

VILLAGE OF BALD HEAD ISLAND, NORTH CAROLINA

Published by Order of the Village Council
Current with legislation passed through September 24, 2010
Supplement No. 4

Published by:
American Legal Publishing Corporation
432 Walnut Street, 12th Floor
Cincinnati, Ohio 45202
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Mayor

John Fisher

Mayor Pro Tempore

Gene Douglas

Art Morris

John Pilera

Village Council

Calvin R. Peck, Jr.

Village Manager

Charles S. Baldwin IV

Village Attorney

Debra Talbert

Village Clerk

PREFACE

This Code constitutes a codification of the general and permanent ordinances of the Village of Bald Head Island, North Carolina.

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

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

Chapter and Section Numbering System

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

and, in the case of divisions, may be placed at the end of the article embracing the subject. The next successive number shall be assigned to the new article or division. New chapters may be included by using one of the reserved chapter numbers. Care should be taken that the alphabetical arrangement of chapters is maintained when including new chapters.

Page Numbering System

The page numbering system used in this Code is a prefix system. The letters to the left of the colon are an abbreviation which represents a certain portion of the volume. The number to the right of the colon represents the number of the page in that portion. In the case of a chapter of the Code, the number to the left of the colon indicates the number of the chapter. In the case of an appendix to the Code, the letter immediately to the left of the colon indicates the letter of the appendix. The following are typical parts of codes of ordinances, which may or may not appear in this Code at this time, and their corresponding prefixes:

| | |
|---------------------------|---------|
| CHARTER | CHT:1 |
| CHARTER COMPARATIVE TABLE | CHTCT:1 |
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Indexes

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

Looseleaf Supplements

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

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

Acknowledgments

This publication was under the direct supervision of Jan Shekitka, Senior Code Attorney, and Catherine Ponson, 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 Alina Medina, Village 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 village readily accessible to all citizens and which will be a valuable tool in the day-to-day administration of the village's affairs.

Copyright

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ADOPTING ORDINANCE

ORDINANCE NO. 2008-0701

AN ORDINANCE OF THE VILLAGE OF BALD HEAD ISLAND, NORTH CAROLINA
AMENDING ORDINANCE NO. 2008-0701

WHEREAS, the Village Council of the Village of Bald Head Island, North Carolina determined it to be in the best interest of the Village and public administration for the Village Ordinances to be organized by subject matter and compiled in a Code of Ordinances; and

WHEREAS, the Village Council previously passed Ordinance No. 2006-0901 with respect to codification of Village Ordinances and repeal of uncodified Ordinances; and

WHEREAS, Ordinance No. 2006-0903 provided for the repeal of uncodified Ordinances to occur two (2) years from the September 15, 2006 adoption date of Ordinance No. 2006-0901; and

WHEREAS, work is ongoing on the codification of the Village's Ordinances and it is in the best interest of the Village and public administration for the two (2) year repeal set forth in Ordinance No. 2006-0901 to be extended for an additional two (2) year period.

NOW, THEREFORE, BE IT ORDAINED BY THE VILLAGE OF BALD HEAD ISLAND,
NORTH CAROLINA:

Section 1. The two (2) year period for the repeal of Pre-existing Ordinances set forth in Sections 2 and 3 of Ordinance No. 2006-0901 is hereby extended for an additional two-year period, so that the effective date of repeal is the 15th day of September, 2010.

Section 2. Except as expressly amended herein, Ordinance No. 2006-0901 is ratified and reaffirmed.

Passed and adopted by the Village of Bald Head Island Council, this the 18th day of July, 2008.

BY: /S/

LAWRENCE LAMMERT, Mayor

ATTEST:

/S/

Joy Barrow Davis, Village Clerk

1st Reading: June 13, 2008

2nd Reading: July 18, 2008

Board Action Unanimous 5 - 0

ORDINANCE NO. 2010-0901

AN ORDINANCE OF THE VILLAGE OF BALD HEAD ISLAND, NORTH CAROLINA, RESPECTING CODIFICATION OF ORDINANCES AND AMENDING ORDINANCES NOS. 2008-0701 AND 2006-0903

WHEREAS, the Village Council of the Village of Bald Head Island, North Carolina, determined it to be in the best interest of the Village and public administration for the Village Ordinances to be organized by subject matter and compiled in a Code of Ordinances; and

WHEREAS, Village Ordinance No. 2006-0903 (Exhibit "A" hereto) adopted a Code entitled "Code of Ordinances, Village of Bald Head Island, North Carolina," published by Municipal Code Corporation consisting of Chapters 1 through 32; and

WHEREAS, Municipal Code Corporation subsequently prepared Supplements 1 and 2 to the Code and the Village wishes to adopt same; and

WHEREAS, Village Ordinance No. 2006-0903 and Ordinance No. 2008-0701 (Exhibit "B" hereto) provided for the repeal on September 15, 2010, of certain uncodified Pre-existing Ordinances adopted on or before September 15, 2006; and

WHEREAS, work is ongoing on the codification of the Village Ordinances and it is in the best interest of the Village and public administration for uncodified ordinances not to be repealed; and

WHEREAS, in several instances, Ordinance No. 2008-701 incorrectly referred to Ordinance No. 2006- 0903 as Ordinance No. 2006-0901 and the Village Council wishes to correct same; and

WHEREAS, American Legal Corporation of Cincinnati, Ohio, has completed the Third Supplement to the Code of Ordinances and the Village Council wishes to adopt the same.

NOW, THEREFORE, BE IT ORDAINED BY THE VILLAGE OF BALD HEAD ISLAND, NORTH CAROLINA:

Section 1. Ordinance No. 2008-0701 is hereby amended so that all references to 2006-0901 shall refer to 2006-0903.

Section 2. Supplements 1 and 2 to the Village Code of Ordinances as submitted by Municipal Code Corporation are hereby adopted by reference as if set out in their entirety.

Section 3. Such Supplements shall be deemed published as of the date hereof and the Village Clerk is hereby authorized and ordered to insert such Supplements into the copy of the Ordinances kept on file at Village Hall.

Section 4. Supplement 3 to the Village Code of Ordinances as submitted by American Legal Corporation of Cincinnati, Ohio, is hereby adopted by reference as if set out in its entirety.

Section 5. Such Supplement shall be deemed published as of the date hereof and the Village Clerk is hereby authorized and ordered to insert such Supplements into the copy of the Ordinances kept on file at Village Hall.

Section 6. The repeal of certain Pre-existing Ordinances set forth in Ordinances Nos. 2006-0903 and 2008-0701 to occur September 15, 2010, is rescinded and no Pre-existing Ordinances or other Ordinances shall be repealed pursuant to Ordinances Nos. 2006-0903 and 2008-0701.

Section 7. Ordinances Nos. 2006-0903 and 2008-0701 are amended as aforesaid and any inconsistent provision thereof is rescinded and shall be of no effect.

Passed and adopted by the Village Council of the Village of Bald Head Island upon first introduction by a supermajority of not less than four Council members on this the 10th day of September, 2010.

BY: /S/

J. Andrew Sayre, Mayor

ATTEST:

/S/

Debra C. Talbert, Village Clerk

[Village Seal]

PART I CHARTER*

* **Editors Note:** herein is the Charter of the Village of Bald Head Island, N.C., being chapter 324 of the Session Laws of 1997, as adopted by the General Assembly on July 24, 1997, and effective on the same

date. Amendments to the original Charter are indicated by parenthetical history notes following amended provisions. The absence of a history note indicates that the provision remains unchanged from the original Charter. Obvious misspellings have been corrected without notation. For stylistic purposes, a uniform system of headings, catchlines and citations to state statutes has been used. Additions made for clarity are indicated by brackets.

State Law References: laws supplementary to charters, G.S. 160A-3.

Article I. Incorporation, Corporate Powers, and Boundaries

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Sec. 1.2. Powers.

Sec. 1.3. Corporate Boundaries.

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Sec. 2.2. Village Council; Composition; Terms of Office.

Sec. 2.3. Mayor; Term of Office; Duties.

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Article XI. Sea Turtle Sanctuary

Sec. 11.1. Sea Turtle Sanctuary.

**ARTICLE I.
INCORPORATION, CORPORATE POWERS, AND BOUNDARIES**

Section 1.1. Incorporation.

The Village of Bald Head Island, North Carolina, in Brunswick County, and the inhabitants thereof shall continue to be a municipal body politic and corporate, under the name of the "Village of Bald Head Island," hereinafter at times referred to as the "Village."

Section 1.2. Powers.

The Village shall have and may exercise all of the powers, duties, rights, privileges, and immunities conferred upon the Village of Bald Head Island specifically by this Charter or upon municipal corporations by general law. The term "general law" is employed herein as defined in G.S. 160A-1.

Section 1.3. Corporate Boundaries.

The corporate boundaries shall be those existing at the time of ratification of this Charter, as set forth on the official map of the Village and as they may be altered from time to time in accordance with law. An official map of the Village, showing the current municipal boundaries, shall be maintained permanently in the office of the Village Clerk and shall be available for public inspection. Upon alteration of the corporate limits pursuant to law, the appropriate changes to the official map shall be made and copies shall be filed in the offices of the Secretary of State, the Brunswick County Register of Deeds, and the appropriate board of elections.

ARTICLE II. GOVERNING BODY

Section 2.1. Village Governing Body; Composition.

The Mayor and the Village Council shall be the governing body of the Village.

Section 2.2. Village Council; Composition; Terms of Office.

The Council shall be composed of four members to be elected by all the qualified voters of the Village for terms of four years, or until their successors are elected and qualified.

(Ord. No. 2008-1203, 12-12-2008)

Section 2.3. Mayor; Term of Office; Duties.

The Mayor shall be elected by all the qualified voters of the Village for a term of four years. The Mayor shall be the official head of the Village government and preside at meetings of the Council, shall have the right to vote on all matters before the Council, but shall not have the power to vote again in instances where there is an equal division on a question, and shall exercise the powers and duties conferred by law or as directed by the Council.

(Ord. No. 2008-1203, 12-12-2008)

Section 2.4. Mayor Pro Tempore.

The Council shall elect one of its members as Mayor Pro Tempore to perform the duties of the Mayor during the Mayor's absence or disability, in accordance with general law.

Section 2.5. Meetings.

In accordance with general law, the Council shall establish a suitable time and place for its regular meetings. Special and emergency meetings may be held as provided by general law.

Section 2.6. Quorum; Voting Requirements.

Official actions of the Council and all votes shall be taken in accordance with applicable provisions of general law, particularly G.S. 160A-75. The quorum provisions of G.S. 160A-74 shall apply.

Section 2.7. Qualifications for Office; Compensation; Vacancies.

The qualifications of the Mayor and Council members shall be in accordance with general law. The Mayor and Council members shall receive no compensation for their services but may be reimbursed for ordinary and necessary expenses. Vacancies shall be filled as provided in G.S. 160A-63.

**ARTICLE III.
ELECTIONS**

Section 3.1. Regular Municipal Elections.

Regular municipal elections shall be held in each odd-numbered year in accordance with the uniform municipal election laws of North Carolina. Elections shall be conducted on a nonpartisan basis and the results determined using the nonpartisan plurality method as provided in G.S. 163-292.

