance shall be a separate offense. Payment of a fine imposed in criminal proceedings pursuant to this subsection does not relieve a person of liability for taxes or fees imposed under this Ordinance.

B. In addition, enforcement of this Ordinance may be by appropriate equitable remedy, injunction or order of abatement issuing from a court of competent jurisdiction pursuant to N.C.G.S. 153A-123(d) and (e).

C. In addition to, and not in lieu of, the criminal penalties and other sanctions provided in this Ordinance, a violation of this Ordinance may also subject the offender to the civil penalties hereinafter set forth.

1. Such civil penalties may be recovered by the County in a civil action in the nature of a debt or may be collected in such other amounts as prescribed herein within the prescribed time following the issuance of notice for such violation.
2. Such notice shall, among other things:
 - a. State upon its face the amount of the penalty and any fines [civil penalties] that may accrue.
 - b. Notify such offender that a failure to pay the penalties within the prescribed time shall subject such offender to a civil action in the nature of debt for stated penalty plus an additional penalty in the amount of twenty-five dollars (\$25.00) together with the cost of the action to be taxed by the Court.
 - c. Provide that such offender may answer the notice by mailing the notice and stated penalty to the Health Director, Moore County Health Department at its mailing address, or by making payment to the Health Director, Moore County Health Department at the appropriate address, and that upon payment, such case or claim and right of action by the County will be deemed compromised and settled.
 - d. State that such penalties must be paid within seventy-two (72) hours from issuance of such notice. Such notice shall further state that if such notice of violation is not paid within seventy-two (72) hours, a civil complaint for collection of such penalty may be filed by the County.
3. The Health Director or his/her designee is authorized to accept such payments in full and as final settlement of the claim or claims, right or rights of action which the County may utilize to enforce such penalty by civil action in the nature of a debt. Acceptance of such penalty shall be deemed a full and final release of any and all such claims, or rights of action arising out of such alleged violation or violations.

4. The civil penalty for any offense in violation of this Ordinance is:

First Offense	Twenty-five dollars	(\$25.00)
Second offense	Fifty dollars	(\$50.00)
Third Offense and thereafter	Seventy-five dollars	(\$75.00)

Such penalty shall be paid within seventy-two (72) hours from the issuance of the notice referred to above. After the seventy-two (72) hour period, the civil penalty will increase by twenty-five dollars (\$25.00) and an additional twenty-five dollars (\$25.00) for every five (5) work day period in which the fine [civil penalty] is not paid, not to exceed one thousand dollars (\$1,000.00).

5. The notice of violation referred to herein may be delivered to the person violating the provisions of this Ordinance in person, or may be mailed to such person at his/her last known address.

6. All penalties paid to the Health Director or recovered in a civil action in the nature of a debt, as herein provided, shall be paid into the general fund of the County.

Sec. 4-11. Feral Cats Colonies.

A. Caregivers of feral cat colonies shall implement proper management to include as follows:

1. Neuter adult cats; and
2. Vaccinate cats against rabies; and
3. Notch left ear of all vaccinated cats; and
4. Manage the health of the colony.

B. Animal Control will notify a feral cat caregiver prior to removal of any feral cat(s) and caregiver will be given a reasonable period of time to resolve any complaint.

C. Animal Control will notify a feral cat caregiver of any feral cat trapped by Animal Control that has a notched ear prior to euthanasia, with the exception of the provisions set forth by Section 4-66 of this Ordinance.

Secs. 4-12—4-30. Reserved.

ARTICLE II. RABIES CONTROL

Sec. 4-31. Compliance with State Laws; Article is Supplemental to State Rabies Laws.

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

B. The purpose of this Article is to supplement the state laws by providing Moore County a procedure for the enforcement of state laws relating to rabies control, in addition to the criminal penalties also provided by state law.

Sec. 4-32. Vaccination of Dogs, Cats and Equine.

A. It shall be unlawful for an owner or keeper to fail to provide current vaccination against rabies for any dog or cat four (4) months of age or older and equine six (6) months of age or older. Should it be deemed necessary by the Health Director that other animals be vaccinated in order to prevent a threatened epidemic or to control an existing epidemic, it shall be unlawful for an owner or keeper to fail to provide current vaccination against rabies for that animal. The time or times of vaccination shall be established by the Commission. Rabies vaccine shall be administered only by a licensed veterinarian or by a certified rabies vaccinator.

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.

Sec. 4-33. Rabies Tag and Certificate.

A. Upon complying with the provisions of Section 4-32, a rabies tag shall be issued to the owner or keeper of the dog or cat vaccinated pursuant to N.C.G.S. 130A-190. An owner or keeper of equine shall be issued a rabies vaccination certificate.

B. It shall be unlawful for any dog or cat owner or keeper to fail to provide the animal with a collar or harness to which are securely attached a current rabies tag as issued under this Section and identification tag bearing owner's name and/or telephone number. The collar or harness, with attached tag, must be worn at all times. Cats and equine shall not be required to wear the metallic tag, but the owner of the cat or equine shall maintain the rabies vaccination certificate, with a physical description of the animal, as written evidence to prove that the animal has a current rabies vaccination.

C. Any equine residing in or entering Moore County shall be required to show proof of current rabies vaccination.

D. In addition to all other penalties for violations as prescribed by law, the animal is subject to impoundment in accordance with the provisions of this Ordinance. If an animal control officer can identify the owner of an animal not wearing a rabies tag, he/she may provide the owner with a written notification of such violation and the owner shall be given forty-eight (48) hours from the time of notification to obtain and/or show proof of current vaccination. Failure to show proof of current vaccination may result in fines [civil penalties] and penalties reflected in Section 4-10 and/or the impoundment of the animal.

E. If an animal enforcement officer can identify the owner of an animal not wearing a rabies tag, he/she may provide the owner with a warning citation to show proof of current vaccination within forty-eight (48) hours without automatically impounding the animal.

F. It shall be unlawful for any person to use for any animal a rabies vaccination tag/certificate issued for any other animal.

Sec. 4-34. Notice to Health Director or Designated Representative When Person Bitten; Confinement of Animal.

A. When a person has been bitten by an animal, it shall be the duty of such person, or his/her parent, guardian or person standing in loco parentis of such person if such person is a minor, and the person owning such animal or having the same in his/her possession or under his/her control, to notify the Health Director or person duly authorized by the Health Director immediately and give their name, address and phone number, age and sex of the person bitten; and the owner or person having such animal in his/her possession or under his/her control shall immediately securely confine the animal for ten (10) days at the expense of the owner in such place as may be designated by the Health Director. It shall be the duty of every physician, after his/her first professional attendance upon a person bitten by any animal having rabies or suspected of having rabies, to report to the health director the name, age and sex of the person 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/her possession or under his/her control, an animal having rabies or suspected of having rabies refuses to confine the animal as required by this Ordinance or by N.C.G.S. 130A-196 and 130A-198, the Health Director may order seizure of the animal and its confinement for ten (10) days in such place as the Health Director designates.

B. Law enforcement agencies investigating animal bites shall report such bites immediately to the Health Director or his/her designee and give the names and addresses of persons bitten and owner of animal.

C. Animals confined pursuant to subsection A of this Section shall not be released from confinement except after a visual inspection of the animal by an animal control officer following a ten (10) day period of confinement or by permission from the Health Director or his/her designee.

D. Animals confined pursuant to subsection A of this Section shall be confined at the expense of the owner or keeper.

E. In the case of an animal whose owner or keeper is not known or cannot be identified, the animal shall be kept for the supervised confinement period of ten (10) days at a place designated and authorized by the Health Director.

F. Badly wounded, diseased, or suffering animals which are suspected of having rabies may be humanely destroyed immediately and the head forwarded for examination in accordance with the latest guidelines set forth by the State of North Carolina Department of Health and Human Services, Division of Laboratory Services for rabies diagnosis.