Section 3.2. Election of Councilmembers.

The Councilmembers serving on the date of ratification of this Charter shall serve until the expiration of their terms or until their successors are elected and qualified. Except for the filling of vacancies as provided for in G.S. 160A-63, two Councilmembers shall be elected at the regular municipal election in 1997 and every four years thereafter, and three Councilmembers shall be elected at the regular municipal election in 1999 and every four years thereafter.

Section 3.3. Special Elections and Referenda.

Special elections and referenda may be held only as provided by general law or applicable local acts of the General Assembly.

ARTICLE IV. ORGANIZATION AND ADMINISTRATION

Section 4.1. Form of Government.

The Village shall operate under the council-manager form of government, in accordance with G.S. 160A, Article 7, Part 2.

Section 4.2. Village Manager; Appointment; Powers and Duties.

The Council shall appoint a Village Manager who shall be responsible for the administration of all departments of the Village government. The Village Manager shall have all the powers and duties conferred by general law, except as expressly limited by the provisions of this Charter, and the additional powers and duties conferred by the Council, so far as authorized by general law.

Section 4.3. Manager's Personnel Authority; Role of Elected Officials.

As chief administrator, the Village Manager shall have the power to appoint, suspend, and remove all officers, department heads, and employees in the administrative service of the Village, with the exception of the Village Attorney and any other official whose appointment or removal is specifically vested in the Council by this Charter or by general law. Neither the Council nor any of its members shall take part in the appointment or removal of officers and employees in the administrative service of the Village, except as provided by this Charter. Except for the purpose of inquiry, or for consultation with the Village Attorney, the Council and its members shall deal with the administrative service solely through the Village Manager, Acting Manager, or Interim Manager, and neither the Council nor any of its members shall give any specific orders to any subordinates of the Village Manager, Acting Manager, or Interim Manager, either publicly or privately.

(S.L. 2008-57, § 1, 7-7-2008)

Section 4.4. Village Attorney.

The Village Council shall appoint a Village Attorney licensed to practice law in North Carolina. It shall be the duty of the Village Attorney to represent the Village, advise Village officials, and perform other duties required by law or as the Council may direct.

Section 4.5. Village Clerk.

The Village Manager shall appoint a Village Clerk to keep a journal of the proceedings of the Council, to maintain official records and documents, to give notice of meetings, and to perform such other duties required by law or as the Manager may direct. The Village Manager shall supervise and may remove the Village Clerk.

2008-57, § 2, 7-7-2008)

Section 4.6. Tax Collector.

The Village shall have a Tax Collector to collect all taxes owed to the Village, subject to general law, this Charter, and Village ordinances and to perform those duties specified in G.S. 105-350 and such other duties as prescribed by law or assigned by the Village Manager. Notwithstanding the provisions of G.S. 105-349, the Village Manager is authorized to appoint and remove the Tax Collector and any deputy tax collectors.

Section 4.7. Finance Director.

The Village Manager shall appoint a Finance Officer to perform the duties designated in G.S. 159-25 and such other duties as may be prescribed by law or as the Council may direct, or the Village Council may, at its election, confer the duties of Finance Officer on the Village Manager as budget Officer. The Finance Officer may be entitled "Accountant", "Treasurer," "Finance Director," "Finance Officer," or any other reasonably descriptive title.

Section 4.8. Other Administrative Officers and Employees.

The Council may authorize other positions to be filled by appointment by the Village Manager and may organize the Village government as deemed appropriate, subject to the requirements of general law.

**ARTICLE V.
FINANCE AND TAXATION**

Section 5.1. Room Occupancy and Tourism Development Tax.

The authority of the Village to levy a room occupancy and tourism tax shall continue as authorized by Chapter 664 of the 1991 Session Laws, and any subsequent acts.

**ARTICLE VI.
CONTRACT POST OFFICE**

Section 6.1. Contract Post Office.

The authority of the Village to operate a contract post office shall continue as authorized by Chapter 16 of the 1991 Session Laws, as amended by Chapter 350 of the 1991 Session Laws, and any subsequent acts.

ARTICLE VII. "NO WAKE" SPEED ZONE

Section 7.1. "No Wake" Speed Zone.

The "no wake" speed zone established by Chapter 688 of the 1987 Session Laws, and any subsequent acts, shall continue as authorized.

ARTICLE VIII. MISCELLANEOUS

Section 8.1. Motorboat Operation.

The Village may regulate the speed and operation of motorboats within the Village jurisdiction to preserve the tranquility and environment of the Village.

Section 8.2. Sand Dunes.

The Village may construct, reconstruct, plant, and maintain sand dunes and regulate access to and across dunes to prevent or repair damage to dunes so as to provide protection against erosion or overwash.

Section 8.3. Beach Regulation.

The Village may, by ordinance, establish standards of dress, conduct, and decorum on the beaches of Bald Head Island and may otherwise regulate the use of those beaches within the Village jurisdiction.

ARTICLE IX. PHASED DEVELOPMENT PLAN

Section 9.1. Phased Development Plan.

In accordance with an act to incorporate the Village of Bald Head Island, Chapter 156 of the 1985 Session Laws, the Village Council was required to adopt by ordinance plans of development consistent with the historical land use patterns and densities in existence on Bald Head Island at the time of ratification of the act. The Village Council, after public hearing and upon recommendation of its Planning Board, adopted a zoning ordinance for the undeveloped portions of Bald Head Island consistent with those historical land

use patterns and densities. Such zoning ordinance is based upon a "Phased Development Plan" (as that term is defined in G.S. 160A-385.1(b)(3)), which plan was prepared by Bald Head Island Limited.

Section 9.2. Vested Rights.

The owners of the undeveloped portions of Bald Head Island are declared hereby to have acquired vested rights in accordance with G.S. 160A-385.1 as to the "Phased Development Plan" entitled "Revised June 29, 1995 STAGE 2 MASTER PLAN BALD HEAD ISLAND, NORTH CAROLINA, BALD HEAD ISLAND PLANNING DEPARTMENT" and approved by the State Division of Coastal Management on August 7, 1995. Notwithstanding the provisions of G.S. 160A-385.1(d), these vested rights shall be valid through December 31, 1999, and no longer. Nothing in this section shall be construed to prohibit the further granting of vested rights by the Village pursuant to the provisions of G.S. 160A-385.1.

Section 9.3. Alteration of Vested Rights.

As specifically authorized by G.S. 160A-385.1(e)(l)a., the vested rights herein granted may only be changed, prior to December 31, 1999, as allowed by the exceptions set forth in G.S. 160A-385.1(e). In addition, subject to the approval of the Village and within the limits established by the Village zoning and other land use ordinances, vested densities may be transferred within the area depicted on the Stage 2 Master Plan referred to in Section 9.2 of this Charter so long as the density of development within the total area is not increased.

Section 9.4. Land Use Regulation.

Except as herein expressly provided, nothing in this Charter shall be construed to prohibit the Village from amending its current land use regulatory ordinances, in whole or in part, or otherwise regulating the use of land within the planning and zoning jurisdiction of the Village.

ARTICLE X. MOTOR VEHICLE REGULATION

Section 10.1. Motor Vehicle Regulation.

The Village may by ordinance exempt from the provisions of Articles 3, 3A, 11, and 13 of Chapter 20 of the General Statutes, in whole or in part, the registration, licensing, regulation, inspection, or equipping of motor vehicles and may regulate the use, operation, possession, and ownership of motor vehicles within the jurisdiction of the Village of Bald Head Island. Additionally, notwithstanding the provisions of Chapter 20 of the General Statutes or any other statute, and in addition to those powers now or hereafter conferred by law, the Village shall have the authority to regulate motor

vehicles and other means of transportation within the jurisdiction of the Village, including the following:

- (1) Regulation of the use and operation of all vehicles, as defined in G.S. 20-4.01(49).
- (2) Regulation of all electrically powered vehicles or vehicles powered by fossil fuel or internal combustion engines.
- (3) Regulation of the size, weight, lighting, safety standards, and engine or motor size or power characteristics of all vehicles or other means of transportation within the jurisdiction of the Village.

Section 10.2. Street Regulation.

In order to establish and preserve the unique character and aesthetics of Bald Head Island, the Village may adopt, by ordinance, such standards for the establishment and maintenance of streets and roads within the jurisdiction of the Village as it deems appropriate. The streets and roads within the jurisdiction of the Village shall not be under the authority of the Department of Transportation. The provisions of Articles 2 and 2A of Chapter 136 of the General Statutes shall not apply within the jurisdiction of the Village. The Village shall be exempt from the provisions of G.S. 136-66.2.

**ARTICLE XI.
SEA TURTLE SANCTUARY**

Section 11.1. Sea Turtle Sanctuary.

The Village of Bald Head Island may create and establish a sea turtle sanctuary within the areas of the Village limits above the mean low water mark, to include the foreshore. Any ordinances adopted by the Village to regulate activities within the sea turtle sanctuary that may or will disturb or destroy a sea turtle, a sea turtle nest, or sea turtle eggs, must be consistent with the ordinance powers found in G.S. 160A-174, G.S. 160A-308, and any other law. The ordinances adopted by the Village may by cross reference incorporate the criminal statutes regarding the taking of sea turtles in G.S. 113-189 and G.S. 113-337. It shall be unlawful for any person within the sea turtle sanctuary to disturb or destroy a sea turtle, a sea turtle nest, or sea turtle eggs in violation of an ordinance adopted by the Village of Bald Head Island.

CHARTER COMPARATIVE TABLE

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

| <i>Ordinance Number</i> | <i>Date</i> | <i>Section</i> | <i>Section this Charter</i> |
|-------------------------|-------------|----------------|-----------------------------|
|-------------------------|-------------|----------------|-----------------------------|

| | | | |
|---------------|------------|-----------|------------|
| | 7-24-1997 | 1.1--11.1 | 1.1-- 11.1 |
| 2008-57(S.L.) | 7- 7-2008 | 1 | 4.3 |
| | | 2 | 4.5 |
| 2008-1203 | 12-12-2008 | | 2.2, 2.3 |

Chapter 1 GENERAL PROVISIONS

Sec. 1-1. How Code designated and cited.

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

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

Sec. 1-4. Catchlines, history notes and references.

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

Sec. 1-6. General penalty; enforcement of ordinances; continuing violations.

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

Sec. 1-8. Supplementation of Code.

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

Sec. 1-1. How Code designated and cited.

The ordinances embraced in this and the following chapters and sections shall constitute and be designated "Code of Ordinances, Village of Bald Head Island, North Carolina," and may be so cited. Such Code may also be cited as the "Bald Head Island Village Code."

State Law References: to adopt code of ordinances, G.S. 160A-77; admission of Code in evidence, G.S. 160A-79.

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

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

Charter. The term "Charter" shall mean the Charter of the Village of Bald Head Island, North Carolina as printed in Part I of this volume.

Code. The term "Code" shall mean the Code of Ordinances, Village of Bald Head Island, North Carolina as designated in section 1-1.

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

State Law References: of time, G.S. 1-593.