Sec. 4-35. Destruction or Confinement of Animal Bitten by a Known Rabid Animal.

Animals not vaccinated against rabies which are bitten by a known rabid animal, or by an animal suspected of having rabies, shall be immediately destroyed unless the owner or keeper agrees to strict isolation of the animal at a veterinary hospital for a period of six (6) months at the owner's or keeper's expense. If the animal has a current rabies vaccination, it shall be revaccinated within seventy-two (72) hours and returned to the owner or keeper within seven (7) calendar days.

Sec. 4-36. Area-Wide Emergency Quarantine.

A. When reports indicate a positive diagnosis of rabies to the extent that lives of persons are endangered, the Health Director may declare an area-wide quarantine for such period as he/she deems necessary. Upon invoking such emergency quarantine, no dog, cat or equine may be taken or shipped from the County without written permission of the Health Director. During such quarantine, the Health Director, law enforcement officers, or persons duly authorized by the Health Director, may seize and impound any dog, cat or equine found running at large in the county. During the quarantine period, the Health Director shall be empowered to provide for a program of mass immunization by the establishment of temporary emergency rabies vaccination facilities strategically located throughout the county.

B. 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.

Sec. 4-37. Postmortem Diagnosis.

A. If an animal dies while under observation for rabies, the head of such animal shall be submitted to the animal control office for shipment to the State laboratory in accordance with the latest guidelines set forth by the North Carolina Department of Health and Human Services, Division of Laboratory Services for rabies diagnosis.

B. The head of any animal suspected of dying of rabies or showing neurological signs consistent with rabies shall be surrendered to the animal control office for shipment to the state laboratory in accordance with the latest guidelines set forth by the North Carolina Department of Health and Human Services, Division of Laboratory Services for rabies diagnosis.

Sec. 4-38. Unlawful Killing or Releasing of Certain Animals.

It shall be unlawful for any person to kill or release any animal under observation for rabies, or any animal under observation for biting a human, or to remove such animal from the County without written permission from the Health Director, provided that a licensed veterinarian, or the Health Director, or persons duly authorized by the Health Director, may authorize any animal to be destroyed for rabies diagnosis.

Sec. 4-39. Failure to Surrender Animal for Confinement or Destruction.

It shall be unlawful for any person to fail or refuse to surrender any animal for confinement or destruction as required in this Ordinance when such demand is made by the Health Director.

Sec. 4-40. Failure to Report/Submit Suspected Rabies Cases for Evaluation.

It shall be unlawful for any person to fail to report/submit to a licensed veterinarian or animal control officer any domestic or wild animal with symptoms compatible with rabies. Failure to comply with this provision may result in the said person being liable for financial expenses incurred as a result of his/her negligence.

Secs. 4-41—4-60. Reserved.

ARTICLE III. IMPOUNDMENT AND REDEMPTION

Sec. 4-61. Impoundment.

A. Any animal which appears to be lost, stray or abandoned, rescued from a manner of care considered to be cruel (See Section 4-3 Cruelty to Animals) or not wearing a currently valid rabies vaccination tag, as required by State law or this Ordinance, or not under restraint in violation of this Ordinance, may be seized, impounded and confined in a humane manner in an animal shelter.

B. Impoundment of such an animal shall not relieve the owner or keeper thereof from any penalty which may be imposed for violation of this Ordinance.

Sec. 4-62. Notice to Owner or Keeper.

A. Upon impounding an animal, notice of such impoundment shall be posted at the end of the workday on which the animal enters the animal shelter, and until the animal is redeemed, adopted or disposed of. Reasonable efforts shall be made to identify the owner or keeper and inform such owner or keeper of the conditions under which the animal may be redeemed.

B. Such notice shall be prominently displayed with public access or by other public means at the animal shelter, and shall include a physical description (species, breed, color, sex, weight, age and any distinguishing features) and the time and place of the taking of such animal, together with the time and date of posting.