Council, village council. The terms "council" and "village council" shall mean and refer to the mayor and council of the Village of Bald Head Island, North Carolina.

County. The term "county" shall mean the County of Brunswick in the State of North Carolina, except as otherwise provided.

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

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

Month. The term "month" shall mean a calendar month.

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 "swear" and "sworn" shall be equivalent to the words "affirm" and "affirmed."

Official time standard. Whenever certain hours are named in this Code, they shall mean standard time or daylight saving time, as may be in current use in this village.

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

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

Personal property. The term "personal property" shall include every species of property, except real property as defined in this section.

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

Property. The term "property" shall include real and personal property.

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

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

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

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

State. The term "state" shall be construed to mean the State of North Carolina, except as otherwise provided.

Statute references. The terms "General Statutes" and "G.S." shall refer to the latest edition of the General Statutes of North Carolina, as amended.

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

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

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

Village. The terms "village" and "the village" mean the Village of Bald Head Island, in the County of Brunswick and in the State of North Carolina, except as otherwise provided.

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

Year. The term "year" shall mean a calendar year.

State Law References: definitions and rules of construction, G.S. 12-3.

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

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

Sec. 1-4. Catchlines, history notes and references.

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

(b) The history notes following sections of the Code and the references scattered throughout the Code are for the benefit of the user only and are not a part of this code.

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

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

Sec. 1-6. General penalty; enforcement of ordinances; continuing violations.

(a) Unless otherwise specifically provided, violation of any provision of this Code or any other village ordinance shall be a misdemeanor, as provided by G.S. 14-4.

(b) Any provision of this Code or any other village ordinance may be enforced by an appropriate equitable remedy issuing from a court of competent jurisdiction. In such case, the general court of justice shall have jurisdiction to issue such orders as may be appropriate, and it shall not be a defense to the application of the village for equitable relief that there is an adequate remedy at law.

(c) Any provision of this Code or any other village ordinance that makes unlawful a condition existing upon or use made of real property may be enforced by injunction and order of abatement, and the general court of justice shall have jurisdiction to issue such orders. When a violation of such a provision occurs, the village may apply to the appropriate division of the general court of justice for a mandatory or prohibitory injunction and order of abatement commanding the defendant to correct the unlawful condition upon or cease the unlawful use of the property. The action shall be governed in all respects by the laws and rules governing civil proceedings, including the Rules of

Civil Procedure in general and Rule 65 in particular. In addition to an injunction, the court may enter an order of abatement as a part of the judgment in the cause. An order of abatement may direct that buildings or other structures on the property be closed, demolished or removed; that fixtures, furniture or other movable property be removed from buildings on the property; that grass and weeds be cut; that improvements or repairs be made; or that any other action be taken that is necessary to bring the property into compliance with this Code or such ordinance. If the defendant fails or refuses to comply with an injunction or with an order of abatement within the time allowed by the court, he may be cited for contempt, and the village may execute the order of abatement. The village shall have a lien on the property for the cost of executing an order of abatement in the nature of a mechanic's and materialman's lien. The defendant may secure cancellation of an order of abatement by paying all costs of the proceedings and posting a bond for compliance with the order. The bond shall be given with sureties approved by the clerk of superior court in an amount approved by the judge before whom the matter is heard and shall be conditioned on the defendant's full compliance with the terms of the order of abatement within a time fixed by the judge. Cancellation of an order of abatement shall not suspend or cancel an injunction issued in conjunction therewith.

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

(e) Except as otherwise specifically provided, each day's continuing violation of any provision of this Code or any other village ordinance shall be a separate and distinct offense.

State Law References: to impose fines and penalties for violation of municipal ordinances, G.S. 160A-175; violation of municipal ordinances a misdemeanor, G.S. 14-4.

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

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

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

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

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

Sec. 1-8. Supplementation of Code.

(a) By contract or by village personnel, supplements to this Code shall be prepared on an annual basis. A supplement to the Code shall include all substantive, permanent and general parts of ordinances passed by the village council during the period covered by the supplement and all changes made thereby in the Code. The pages of a supplement shall be so numbered that they will fit properly into the Code and will, where necessary, replace pages that 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 authorized to prepare the supplement) may make formal, nonsubstantive changes in ordinances and parts of ordinances included in the supplement, insofar as it is necessary to do so to embody them into a unified code. For example, the codifier may:

(1) Organize the ordinance material into appropriate subdivisions.

(2) Provide appropriate catchlines, headings and titles for sections and other subdivisions of the Code printed in the supplement, and make changes in such catchlines, headings and titles.

(3) Assign appropriate numbers to sections and other subdivisions to be inserted in the Code and, where necessary to accommodate new material, change existing section or other subdivision numbers.

(4) Change the words "this ordinance" or words of the same meaning to "this chapter," "this article," "this division," etc., as the case may be, or to "sections _____ to _____" (inserting section numbers to indicate the sections of the Code which embody the substantive sections of the ordinance incorporated into the Code).

(5) Make other nonsubstantive changes necessary to preserve the original meanings of ordinance sections inserted into the Code; but in no case shall the codifier make any

change in the meaning or effect of ordinance material included in the supplement or already embodied in the Code.

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

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

- (1) Any offense or act committed or done or any penalty or forfeiture incurred or any contract or right established or accruing before the effective date of this Code;
- (2) Any ordinance or resolution promising or guaranteeing the payment of money for the village or authorizing the issuance of any bonds of the village or any evidence of the village's indebtedness;
- (3) Any contract or obligation assumed by the village;
- (4) Any ordinance fixing the salary of any village officer or employee;
- (5) Any right or franchise granted by the village;
- (6) Any ordinance dedicating, naming, establishing, locating, relocating, opening, widening, paving, etc., any street or public way in the village;
- (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 map amendment;
- (11) Any ordinance dedicating or accepting any subdivision plat;
- (12) Any ordinance describing or altering the boundaries of the village;
- (13) The administrative ordinances or resolutions of the village not in conflict or inconsistent with the provisions of this Code;
- (14) Any ordinance levying or imposing taxes not included in this Code;
- (15) Any ordinance establishing or prescribing street grades in the village;

nor shall any such ordinance be construed to revive any ordinance or part thereof that has been repealed by a subsequent ordinance which is repealed by this chapter; and all

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

State Law References: not repealed by General Statutes, G.S. 164-7.

Chapter 2 ADMINISTRATION*

* **Cross References:** contract or obligation assumed by the village saved from repeal, § 1-9(3); the administrative ordinances or resolutions of the village not in conflict or inconsistent with the provisions of this Code saved from repeal, § 1-9(13); civil emergencies, ch. 8; administration of flood damage prevention regulations, § 14-61 et seq.; utilities, ch. 30; administration of zoning regulations, § 32-41 et seq.; personnel, app. A; grant criteria procedures for local implementation and enforcement programs under the coastal area management act, app. B.

State Law References: and towns, G.S. ch. 160A.

Article I. In General

Secs. 2-1--2-30. Reserved.

Article II. Mayor and Council

Secs. 2-31--2-60. Reserved.

Article III. Officers and Employees

Sec. 2-61. Criminal background check.

Secs. 2-62--2-90. Reserved.

Article IV. Boards, Commissions and Committees

Division 1. Generally

Secs. 2-91--2-110. Reserved.

Division 2. Planning Board

Sec. 2-111. Created.

Sec. 2-112. Membership.

Sec. 2-113. Officers and meetings.

Sec. 2-114. Duties.

Sec. 2-115. Financing.

Secs. 2-116--2-130. Reserved.

Article V. Finance

Division 1. Generally

Sec. 2-131. Surplus personal property.

Secs. 2-132--2-150. Reserved.

Division 2. Purchasing

Sec. 2-151. Grant of authority.

Sec. 2-152. Report.

Sec. 2-153. Extent of authority.

Sec. 2-154. No limitation of other authority.

Sec. 2-155. Appropriation required.

Sec. 2-156. Application of general statutes.

Secs. 2-157--2-180. Reserved.

Division 3. Construction and Repair Contracts

Sec. 2-181. Grant of authority.

Sec. 2-182. Report.

Sec. 2-183. Extent of authority.

Sec. 2-184. No limitation of other authority.

Sec. 2-185. Appropriation required.

Sec. 2-186. Application of general statutes.

ARTICLE I. IN GENERAL

Secs. 2-1--2-30. Reserved.

ARTICLE II. MAYOR AND COUNCIL *

* **Charter References:** body, art. II.

State Law References: and council, G.S. 160A-66 et seq.

Secs. 2-31--2-60. Reserved.

ARTICLE III. OFFICERS AND EMPLOYEES*

* **Charter References:** officers and employees, § 4.2 et seq.

Cross References: ordinance fixing the salary of any village officer or employee saved from repeal, § 1-9(4); zoning enforcement officer, § 32-41; local permit officer, app. B, § 15A NCAC 71.0507.

Sec. 2-61. Criminal background check.

(a) In order to protect the citizens of the village, and their properties, the procedures herein are established to provide for fingerprinting and criminal history checks on all final applicants for regular full and part time positions in the village government. Employment with the town may be denied for those persons convicted of any crime against a person, or crimes against property where intent is an element, or any drug or gambling related offense.

(b) The village manager, or designee, shall conduct an investigation of any final candidate for a permanent full-time or part-time position with the village government and it shall be a precondition of employment that an applicant for such a position shall upon request, provide fingerprints and all other necessary personal identification including a birth certificate, social security number and drivers license, if available, so that the village manager or designee, may cause a thorough search to be made of local and state criminal records to determine if the applicant has a history of criminal convictions or the crimes enumerated above by the use of the division of criminal information network (DCI).

(c) The village police department shall provide the findings from the use of the DCI to the village manager or designee, provided that all necessary agreements with the State Bureau of Investigations Divisions of Criminal Information have been executed.

(d) An evaluation of any crime for purpose of employment will take into account the nature and the circumstances of the offense and the time frame of the offense as it relates to the essential job functions for the position applied.

(e) If this section or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provision or applications of the ordinance which can be given separate effect and to that end the provisions of this section are declared to be severable.

(f) Prior to denial or termination of employment based upon criminal history record inquiry (CHRI) received from the criminal justice agency, the village police department shall verify the existence of a record by either obtaining a certified public record or by

submitting a fingerprint card of the individual to the CIIS section for verification that the CHRI record belongs to the individual.

(g) Any ordinance or any part of an ordinance in conflict with this section, to the extent of such conflict, is hereby repealed.

(h) This section is adopted in the interest of the public health, safety and general welfare of the inhabitants of the village pursuant to G.S. 160A et seq., and shall be in full force and effect from and after its adoption.

(Ord. No. 2006-1201, 12-15-2006)

Editors Note: No. 2006-1201, adopted Dec. 15, 2006, did not specifically amend the Code. Hence, inclusion as § 2-61 was at the discretion of the editor.

Secs. 2-62--2-90. Reserved.

ARTICLE IV. BOARDS, COMMISSIONS AND COMMITTEES*

* **Cross References:** board of adjustment, § 32-101 et seq.

State Law References: to create, change or abolish boards, commissions and agencies, G.S. 160A-146.

DIVISION 1. GENERALLY

Secs. 2-91--2-110. Reserved.

DIVISION 2. PLANNING BOARD*

* **State Law References:** to create a planning board, G.S. 160A-361.

Sec. 2-111. Created.

There is hereby created the village planning board for purposes of performing those duties set forth in this division and any duties hereafter assigned to it by the council.

(Ord. No. 22, § 1, 4-15-1989)

Sec. 2-112. Membership.

(a) The planning board shall consist of five members, at least three of whom shall be qualified registered voters of the village. All of the members shall be appointed by the village council for three-year staggered terms. Two alternates shall be appointed by the village council for three-year terms to substitute at meetings for absent members. When substituting, such alternates shall have the same voting privilege as an appointed member. No member may serve more than two consecutive terms.

(b) Vacancies occurring for reasons other than expiration of membership shall be filled by the village council for the remainder of the unexpired term. Vacancies occurring by expiration of the initial board's term and by the expiration of the terms of subsequent board members shall be filled by an appointment for three years by the village council.

(c) Faithful attendance at all planning board meetings and conscientious performance of the duties required of members is a prerequisite of continuing membership on the board. Two consecutive unexcused absences as determined by the board constitute unfaithful attendance. The village council shall remove and replace any member of the board for such unfaithful attendance.

(Ord. No. 22, § 2, 4-15-1989)

Sec. 2-113. Officers and meetings.

(a) The planning board shall hold its first meeting each year in the month of July. During that meeting, the planning board shall elect one of its members to serve as chairman and preside over the board's meetings and one member to serve as vice-chairman to serve as acting chairman in the absence of the chairman. The persons so designated shall serve in these capacities for one year and shall be eligible for reelection.

Vacancies in these offices may be filled for the unexpired term only. The chairman shall appoint any committee deemed necessary to investigate any matter before the board.

(b) The board shall further adopt rules for the transaction of its business and shall provide for appointment of a secretary who shall be responsible for making and retaining records of the members' attendance, its resolutions, discussions, findings and recommendations, which notes shall be kept and maintained at the village offices as public records.

(c) Any board meeting shall be open to the public and the presence of three members thereof shall constitute a quorum.

(Ord. No. 22, § 3, 4-15-1989)

Sec. 2-114. Duties.

The responsibilities and duties of the planning board shall be as follows:

(1) To make studies of the village for purposes of preparing a proposed zoning ordinance and land use regulation scheme.

(2) To determine objectives to be sought by such zoning and land use; to prepare and recommend plans for achieving such objectives consistent always with the North Carolina General Statutes and the village charter; and specifically to develop and propose a zoning ordinance complete with proposed district classifications, maps showing proposed district boundaries and procedure for enforcement thereof, having due regard for considerations set forth in G.S. 160A-383 and subject always to the limitations contained therefor in the village charter.

(3) The planning board shall have such public hearings as it determines to be necessary in the course of preparing the above-referenced proposed ordinance and upon completion shall certify the ordinance to the village council which shall then take such action upon the proposed ordinance as it shall deem appropriate.

(4) To continually review any existing zoning ordinance and to make recommendations regarding adjustments thereto and specifically to recommend any amendments thereto.

(5) To review on behalf of the village council and to advise the village council on proposals for the development of new areas of the island.

(6) In addition to performing the above-related duties regarding creation and establishment of a zoning ordinance, the planning board shall perform such other duties as the council may from time to time direct.

(Ord. No. 22, § 4, 4-15-1989)

Sec. 2-115. Financing.

Expenditures of the planning board shall be within amounts appropriated for such purpose by the village council and no indebtedness for which the village shall be liable shall be contracted by the planning board unless an appropriation has been made therefor by the village council and then only to the extent of the appropriation.

(Ord. No. 22, § 5, 4-15-1989)

Secs. 2-116--2-130. Reserved.

ARTICLE V. FINANCE*

* **Charter References:** and taxation, art. V.

Cross References: ordinance or resolution promising or guaranteeing the payment of money for the village or authorizing the issuance of any bonds of the village or any evidence of the village's indebtedness saved from repeal, § 1-9(2).

State Law References: government finance, G. S. ch. 159.

DIVISION 1. GENERALLY

Sec. 2-131. Surplus personal property.

(a) The village manager is hereby authorized to dispose of all surplus personal property owned by the village, whenever he determines, in his discretion, that:

(1) The item or group of items has a fair market value of less than \$5,000.00;

(2) The property is no longer necessary for the conduct of public business; and

(3) Sound property management principles and financial considerations indicate that the interests of the village would best be served by disposing of the property.

(b) The village manager may dispose of any such surplus personal property by any means which he judges reasonably calculated to yield the highest attainable sale price in money or other consideration, including but not limited to the methods of sale provided in G.S. 160A-265 et seq. Such sale may be public or private, and with or without notice and minimum waiting period.

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

(d) The village manager shall keep a record of all property sold under authority of this section and that record shall generally describe the property sold or exchanged, to whom it was sold, or with whom exchanged, and the amount of money or other consideration received for each sale or exchange.

(Ord. No. 53, §§ 1--4, 2-20-1998)

State Law References: to dispose of municipal property, G.S. 160A-266(c).

Secs. 2-132--2-150. Reserved.

DIVISION 2. PURCHASING

Sec. 2-151. Grant of authority.

Subject to the restrictions and conditions provided in this division, when purchasing apparatus, supplies, materials or equipment for the use of the village, in addition to such authority as may be provided by law and/or otherwise delegated by the village council, the village manager shall have the authority to:

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

(Ord. No. 54, § 1, 2-20-1998)

Sec. 2-152. Report.

At the first meeting of the village council following the award of any contracts pursuant to this division, the village manager shall submit a report to the village council summarizing the bids received and the contracts awarded. Such report shall be included in the minutes of the meeting at which it is received.

(Ord. No. 54, § 2, 2-20-1998)

Sec. 2-153. Extent of authority.

Except in cases of sole source purchases pursuant to G.S. 143-129(f) and cases or purchases from established contracts pursuant to G.S. 143-129(g), unless otherwise provided by law, the provisions of this division shall apply to the purchase of apparatus, supplies, materials or equipment required for use by the village.

(Ord. No. 54, § 3, 2-20-1998)

Sec. 2-154. No limitation of other authority.

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

(Ord. No. 54, § 4, 2-20-1998)

Sec. 2-155. Appropriation required.

No purchase shall be made by the village manager under the authority of this division unless an appropriation for such purpose has been authorized in the annual budget, or by supplemental appropriation or budget appropriation amendment duly adopted by the village council.

(Ord. No. 54, § 5, 2-20-1998)

Sec. 2-156. Application of general statutes.

In acting pursuant to the authority delegated by this division, the village manager shall comply with the requirements of G.S. 143-128 et seq.

(Ord. No. 54, § 6, 2-20-1998)

State Law References: to delegate purchasing authority, G.S. 143-129(a).

Secs. 2-157--2-180. Reserved.

**DIVISION 3.
CONSTRUCTION AND REPAIR CONTRACTS**

Sec. 2-181. Grant of authority.

Subject to the restrictions and conditions set forth in this section, in addition to any such authority as provided by law and/or otherwise delegated by the village council, the village manager shall have the authority to:

- (1) Prepare or cause to be prepared plans and/or specifications setting forth a complete description of the construction and/or repairs needed and the characteristics, features, and/or requirements therefor;
- (2) Include, where appropriate, specifications for the services needed by the village;
- (3) Advertise or otherwise secure bids for such services if required under applicable law;
- (4) Award contracts for the services in keeping with the requirements of applicable law;
- (5) Reject bids;
- (6) Readvertise to receive additional bids, if necessary;
- (7) Waive bid bond or deposit requirements;
- (8) Waive performance and payment bond requirements; and
- (9) Execute and deliver the contracts.
- (10) Accept and award contracts requiring expenditure of public money in an amount not greater than \$300,000.00 for the purpose of construction and/or repair on behalf of the village.

(Ord. No. 2000-25, § 1, 10-21-2000; Ord. No. 2002-016, § 1, 8-16-2002)

Sec. 2-182. Report.

At the first meeting of the village council following the award of any contracts pursuant to this division, the village manager shall submit a report to the village council summarizing the bids received and the contracts awarded. Such report shall be included in the minutes of the meeting at which it is received.

(Ord. No. 2000-25, § 2, 10-21-2000)

Sec. 2-183. Extent of authority.

Unless otherwise provided by law, the provisions of this division shall apply only to the acceptance and award of construction and/or repairs required by the village.

(Ord. No. 2000-25, § 3, 10-21-2000)

Sec. 2-184. No limitation of other authority.

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

(Ord. No. 2000-25, § 4, 10-21-2000)

Sec. 2-185. Appropriation required.

The village manager shall not provide for the letting of any contract unless an appropriation for the construction and/or repair has been authorized in the annual budget, or by supplemental appropriation or budget appropriation amendment duly adopted by the village council.

(Ord. No. 2000-25, § 5, 10-21-2000)

Sec. 2-186. Application of general statutes.

In acting within the authority delegated by this division, the village manager shall comply with the requirements of the General Statutes, as from time to time may be amended, modified, supplemented, revised, or superseded, to the same extent as would have otherwise applied to the village council.

(Ord. No. 2000-25, § 6, 10-21-2000)

State Law References: to enter into contracts, G.S.160A-16 et seq.

Chapter 3 RESERVED

Chapter 4 ANIMALS*

***Editors Note**— Ord. No. 2007-1001, Art. XX, § 3, adopted Oct. 26, 2007, repealed ch. 4, arts. I, II, §§ 4-1--4-3, 4-31--4-34 in its entirety. Articles I, II, III, VIII, X, XII, XIII, XIV, XV, XVI, XVII, XVIII, XIX and XX of Ord. No. 2007-1001 and Ord. No. 2007-1003, adopted Oct. 26, 2007 enacted new provisions to read as herein set out. Prior to amendment, Ch. 4 pertained to similar subject matter. See Code Comparative Table for derivation.

Cross References— Environment, ch. 10.

State Law References— Protection of animals, G.S. 19A-1 et seq.; dogs generally, G.S. 67-1 et seq.; rabies control, G.S. 130A-184 et seq.; regulation of domestic animals, G.S. 160A-186.

Article I. In General

Sec. 4-1. Authority.

Sec. 4-2. Purpose and objective.

Sec. 4-3. General provisions.

Sec. 4-4. Nuisance pets.

Secs. 4-5—4-50. Reserved.

Article II. Rabies Control

Sec. 4-51. Definitions.

Sec. 4-52. Vaccination for rabies.

Sec. 4-53. Bites.

Sec. 4-54. Sanctions, penalties, fines and remedies.

Secs. 4-55—4-75. Reserved.

Article III. Animal Cruelty

Sec. 4-76. Definitions.

Sec. 4-77. Exemptions.

Sec. 4-78. General care and prohibited acts.

Sec. 4-79. Failure to report animal cruelty.

Sec. 4-80. Sanctions, penalties, fines and remedies.

Secs. 4-81—4-120. Reserved.

Article IV. Dangerous Dog or Other Dangerous Animal

Sec. 4-121. Definitions.