C. Such notice for livestock shall be prominently displayed with public access or by other public means in addition to the County courthouse, and shall include a physical description (species, breed, color, sex, weight, approximate age and other distinguishing features) and the time and place of the taking of such animal, together with the time and date of posting.

Sec. 4-63. Redemption by Owner or Keeper Generally.

A. The owner or keeper of an animal impounded pursuant to Sections 4-61 and 4-62 of this Ordinance may redeem the animal and regain possession thereof within seventy-two (72) hours after notice of impoundment is posted as required by this Ordinance and complying with all applicable provisions of this Ordinance by paying any applicable fees as determined by the Board of Commissioners.

B. Any animal held or impounded in the animal shelter because of being found running at large shall be released its owner by the Health Department Director or his/her designee, upon presentation of the following:

- (1) Proof of Ownership of such animal; and
- (2) Proof of current rabies vaccination; and
- (3) Payment of the daily boarding cost plus the impoundment fee, as set forth as follows:

First Violation per Animal:

If the animal is not microchipped it shall be microchipped at the owner's expense prior to return.

Second Violation per Animal:

If the animal is intact, the animal shall be spayed/neutered at the owner's expense prior to return.

Third and each ensuing Violation per Animal:

Seventy-five dollars (\$75.00).

C. Any animal held or impounded in the animal shelter because of violation of any provision of this Ordinance, except running at large, shall be released its owner thereof by the Health Director or his/her designee upon proof of ownership of such animal. The owner of such animal shall remain liable for payment of the daily boarding cost plus the impoundment fee as set forth above.

D. Payment of the daily boarding cost and impoundment fee shall not relieve the owner from the responsibility for all penalties which may be imposed for a violation of any of the provisions of this Ordinance.

E. All animals with proper identification shall be held a minimum of seven (7) days and all exhaustive measures will be taken to reunite the animal with its owner.

F. The owner or keeper of an animal or livestock impounded pursuant to Sections 4-61 and 4-62 of this Ordinance may redeem the animal and regain possession thereof within thirty (30) days after notice of impoundment is posted.

G. The provisions of this Section shall have no application with respect to animals surrendered by the owner or keeper to animal control or to an animal shelter for immediate adoption or destruction as provided for in Section 4-7.

Sec. 4-64. Destruction or Adoption of Unredeemed Animal Generally.

A. If an impounded animal is not redeemed by the owner or his/her designee within the period prescribed in Section 4-63, it may be destroyed in a humane manner as approved by the American Veterinary Medical Association, the Humane Society of the United States or the American Humane Association, or it shall become the property of the animal shelter.

B. No animal which has been impounded for being a stray or unclaimed by its owner may be adopted from the animal shelter during a period of emergency rabies quarantine invoked pursuant to this Ordinance, except by special authorization of the Health Director or his/her designee.

Sec. 4-65. Procedure for Redemption or Adoption of Unvaccinated Dog or Cat.

A. Unless proof of a current rabies vaccination can be furnished, every animal will be vaccinated for rabies if it is at least four (4) months of age or older. Every person who either adopts or redeems a dog or cat at the animal shelter will be given a "proof of rabies vaccination notice" at the time of the redemption or adoption. For animals less than four (4) months of age, a notice will be stamped with a date stating the maximum time limit allowed to take the dog or cat to a veterinarian for rabies vaccination.

B. The "proof of rabies vaccination notice" will be completed by the veterinarian and returned to the shelter issuing the notice.

C. Payment for rabies vaccination provided for in this Section will be the responsibility of the person redeeming or adopting the animal.

Sec. 4-66. Destruction of Wounded, Diseased or Unweaned Animals.

Notwithstanding any other provision of this Ordinance, any animal seized and impounded which is badly wounded or diseased (and not a rabies suspect), and has no identification may be destroyed immediately in a humane manner. Unweaned animals may be humanely destroyed after significant attempts to contact local animal shelters and/or individual rescuers have failed. If the animal has identification, the animal shelter and/or animal control shall attempt to notify the owner before disposing of such animal. If the owner cannot be reached readily, and the animal is suffering, the animal shelter, animal control or any law enforcement officer may destroy the animal at its discretion in a humane manner.