Sec. 4-122. Exemption.

Sec. 4-123. Determination of dangerousness.

Sec. 4-124. Confinement and restraint of a dangerous dog or other dangerous animal.

Sec. 4-125. Transfer of ownership of a dangerous animal.

Sec. 4-126. Sanctions, penalties, fines and remedies.

Secs. 4-127—4-145. Reserved.

Article V. Interference

Sec. 4-146. Interference.

Secs. 4-147—4-180. Reserved.

Article VI. Impoundment of Animals

Sec. 4-181. Definitions.

Sec. 4-182. Impoundment.

Sec. 4-183. Feral cats.

Sec. 4-184. Notice.

Sec. 4-185. Boarding fees.

Secs. 4-186—4-230. Reserved.

Article VII. Civil Penalties

Sec. 4-231. Civil penalties.

Secs. 4-232—4-275. Reserved.

Article VIII. Redemption of Animals

Sec. 4-276. Redemption of animals.

Secs. 4-277—4-300. Reserved.

Article IX. Disposition and Adoption of Impounded Animals

Sec. 4-301. Disposition of impounded animals.

Sec. 4-302. Adoption fees.

Sec. 4-303. Recovery of adopted animal.

Secs. 4-304—4-335. Reserved.

Article X. Service and Return of Service

Sec. 4-336. Method of service and return.

Secs. 4-337—4-365. Reserved.

Article XI. Appeals and Requests for Review

Sec. 4-366. Appeal procedure.

Sec. 4-367. Appeal hearing.

Secs. 4-368—4-400. Reserved.

Article XII. Gender

Sec. 4-401. Gender statement.

Secs. 4-402--4-435. Reserved.

Article XIII. Severability

Sec. 4-436. Severability.

Secs. 4-437--4-465. Reserved.

Article XIV. Enforcement and Effect of this Chapter

Sec. 4-466. Enforcement.

Secs. 4-467— 4-479. Reserved.

Article XV. Sea Turtle Sanctuary

Sec. 4-480. Activities within sea turtle sanctuaries.

Secs. 4-481—4-499. Reserved.

Article XVI. Livestock and Wild Animals

Sec. 4-500. Definitions.

Sec. 4-501. Feeding or harassment of wild animals is prohibited.

Sec. 4-502. Possession of livestock or wild animals prohibited.

Secs. 4-503 —4-519. Reserved.

Article XVII. Unrestrained Dogs.

Sec. 4-520. Definitions.

Sec. 4-521. Unrestrained dogs prohibited.

ARTICLE I. IN GENERAL

Sec. 4-1. Authority.

This chapter is established pursuant to the following grants of statutory authority:

(1) North Carolina General Statute 153A-121 which delegates to counties the power to regulate by ordinance, acts, omissions, or conditions detrimental to the health, safety or welfare of their citizens and the peace and dignity of the county.

(2) North Carolina General Statute 153A-123, which authorizes counties to levy fines and penalties for violation of their ordinances and allows counties to secure injunction and abatement orders to further insure compliance with their ordinances.

(3) North Carolina General Statute 153A-127 which authorizes counties to define and prohibit the abuse of animals.

(4) North Carolina General Statute 153A-131 which authorizes counties to regulate, restrict or prohibit the possession or harboring of animals which are dangerous to persons or property.

(5) North Carolina General Statute 153A-422 which authorizes counties to establish, equip, operate and maintain animal shelters.

(6) North Carolina General Statute 130A-192 which authorizes animal control officers to determine if there are any dogs and cats not wearing valid rabies vaccination tags.

(7) North Carolina General Statute 67 which authorizes health directors to declare a dog potentially dangerous.

(8) North Carolina General Statute 14-4 which makes it a misdemeanor, unless otherwise specified, if any person shall be found guilty of violating an ordinance of the county.

(Ord. No. 2007-1001, Art. I, (1), 10-26-2007; Ord. No. 2007-1003, 10-26-2007)

Sec. 4-2. Purpose and objective.

This chapter is established for the following purposes and objectives:

(1) *Animal cruelty*. To define and prohibit the abuse of animals;

(2) *Rabies*. To protect citizens and animals of Brunswick County from rabies transmitted by unconfined, uncontrolled, or unimmunized dogs or cats;

(3) *Animals at large*. To regulate, restrict or prohibit the running at large of any domestic animals;

(4) *Stray animals*. To regulate, restrict or prohibit the keeping of stray domestic animals;

(5) *Animal nuisance*. To regulate animals that may be nuisance;

(6) *Wild or exotic animals, poisonous reptiles and dangerous animals.* To regulate, restrict or prohibit the harboring or keeping or ownership of, wild or exotic animals, poisonous reptiles and dangerous animals;

(7) *Animal bites.* To establish rules and procedures for dealing with animal bites;

(8) *Impoundment of animals.* To regulate the impoundment and confinement of animals;

(9) *Redemption of impounded animals.* To regulate and establish procedures and fees for redeeming impounded animals in the county's animal shelter; and

(10) *Destruction of animals.* To regulate and establish procedures for destroying diseased, strayed, unwanted or unclaimed animals.

(Ord. No. 2007-1001, Art. I, (2), 10-26-2007; Ord. No. 2007-1003, 10-26-2007)

Sec. 4-3. General provisions.

The following general provisions shall apply to this chapter:

(a) *Animal services.* Authority is hereby granted to animal services to enforce this chapter. This chapter shall be enforced by all animal services officers (as defined in subsection (c), having all rights, powers and immunities granted in this subsection (a)(1)—(13). All employees of animal services are hereby granted the following rights, powers, and immunities and said employees, through animal services shall:

(1) Have the responsibility, along with law enforcement agencies to enforce all laws of North Carolina and all ordinances of Brunswick County pertaining to animals and shall cooperate with all law enforcement officers within Brunswick County in fulfilling this duty;

(2) Enforce and carry out all laws of North Carolina and all ordinances of Brunswick County pertaining to rabies control;

(3) Be responsible for the investigation of all reported animal bites, for the quarantine of any dog or cat having or suspected of having rabies for a period of not less than ten days, and for reporting to the local health director as soon as practicable the occurrence of any such animal bite and the condition of any quarantined animal;

(4) Be responsible for the operation of the animal shelter;

(5) Be responsible for the seizure and impoundment, when necessary, of any animal of Brunswick County involved in a violation of this or any other ordinance or state law;

(6) Investigate cruelty or abuse of animals and protect animals from cruelty or abuse;

(7) Be empowered to seize animals pursuant to G.S. 19A-46, or with the consent of an owner or occupant of the property, or as evidence if the animals are in "plain view", or by criminal or administrative search warrant if the animals are being cruelly treated or abused;

(8) Make canvasses of homes and businesses in the county as necessary for the purpose of ascertaining compliance with this chapter or state statute;

(9) Keep, or cause to be kept, accurate and detailed records of seizures, impoundments, and disposition of animals coming into the custody of animal services, bite cases, violations, complaints, investigations, and monies collected;

(10) Be empowered to issue notices of violation and assess civil penalties for violations of this chapter;

(11) Be empowered to go in the yard of animal owners to inspect the condition of animals;

(12) Be empowered to make inspections of buildings or dwellings with the consent of the owner or occupant, or by administrative search warrant, or criminal search warrant when there is reasonable cause to believe that this chapter or state law is being violated; and

(13) Be empowered to go upon private property to seize animals pursuant to the provisions of this chapter or court order.

(b) *Animal services director.* The animal services director shall be the chief animal services officer, be in charge of animal services, and supervise the Brunswick County Animal Shelter. The animal services director shall have the authority to delegate to his animal services officers or administrative staff any of the powers granted him by this chapter. Any act done by an animal services officer or a member of the administrative staff that is in compliance with or within the scope of this chapter, shall be considered the official act of the animal services director.

(c) *Animal services officer.* All persons employed by the animal services department shall be considered animal services officers and shall have all rights, powers, and immunities granted under this chapter and by the general laws of this state to enforce the provisions of this chapter and the General Statutes of North Carolina as they relate to animal control and animal welfare. All animal services officers are hereby appointed animal cruelty investigators.

(Ord. No. 2007-1001, Art. I, (3), 10-26-2007; Ord. No. 2007-1003, 10-26-2007)

Sec. 4-4. Nuisance pets.

(a) *Nuisance pets* are defined as dogs, or other domesticated animals, present on Bald Head Island:

(1) Who are permitted by owners to roam off the owners' premises, not accompanied by a responsible person. (This does not include a pet that is previously reported as "lost" and is being searched for);

(2) Who chase, snap at, or otherwise harass pedestrians, bicyclists, or vehicle drivers;

(3) Who damage or destroy property of another person;

(4) Who obtain entrance to outside garbage enclosures and scatter their contents;

(5) Who regularly harass other wildlife or pets on Bald Head Island; or

(6) Who engage in prolonged noisemaking.

(b) Regulations and remedies herein are cumulative and not exclusive of those of other laws or regulations.

(c) A written and signed complaint statement is required to be submitted to the police department by the reporting party within ten days of the incident; and the opportunity for a written reply would be accorded to the pet owner before a pet is determined to be a "nuisance pet" by the Bald Head Island police department.

(d) The village police department is authorized to issue warnings or appropriate fines to owners of nuisance pets dependent upon the frequency of filed complaint. Civil fines, if issued, will be \$100.00 for first offense, increasing in \$50.00 increments for each subsequent offense within a 12-month period of the most recent offense.

(Ord. No. 2009-0504, 5-15-2009)

Secs. 4-5--4-50. Reserved.

ARTICLE II. RABIES CONTROL

Sec. 4-51. Definitions.

As used in this article the following terms are defined below:

Bite means the act of an animal seizing flesh with its teeth or jaws so as to tear, pierce or injure the flesh.

Cats means any and all domestic felines.

Confinement means impoundment within the county's animal shelter or other appropriate facility.

Dogs means any and all domestic canines.

Owner means any person, groups of persons, firm, partnership or corporation owning, keeping, having charge of or taking care of an animal or allowing an animal to remain on its property for more than 72 hours.

Rabies vaccinator means a person appointed and certified to administer rabies vaccine or a licensed veterinarian.

Rabies vaccine means an animal rabies vaccine approved by the United States Department of Agriculture for use in this state.

Restraint means a secure enclosure, chain, leash or other physical device of sufficient strength which allows the owner to maintain direct control of an animal.

Vaccination means the administration of rabies vaccine by a licensed veterinarian or by a certified rabies vaccinator.

(Ord. No. 2007-1001, Art. II, (1), 10-26-2007; Ord. No. 2007-1003, 10-26-2007)

Sec. 4-52. Vaccination for rabies.

Owners of dogs and cats shall comply with the provisions of this section.

(1) *Vaccination*. The owner of every dog or cat shall have the animal vaccinated against rabies at four months of age, again at 16 months of age and then every three years by a licensed veterinarian or by a certified rabies vaccinator with a rabies vaccine approved by the United States Department of Agriculture and approved by the North Carolina Commission for Health Services for use in this state.

(2) *Rabies tags*. A licensed veterinarian or a certified rabies vaccinator who administers rabies vaccine to a dog or cat shall issue a rabies vaccination tag to the owner of the animal. The rabies vaccination tag shall show the year issued, a vaccination number, the words North Carolina or the initials "NC" and the words "rabies vaccine". The owner shall make sure that the dog or cat wears the rabies tag at all times.

(3) *Rabies vaccination certificates*. The owner of a dog or cat must be able to produce a current rabies vaccination certificate. This certificate shall be issued by a licensed veterinarian or a certified vaccinator at the time the dog or cat is vaccinated. A copy of the certificate shall also be mailed or delivered to the animal services director by the licensed veterinarian or certified rabies vaccinator within 45 days of the animal being vaccinated. The animal services director may implement another method for collecting vaccination certificates. Brunswick County residents who have their animals vaccinated

outside of Brunswick County are responsible for filing the rabies vaccination certificate within animal services within five days of the inoculation or within five days of their return to the local area.

(4) *Nontransferable.* Rabies tags cannot be transferred from animal to animal.

(5) *Lost, destroyed or stolen rabies tags.* If a rabies tag is lost, destroyed or stolen, a duplicate tag must be obtained from the veterinarian at a fee not to exceed the actual cost of the tag, link and rivets, plus transportation cost.

(Ord. No. 2007-1001, Art. II, (2), 10-26-2007; Ord. No. 2007-1003, 10-26-2007)

Sec. 4-53. Bites.

In order that rabies may be controlled and treated, all persons shall comply with the provisions of this section.

(1) *Persons bitten.* Wounds inflicted by any animal known to be a potential carrier of rabies shall be reported immediately to the county health director and the animal services director by the person who has been bitten, or in case of a child, his or her parents or guardian or other responsible party. Any person who has knowledge of a dog or cat inflicting a wound shall immediately report the same to the county health director and/or the animal services director, and provide the names and addresses of the person(s) bitten and the names and addresses of the owner(s) of any animals involved, if known. Every physician who treats a wound inflicted by any animal known to be a potential carrier of rabies shall report the incident to the county health director and/or the animal services director and provide the names and addresses of the person(s) bitten and the names and addresses of the owner(s) of any animals involved, if known, within 24 hours of rendering treatment.

(2) *Confinement of biting dogs and cats and confinement of animals suspected of having rabies.* Every dog or cat that bites a human being shall be confined immediately. The animal shall be delivered within eight hours of the incident, by the owner, to the county animal shelter or to a licensed veterinary hospital. The animal shall be confined for observation for not less than ten days. The owner shall be responsible for the cost of confinement at either place. The animal services director shall have authority to order confinement of a dog or cat to the county's animal shelter or any other appropriate facility. Brunswick County Animal Services may waive the cost of confining the animal at the shelter if the bite occurred on the owner's premises and the animal was provoked. Final authority as to place of confinement rests with the county health director. After reviewing the circumstances of a particular case, the county health director may permit the animal to be confined on the premises of the owner, but only after an inspection and recommendation from the animal services director. The animal services director's recommendation shall be based on whether or not there is a suitable secure enclosure on the premises and other circumstances warrant confinement on the owner's premises.

a. An owner or possessor of an animal which is suspected of having rabies shall immediately notify the county health director or animal services director and shall securely confine the animal until further instructed by the county health director or animal services director.

(3) *Destruction of infected dogs and cats.* If a dog or cat, in or out of confinement, develops rabies, as determined by a licensed veterinarian, it shall be the duty of the owner to have such animal euthanized under the supervision of the animal services director. Any dog or cat known to have been bitten by another animal which is known or proved to be rabid shall be euthanized immediately by the owner or by the animal services director unless the dog or cat has been vaccinated against rabies more than three weeks prior to being bitten and is given a booster dose of rabies vaccine within three days of the bite.

(Ord. No. 2007-1001, Art. II, (3), 10-26-2007; Ord. No. 2007-1003, 10-26-2007)

Sec. 4-54. Sanctions, penalties, fines and remedies.

Violations of this article [and Article II of the Brunswick County Animal Control Ordinance], are punishable by prosecution in criminal court as provided by G.S. 14-4, unless a greater penalty is provided elsewhere, or by the imposition of civil penalties, as prescribed in article VII, or both. Collection of civil penalties may be by civil action or by the use of a collection agency.

(1) *Failure to keep rabies tags on dogs and cats at all times.* It shall be a violation if a dog or cat is observed by an animal services officer not wearing a valid rabies tag, regardless of whether or not the animal is on or off the owner's property and regardless of whether or not the animal has been vaccinated.

(2) *Failure to produce proof of vaccination and/or failure to have animal vaccinated when the owner is known.* In addition to any civil penalties imposed for violation of subsection (1) above, the owner of a dog or cat may be assessed another civil penalty, if he or she fails to produce proof of vaccination and/or fails to have the animal vaccinated within 72 hours of the issuance of a written notice of violation and civil penalty. The notice of violation and civil penalty shall specify that the owner has 72 hours to produce proof of vaccination and/or to have the animal vaccinated and failure to do so shall result in the assessment of a civil penalty. If the owner presents proof of vaccination, within 72 hours of the issuance of the notice of violation, the civil penalty shall not be assessed. Having the animal vaccinated or showing proof of vaccination shall not discharge the civil penalties assessed for violation of subsection (1) above.

a. If the animal is not vaccinated and/or the civil penalty is not paid within 72 hours, animal services shall have the authority to summarily seize the animal. The owner shall have give five days from the date of seizure to redeem the animal. The owner may redeem the animal by paying the civil penalty, the redemption fee and all boarding fees. If the owner wishes to request a review of the seizure of the animal, the owner must file

a written request with the board of health's environmental committee within five days of the seizure. If a timely request is filed, the board of health's environmental committee shall convene within ten days of the receipt of said request. If the owner disagrees with the board of health's environmental committee decision, the owner must seek a review by the Brunswick County Superior Court within ten days of the issuance of the board committee's written decision. If the owner fails to redeem the animal, or fails to timely request a review of the seizure, or fails to timely appeal the board committee's written decision, the animal shall become the property of Brunswick County and shall be disposed of according to this chapter.

b. The animal services officer may, in addition, issue a criminal summons or warrant, pursuant to the G.S. 130A-25 for the owner's violation of the G.S. 130A-185 or 130A-192. Any owner, if convicted, shall be guilty of a misdemeanor and shall be fined not more than \$500.00 or imprisoned for not more than six months.

(3) *Dogs or cats without valid rabies tags and the owner is unknown.* If a dog or cat is observed not wearing a valid rabies vaccination tag and the owner is unknown and cannot be found, the animal services director or his designee may impound the animal. Written notice of impoundment shall be posted at the animal shelter for a minimum of five days. If the animal has not been redeemed by the owner after five days the animal shall become the property of Brunswick County to be disposed of according to this chapter. If the owner is found, the animal shall be released upon payment of all redemption fees and a civil penalty for failure to wear a valid rabies vaccination tag. The owner may also be subject to other appropriate penalties described in Article IV [of the Brunswick County Animal Control Ordinance], plus a civil penalty for the animal being at large.

(4) *Failure to provide animal services with rabies vaccination certificates.* Any veterinarian or certified rabies vaccinator who willfully refuses to turn over rabies vaccination certificates to animal services pursuant to G.S. 130A-189, shall be subject to the issuance of a criminal summons or warrants or the filing of a civil action to obtain the certificates.

(5) *Failure to notify the county health director and/or the animal services director of a biting incident and failure to confine biting dogs and cats.* If the owner of a dog or cat, or the person being bitten, or the parent of a child or other legal guardian or person standing in loco parents of the person, fails to notify the health director and/or the animal services director and provide the names and addresses of the person(s) bitten and the names and addresses of the owner(s) of any animals involved in a biting incident; or the owner, who has knowledge of a dog or cat biting incident, fails to confine the animal pursuant to section 4-53, the animal services director or the county health director may seek the issuance of a criminal summons or warrant charging the person with a violation of G.S. 130A-196.

(Ord. No. 2007-1001, Art. II, (4), 10-26-2007; Ord. No. 2007-1003, 10-26-2007)

Secs. 4-55--4-75. Reserved.

ARTICLE III. ANIMAL CRUELTY

Sec. 4-76. Definitions.

As used in this article the following terms are defined below:

Adequate shelter: An enclosure of at least three sides, a roof and a floor. The enclosure shall be ventilated and must have sufficient room for the animal(s) to move around freely and to lie down comfortably. Animals housed under the following conditions shall not constitute adequate shelter:

- (1) Underneath outside steps, decks and stoops; or
- (2) Inside of vehicles; or
- (3) Underneath vehicles; or
- (4) Inside metal barrels placed in direct sunlight during the summer; or
- (5) Inside cardboard boxes.

Animal: Every nonhuman species, both domestic and wild.

Cruelty and cruel treatment: Every act, omission, or act of neglect whereby unjustifiable, pain, suffering or death is caused or permitted, or attempted to be caused or permitted, against animals, as well as acts or attempted acts of teasing, molesting, baiting or trapping animals unlawfully. By way of example and not limitation, the following acts or conditions shall constitute prima facie evidence of animal cruelty:

- (1) A collar, rope or chain embedded in or causing injury to an animal's neck;
- (2) Dogs or cats left out in the rain, snow, extreme heat or cold without shelter;
- (3) Animals that have not been fed or watered adequately;
- (4) Intentionally allowing animals to engage in a fight;
- (5) Allowing animals to live in unsanitary conditions; and
- (6) Allowing animals to live under crowded conditions; and

(7) Failure or refusal of an owner to obtain medical treatment for an animal when in an animal services officer's opinion such treatment is needed.

Owner: Any person or group of persons owning, keeping, having charge of or taking care of an animal.

Person: Any human being, firm, partnership or corporation including any nonprofit corporation.

(Ord. No. 2007-1001, Art. III, (1), 10-26-2007; Ord. No. 2007-1003, 10-26-2007)

Sec. 4-77. Exemptions.

This article shall not apply to agencies conducting biomedical research or training, lawful activities for sport, the production of livestock or poultry for sale as a consumer product and the lawful destruction of any animal for the purpose of protecting livestock, poultry or humans.

(Ord. No. 2007-1001, Art. III, (2), 10-26-2007; Ord. No. 2007-1003, 10-26-2007)

Sec. 4-78. General care and prohibited acts.

All animals shall be kept and treated under sanitary and humane conditions and failure of the owner or possessor of the animal to abide by the provisions listed below shall subject the owner or possessor to the sanctions described in section 4-80.

(1) *Food, water and shelter.* All animals in the possession of any persons shall be provided proper and adequate food and water. All animals, unless otherwise indicated in this chapter, shall be given at suitable intervals not to exceed 24 hours, a quantity of wholesome foodstuff suitable for the species and age, sufficient to maintain a healthful level of nutrition. All animals shall have access to a constant supply of clean, fresh water. All animals shall be provided proper and adequate shelter from the weather at all times.

(2) *Clean shelter.* All shelter for animals and the area surrounding said shelter shall be kept clean at all times.

(3) *Medical treatment.* All owners or possessors of animals shall provide proper medical attention for sick, diseased or injured animals. A sick animal shall go no longer than 24 hours without veterinary care.