Sec. 4-67. 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. 4-68. Keeping Stray Animals; Requirements; Failure to Surrender.

A. It shall be unlawful for any person in the County knowingly and intentionally to harbor, feed, keep in possession by confinement or otherwise allow to remain on his/her property, any animal which does not belong to him/her, unless he/she has, within seventy-two (72) hours from the time such animal came into his/her possession, notified the animal control office or person designated by the Health Director. Upon receiving such notice, the animal control officers may take such animal and place it in an animal shelter and shall deal with it as provided by the animal shelter policy.

B. It shall be unlawful for any person to refuse to surrender any such stray animal to animal control or any person duly authorized by the Health Director or his/her designee upon demand.

C. Any person or organization who fails to notify the County animal control officer, or any person designated by the Health Director, within seventy-two (72) hours of coming into possession of an animal that does not belong to him, shall be deemed the temporary custodian of said animal, and shall be subject to compliance with all provisions of this Ordinance.

Secs. 4-69—4-85. Reserved.**ARTICLE IV. PERMITS*****Sec. 4-86. Security Dogs.**

A. It shall be unlawful to keep, maintain or use any dog in the county for the purpose of protecting any commercial or industrial property, or person on such property, unless a permit has first been obtained from the Health Director, in accordance with the provisions of this Section, and unless such permit shall remain unsuspended and unrevoked. A warning sign shall be posted near entrances and exits to property declaring a security dog is present.

B. It shall be unlawful to keep, maintain or use any patrol or security dog in the County for the purpose of protecting any residential property, or person on such property, unless a permit has first been obtained from the Health Director, in accordance with the provisions of this Section, and unless such permit shall remain unsuspended and unrevoked.

C. The Board of Health shall promulgate regulations and a fee schedule for the issuance of permits, and shall include requirements for humane care of all security dogs and for the compliance with this provision of this Ordinance and other applicable laws. The Board of Health may amend such regulations from time to time as deemed appropriate for public health and welfare and for the protection of security dogs.

***Note**—Cross reference to the Moore County Code of Ordinances, Chapter 9 entitled Licenses, Permits and Miscellaneous Business Regulations.

D. The Health Director may revoke any permit if the person holding the permit refuses or fails to comply with this Ordinance, the regulations promulgated by the Board of Health, or any other applicable law.

E. Regulation Standards include keeping the animal in an enclosure with a fence six (6) feet high, or higher, if the animal control officer, considering the history, size and strength of the dog, determines a higher fence is necessary, and a warning sign (i.e., "Security Dog On Premises") which must be visible from twenty (20) feet on all sides of the fence. The owner is required to notify the animal control officer immediately if the dog gets loose or attacks a person or another animal.

Sec. 4-87. Collecting Dogs and Cats for Resale.

A. It shall be unlawful for any person to collect any dog or cat for the purpose of resale unless a permit for the same shall have been obtained from the Health Director in accordance with the provisions of this Section, and unless such permit remains unsuspended and unrevoked, in addition to a valid U.S.D.A. license pursuant to the Federal Animal Welfare Act (7 USC 2131 et seq.).

B. The Board of Health shall promulgate regulations and a fee schedule for the issuance of permits, and shall include requirements for humane care and transportation of all cats and dogs for the compliance with the provisions of this Ordinance and other applicable laws. The Board of Health may recommend changes to such regulations from time to time as deemed appropriate for public health and welfare and for the protection of collected dogs and cats, not inconsistent with State or Federal laws.

C. The Health Director may revoke any permit if the person holding the permit refuses or fails to comply with this Ordinance, the regulations promulgated by the Board of Health, or any State or Federal law governing the protection and keeping of animals.

Sec. 4-88. Mandatory Spay/Neuter of Adopted Animals.

Any group, organization or entity offering animals for adoption in Moore County must provide proof of sterilization for every animal, six (6) months of age or over, and prior to adoption. Any adult animal must be spayed or neutered prior to being placed into a home.