(4) *Cruelty and cruel treatment.* No person shall beat, torment, overload, overwork, tease, molest or bait an animal or otherwise cruelly treat an animal as defined in section 4-76. No person shall shoot a dog or any other animal, either on or off the owner's property, unless the animal is in the act of attacking a human being, sheep, cattle, hog, goat, or poultry or any domestic animal or as otherwise allowed by the North Carolina

Wildlife Resources Commission. This shall not apply to animal services officers when in the performance of their duties. No person shall trap a dog or cat without the permission of animal services.

(5) *Illegal contest or combat.* No person shall cause, permit or instigate any dogfight, cockfight, bullfight or other illegal contest or combat between animals or animals and humans.

(6) *Poisoning of animals.* No person shall expose any known poisonous substance or mix a poisonous substance with food, so that it will likely be eaten by any animal. This does not include acts or attempts of persons to rid their own property of rats or any other acts permitted by the North Carolina Wildlife Resources Commission.

(7) *Confining animals to motor vehicles or transporting animals.* No person shall leave an animal in a closed car, truck or other vehicle for such duration or at temperatures as an animal services officer, in his sole discretion, deems harmful or potentially harmful to the animal. No person shall carry or cause to be carried in or upon any vehicle or other conveyance, any animal in a cruel or inhumane manner.

(8) *Abandonment.* No person shall turn loose or discard any domesticated animal or pet with the intent of abandoning such animal or pet.

(9) *Disposing of dead animals.* All possessors or owners of animals that die, from any cause, shall bury the dead animal to a depth of at least three feet beneath the surface of the ground on his or her leased or owned property. No animal shall be buried within 300 feet of any flowing stream or public body of water. In the alternative, said animal shall be completely burned or otherwise disposed of in a manner approved by the state veterinarian. In any event, all dead animals shall be disposed of within 24 hours after knowledge of the death. No possessor or owner of a dead animal[(s)] shall remove the carcass of a dead animal from his premises to the premises of another person without written permission of the person having charge of such premises and without burying said carcass as provided above.

(10) *Reporting injured or killed domestic animals.* All persons who injure or kill a domesticated animal by running over, into, or otherwise coming in contact with such an animal with an automobile, motorcycle, bicycle or other vehicle shall notify the owner of the animal immediately. If the owner is not known, the person who injured or killed the animal shall immediately notify the animal services director, or the police department if the injury or death occurred in the city, or the sheriff's department if the injury or death occurred in the county. The person who injured or killed the animal shall give his or her name and address to the appropriate authority. An owner or lessee of real property who finds an injured or suffering domesticated animal on his property shall report the same to animal services as soon as the animal is discovered on the real property.

(11) *Animals given away as prizes.* No live animal shall be given away, raffled or offered as a prize, premium or advertising device for, or as an inducement to enter, any contest, game or other competition involving skill or chance.

(12) *Public exhibits of animals.* Animal services shall have the authority to inspect public exhibits of animals which are a part of fairs, carnivals, festivals, fund raising events, petting zoos and any other activity or function carried on in Brunswick County. Brunswick County Animal Services shall have the authority to close down any exhibit, function or activity if it is determined that animals are being cruelly treated or animals run the risk of causing injury or harm to the public or run the risk of being injured or harmed themselves. Animal services, the health department nor brunswick county accept any liability for any injury, damage of property or loss visiting or monitoring public exhibits of animals.

(Ord. No. 2007-1001, Art. III, (3), 10-26-2007; Ord. No. 2007-1003, 10-26-2007)

Sec. 4-79. Failure to report animal cruelty.

An owner or lessee of property who knows, or based on facts and circumstances should know, that animals are being or have been cruelly treated on the owner's or lessee's real property, shall report said act or acts of cruelty to the animal services department. The owner or lessee of real property who fails to report acts of animal cruelty shall be subject to the appropriate sanctions described in section 4-80, below.

(Ord. No. 2007-1001, Art. III, (4), 10-26-2007; Ord. No. 2007-1003, 10-26-2007)

Sec. 4-80. Sanctions, penalties, fines and remedies.

Violations of this article [and Article III of the Brunswick County Animal Control Ordinance], are punishable by prosecution in criminal court as provided by G.S. 14-4, unless a greater penalty is provided elsewhere, or by the imposition of civil penalties, as prescribed in Article VII, or both. Collection of civil penalties may be by civil action or by the use of a collection agency.

(1) *Failure to adequately provide for animals and cruel treatment of animals.* Whenever it has been determined by an animal services officer that an animal is not being adequately provided for or is being cruelly treated, as defined in section 4-78, above, he may file with the magistrate a sworn complaint requesting an order allowing him to take immediate custody of, and provide suitable care for, the animal. The magistrate, pursuant to G.S. 19A-46 and this chapter, shall issue the order only when he finds probable cause to believe that the animal is being cruelly treated and that it is necessary for the animal services officer to take immediate custody. Any magistrate's order issued under this section shall be valid for only 24 hours after its issuance. After the animal services officer executes the order, he shall return it with a written inventory of the animal(s) seized to the clerk of court.

a. The animal services officer may request that a law enforcement officer accompany him to help seize the animal. He may forcibly enter any premises or vehicle when necessary to execute the order only if he reasonably believes that the premises or vehicle is unoccupied by any person and that the animal is on the premises or in the vehicle and only if the animal services officer is accompanied by a law enforcement officer. In any case, he must give notice of his identity and purpose to anyone who may be present before entering the premises. If the premises is occupied and access to the premises and the animal is denied by the occupant, the animal services officer shall obtain a judicial order from a district court judge authorizing forcible entry. Forcible entry shall only be used during the daylight hours.

b. When the animal services officer seizes an animal, he must leave with the owner, if known, or affix to the premises or vehicle a copy of the magistrate's order and a written notice of the description of the animal, the place where the animal will be taken, the reason for taking the animal, a list of conditions, if any, which must be met before the owner can redeem the animal and the animal services officer's intent to file a complaint in district court requesting custody of the animal if the conditions are not met.

c. When the animal services officer takes custody of such an animal, he shall file a verified complaint asking the district court to determine custody of the animal. The animal services officer may also seek injunctive relief and any other relief he deems appropriate. This complaint shall be filed as soon as possible, but in no event longer than 30 days after the taking of the animal. If the owner surrenders the animal, the animal services officer does not have to file a complaint seeking custody of the animal.

d. The animal services officer must take any animal seized directly to a safe and secure place and provide suitable care for it. The necessary expenses of caring for a seized animal, including necessary veterinary care, shall be a charge against the animal's owner and a lien on the animal to be enforced as provided by G.S. 44A-4.

(2) *Alternative remedy and sanction.* If it is determined by an animal services officer that an animal is not in immediate danger, or the condition or problem which gives rise to inadequate care or cruel treatment can be corrected immediately or within a short period of time, not to exceed 72 hours, he may, in lieu of subsection (1), above, issue a written notice of violation requesting the owner or possessor of the animal to cease and desist or to correct the problem within 72 hours. If the condition or problem is not corrected within 72 hours or the owner or possessor of the animal fails to cease or desist from the cruel treatment or fails to adequately provide for the animal, the animal services officer may take action as outlined in subsection (1), above.

(3) *Violation of section 4-78(2); (clean shelter).* Notwithstanding the other provisions and sanctions of this article, when it has been determined by an animal services officer that animals have been allowed to live in unsanitary conditions, and that said conditions resulted from the owner's unwillingness or inability to clean the area where animals are housed or that the conditions resulted from the number of animals involved, animal services may summarily seize the animals. Before the animals are seized, the animal

services director or health director shall issue a declaration of unsanitary conditions and notice of seizure to the owner. If the owner wishes to request a review of the seizure of the animals, the owner must file a written request with the board of health's environmental committee within five days of the seizure. If a timely request is filed, the board of health's environmental committee shall convene within ten days of the filing of said request. If the within ten days of the filing of said request. If the owner disagrees with the board of health's environmental committee decision, the owner must seek a review by the Brunswick County Superior Court within ten days of the issuance of the board committee's written decision. If the owner fails to timely request a review of the seizure or fails to timely appeal the committee's written decision, the animal shall become the property of Brunswick County and shall become the property of Brunswick County and shall be disposed of according to this chapter.

(4) *Violation of section 4-78(4)--(9)*. When it has been determined by an animal services officer that there has been a violation of one or more of the following subsections (4)--(9), he may initiate the issuance of a criminal summons or warrant for violating the following criminal statutes:

- a. G.S. 14-360, Cruelty to Animals;
- b. G.S. 14-361.1, Abandonment of Animals;
- c. G.S. 14-362 and 14-362.1, Cockfighting and other Animal fights;
- d. G.S. 14-363, Transporting Animals Cruelly;
- e. G.S. 14-401, Animal Poisoning;
- f. G.S. 106-403 and 106-405, Disposing of Dead Animals.

Any person found guilty under any of the above criminal statutes shall be subject to the penalty therein prescribed, or if no penalty therein prescribed, or if no penalty is prescribed, then according to G.S. 14.4.

(5) *Violation of section 4-78(10)*; (reporting injured or killed domestic animals). When it has been determined by an animal services officer that a domesticated animal has been injured or killed, as a result of coming into contact with an automobile, motorcycle, bicycle or other vehicle, and the person operating said conveyance fails to report the same, and the operator can be identified by an eyewitness or physical evidence, the animal services officer may issue a written notice of violation and civil penalty to the operator.

- a. Any owner or lessee of real property who fails to report the existence of an injured or suffering domesticated animal on his property as required by section 4-78(10) above, may be issued a written notice of violation and civil penalty.

(6) *Violation of section 4-78(11) or (12)*; (animals as prizes and public exhibits of animals). Any person who violates section 4-78(11) shall be subject to the issuance of a criminal warrant or summons and, if convicted, shall be guilty of a misdemeanor punishable by a fine not to exceed \$500.00 or imprisoned for not more than six months. Any person who fails or refuses to close down an exhibit, function or activity after being instructed to do so by animal services shall be subject to the issuance of a criminal warrant or summons and, if convicted, shall be guilty of a misdemeanor punishable by a fine not to exceed \$500.00 or imprisoned for not more than six months.

(Ord. No. 2007-1001, Art. III, (5), 10-26-2007; Ord. No. 2007-1003, 10-26-2007)

Secs. 4-81--4-120. Reserved.

ARTICLE IV. DANGEROUS DOG OR OTHER DANGEROUS ANIMAL

Sec. 4-121. Definitions.

As used in this article the following terms shall have the meanings set forth below:

At large means when any previously determined dangerous dog or other dangerous animal is off of the property of its owner and not under restraint or when any previously determined dangerous dog or other dangerous animal is not confined to a secure enclosure while on the property of its owner, it shall be deemed at large.

Dangerous animal means:

(1) A dog or other animal that:

- a. Without provocation has killed or inflicted severe injury on a person, or
- b. Is determined by the health director to be potentially dangerous because the animal has engaged in one or more of the behaviors listed in the definition of a potentially dangerous animal; or

(2) Any dog owned or harbored primarily or in part for the purpose of dog fighting, or any dog trained for dog fighting.