Secs. 4-89—4-99. Reserved.

Notes:

State law references—Authority of county to levy taxes to provide animal protection and control programs, N.C.G.S. § 153A-149(c)(6); animal license tax, N.C.G.S. § 153A-153; animal shelters, N.C.G.S. § 153A-442; dogs, N.C.G.S. Ch. 67; power to define and prohibit animal abuse, N.C.G.S. § 153A-127; power of county to regulate, restrict or prohibit the possession or harboring of dangerous animals, N.C.G.S. § 153A-131; wildlife resources commission, N.C.G.S. § 143-237 et seq.; rabies, N.C.G.S. § 130A-184 et seq.; ordinance making power, N.C.G.S. § 153A-121.

Board of Commissioners Adoption 10/6/08.

Moore County Animal Control Ordinance Adopted 5/2/88 repealed.

CODE COMPARATIVE TABLE

PRIOR CODE

This table gives the location within this Code of those sections of the Prior Code which are included herein. Sections of the Prior Code, as supplemented, not listed herein have been omitted as repealed, superseded, obsolete or not of a general and permanent nature. For the location of the ordinances adopted subsequent thereto, see the table immediately following this table.

Prior Code Section	Section this Code
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3.10	8-2
7.11	20-3
7.19	20-1
8.1	32-17
8.2—8.11	32-19—32-28
8.12	32-18
9.10, 9.11	26-1, 26-2
9.11	36-1
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9.16	14-1
9.17	26-4
9.19	26-5
9.24	26-6
9.27	26-7
9.29	26-8
12.10	40-23
12.50	40-24

CODE COMPARATIVE TABLE

ORDINANCES

This table gives the location within this Code of those ordinances adopted since the Prior Code, which are included herein. Ordinances adopted since adoption of the Prior Code, and not listed herein, have been omitted as repealed, superseded or not a general and permanent nature.

Ordinance Date	Section	Section this Code
8-11-1969(Ord.)		14-1
5-12-1980(Ord.)	1—3	40-24
12-13-1982(Ord.)	2.10	4-1
7- 9-1990(Ord.)	1	18-20
	2	18-19
	3—15	18-21—18-33
4- 8-1991(Ord.)	1—3	2-1
5-13-1991(Ord.)	1—9	10-19—10-27
5-11-1992(Ord.)	1	10-59
	2	10-57
	3—20	10-60—10-77
	21	10-58
10-10-1994(Ord.)		40-52
11-13-1995(Ord.)	I	18-104
	V	18-107
7-21-1997(Ord.)	(a)	26-62
	(b)	26-61
	(c)	26-63
9- 8-1997(Ord.)	1—6	6-1—6-6
4-13-1998(Ord.)	1—3	40-24
3-13-2000(Ord.)		1-8
2-10-2003(Ord.)	div. 2	38-20
	34-81	38-19
	34-82—34-135	38-21
	34-136, 34-137	38-46, 38-47
	34-139, 34-140	38-48, 38-49
	34-141	38-49
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	34-165	38-145
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	34-171—34-182	38-169—38-180
	34-183—34-186	38-199—38-202

VASS MUNICIPAL CODE

Ordinance Date	Section	Section this Code
	34-187, 34-188	38-228, 38-229
	34-189, 34-190	38-252, 38-253
	34-191	38-285
	34-192	38-304
	34-193, 34-194	38-327, 38-328
	34-195, 34-196	38-360
	34-197—34-201	38-362—38-366
3-10-2003(Ord.)		40-53
9- 8-2003(Ord.)	1—9	34-1—34-9
4-26-2004(Ord.)	art. I, § 1—art. I, § 4	28-1—28-4
	art. II, § 1—art. II, § 13	28-27—28-39
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***Note**—The adoption, amendment, repeal, omissions, effective date, explanation of numbering system and other matters pertaining to the use, construction and interpretation of this Code are contained in the adopting ordinance and preface which are to be found in the preliminary pages of this volume.

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