Potentially dangerous animal means a dog or any other animal that without provocation has killed or inflicted severe injury on a person, or a dog or another animal that has:

(1) Inflicted a bite on a person that resulted in broken bones or disfiguring lacerations or required cosmetic surgery or hospitalization; or

(2) Killed or inflicted severe injury upon domestic animal when not on the owner's real property; or

(3) Approached a person when not on the owner's property in a vicious or terrorizing manner in an apparent attitude of attack.

Owner means any person, group of persons, firm, partnership or corporation owning, keeping, harboring, having charge of or taking care of a dangerous dog or other dangerous animal or allowing a dangerous dog or other dangerous animal to remain on its property for 72 hours.

Owner's property means any real property owned or leased by the owner of a dangerous dog or other dangerous animal, not including any public right-of-way or the common areas of a condominium, apartment complex or townhouse development.

Restraint: means a dangerous or potentially dangerous animal is restrained if it is firmly under the control of a competent person by means of a leash, chain, or rope at all times. When the animal is not in a secure enclosure but on the owner's property it shall be securely under restraint by a competent person who by means of a leash, chain, or rope has the animal firmly under control at all times. When a dangerous or potentially dangerous animal is off of the property of its owner, restraint shall also include a secure muzzle on the animal. For purposes of this section, tying a dangerous animal or potentially dangerous animal to a stake, pipe, tree or any other stationary object shall not constitute restraint. When the animal is not under the control of a competent person, restraint shall mean confinement to a secure enclosure deemed appropriate by the health director or his designee.

Secure enclosure means an enclosure from which dangerous animal or potentially dangerous animal cannot escape unless freed by an owner. Enclosures shall be of a size appropriate for the animal it will hold, and must have a concrete floor. The enclosure shall be constructed with a minimum of 11½ gauge galvanized chain link fencing securely attached to the frame of said enclosure. The enclosure shall have a wire top also constructed of a minimum 11½ gauge galvanized chain link fencing. The enclosure's exit/entry gate must be equipped with a pad lock. Such facilities must be approved by the health director or his designee. Human dwelling units shall not be approved as enclosures for dangerous animals.

(Ord. No. 2007-1001, Art. VIII, (1), 10-26-2007; Ord. No. 2007-1003, 10-26-2007)

Sec. 4-122. Exemption.

This article shall not apply to a dog being used by a law enforcement officer to carry out the law enforcement officer's official duties, or a dog being used in a lawful hunt, or a dog used as a hunting dog, herding dog, or predator control dog on the property of or under the control of its owner, or a dog where the injury inflicted by the dog was sustained by a person who, at the time of the injury, was committing a willful trespass or

tort, was tormenting, abusing, or assaulting the dog, had tormented, abused, or assaulted the dog or was committing or attempting to commit a crime.

(Ord. No. 2007-1001, Art. VIII, (2), 10-26-2007; Ord. No. 2007-1003, 10-26-2007)

Sec. 4-123. Determination of dangerousness.

If the health director receives information that a dog or any other animal has exhibited or committed any of the acts described in the potentially dangerous animal definition above, he must make a determination as to whether the animal is potentially dangerous. The health director must issue a written determination within five days of learning about the dangerous propensity of the animal. Whatever determination makes must be placed in writing. The written decision must contain his reasons for declaring or not declaring the animal potentially dangerous. If the animal is declared potentially dangerous, specific instructions in accordance with section 4-124, of this article and any other controls as deemed as necessary by the health director or his designee shall be given. These instructions must be followed during the pendency of any appeal filed by the owner and at all times thereafter unless the owner prevails on appeal. Animals declared dangerous or potentially dangerous shall be seized by Brunswick County Animal Services and impounded at Brunswick County Animal Shelter or other facility approved by the health director or his designee. The animal shall be impounded for 14 days or until such time as the secure enclosure is constructed by the owner at the discretion of the health director and approved by the health director or his designee. All fines penalties and fees shall be paid by the owner of the dangerous animal or potentially dangerous animal prior to the animal being reclaimed. Dangerous animals or potentially dangerous animals not reclaimed by the owner after 20 days of being deemed dangerous shall become property of Brunswick County and be humanely destroyed. The written decision shall be served on the owner of the animal. If the owner of the animal disagrees with the health director's decision, he must file a written appeal and request for hearing with the board of health's environmental committee within five days of receiving the written decision. The board of health's environmental committee shall schedule a hearing within ten days of receiving the appeal and request for hearing. The board of health's environmental committee shall render a written decision within three days after the hearing and serve the same on the owner. The owner may appeal the board of health's environmental committee decision to the superior court by filing notice of appeal and a petition for review within ten days of the final decision of the board of health's environmental committee. The appeal shall be heard de novo in superior court pursuant to G.S. 67 4.1(c).

(Ord. No. 2007-1001, Art. VIII, (3), 10-26-2007; Ord. No. 2007-1003, 10-26-2007)

Sec. 4-124. Confinement and restraint of a dangerous dog or other dangerous animal.

The owner of a dangerous dog or other dangerous animal shall keep the animal within a secure enclosure, as defined in section 4-121, of this article, on his property, or on the property of another with written permission. When the animal is not in a secure

enclosure but on the owners property it shall be securely under restraint by a competent person who by means of a leash, chain or rope has the animal firmly under control at all times. When the animal is off of the property of the owner, it shall be securely muzzled and under restraint by a competent person who by means of a leash, chain or rope has the animal firmly under control at all times. The owner shall notify animal services immediately of an escape by the animal. All dangerous dogs must be microchipped for identification by a licensed Veterinarian within 20 days at the owner's expense and animal services provided with the identification number. All owners of dangerous dogs must purchase a sign from animal services that states "DANGEROUS DOG" and post same on the enclosure where said dog is confined.

(Ord. No. 2007-1001, Art. VIII, (4), 10-26-2007; Ord. No. 2007-1003, 10-26-2007)

Sec. 4-125. Transfer of ownership of a dangerous animal.

If the owner of a dangerous animal or potentially dangerous animal transfers ownership or possession of the animal to another person, the owner shall provide written notice to the new owner or person taking possession that the animal is dangerous, as defined in this article and the owner shall provide animal services with written notice that ownership or possession of the animal prior to the transfer of ownership.

(Ord. No. 2007-1001, Art. VIII, (5), 10-26-2007; Ord. No. 2007-1003, 10-26-2007)

Sec. 4-126. Sanctions, penalties, fines and remedies.

Violations of this article [and Article VIII, of the Brunswick County Animal Control Ordinance], are punishable by prosecution in criminal court as provided by G.S. 14-4, unless a greater penalty is provided elsewhere, or by the imposition of civil penalties as prescribed in article VII, or both. Collection of civil penalties may be by civil action or by the use of a collection agency.

(1) Dangerous animal or potentially dangerous animal found at large.

a. If an animal, which has previously been determined to be dangerous or potentially dangerous by the health director, is found at large, it may be tranquilized or humanely destroyed by an animal services officer with or without prior notice to the owner, only after unsuccessful attempts to catch it and authorization from the animal services director. If an animal services officer does tranquilize or humanely destroy such an animal, he shall submit a written report of the incident to the animal services director within 72 hours of the incident and shall make a good faith attempt to notify the owner of the incident.

b. If an animal which previously has been determined to be dangerous or potentially dangerous by the health director is determined by an animal services officer to pose immediate danger to the health and safety of any person or animal, the dangerous animal or potentially dangerous animal may be tranquilized or humanely destroyed at

the animal service officer's discretion, with or without prior notification to the owner. In the event the animal services officer does tranquilize or humanely destroy such animal, he shall submit a written report of the incident to the animal services director within 72 hours of the incident and shall make a good faith attempt to notify the owner of the incident.

c. If a dangerous animal or potentially dangerous animal is caught while at large or seen at large, it may be impounded and humanely destroyed. Animal services may go upon private property to seize the animal. The health director may issue a notice of intent to destroy the animal to the owner. The owner may appeal this intended action by filing a written request with the board of health's environmental committee within five working days of receiving the written decision. The board of health's environmental committee shall schedule a hearing within ten days of receiving the appeal and request for hearing. The board of health's environmental committee shall hear the appeal and render a final written decision within three working days after the hearing and serve the same on the owner. The owner may appeal the board of health's environmental committee decision to the superior court by filing notice of appeal and a petition for review within ten days of the final decision of the board of health's environmental committee. If the owner fails to seek a timely review of the animal services director's notice of intent to destroy the animal or if he fails to file a timely appeal of the board of health's environmental committee's decision, animal services may humanely destroy the animal.

d. If the owner of a dangerous or potentially dangerous animal has failed to adhere to the written dangerous dog instructions provided by the health director, the health director may issue an order of seizure with intent to destroy the animal to the owner. The owner may appeal this intended action by filing a written request with the board of health's environmental committee within five working days of receiving the written decision. The board of health's environmental committee shall schedule a hearing within ten days of receiving the appeal and request for hearing. The board of health's environmental committee shall hear the appeal and render a final written decision within three working days after the hearing and serve the same on the owner. The owner may appeal the board of health's environmental committee decision to the superior court by filing notice of appeal and a petition for review within ten days of the final decision of the board of health's environmental committee. If the owner fails to seek a timely review of the health director's notice of intent to destroy the animal or if he fails to file a timely appeal of the board of health's environmental committee's decision, animal services may humanely destroy the animal.

(2) Failure to confine or restrain a dangerous animal and failure to provide notice of transfer. Any owner who fails to confine or restrain a dangerous animal or any owner who fails to provide the written notices described in section 4-125, above or violates any provisions of this article shall be subject to the sanctions, fines, penalties and remedies mentioned above as well as being subject to the issuance of a criminal warrant or summons. If convicted, the owner shall be guilty of a misdemeanor punishable by a fine not to exceed \$500.00 or imprisonment for not more than six months, or both (G.S. 67-4.2)(c)).

(Ord. No. 2007-1001, Art. VIII, (6), 10-26-2007; Ord. No. 2007-1003, 10-26-2007)

Secs. 4-127--4-145. Reserved.

ARTICLE V. INTERFERENCE

Sec. 4-146. Interference.

It shall be unlawful for any person to interfere with, hinder, or molest an employee of animal services or any other person duly authorized by this chapter while in the performance of duty. It shall also be unlawful for any person to seek release, or attempt to release, or to release any animal in the custody of animal services, except as otherwise specifically provided in this chapter. The animal services director may initiate the issuance of a criminal warrant for any person violating this article. If convicted, the person shall be guilty of a misdemeanor punishable by a fine of up to \$500.00 or imprisonment for not more than six months.

(Ord. No. 2007-1001, Art. X, 10-26-2007; Ord. No. 2007-1003, 10-26-2007)

Secs. 4-147--4-180. Reserved.

ARTICLE VI. IMPOUNDMENT OF ANIMALS

Sec. 4-181. Definitions.

As used in this article, the following terms shall have the meanings set forth below:

Animal means every nonhuman species, both domestic and wild.

Feral cat means a domestic cat which has adapted to survive in the wild, is homeless and ownerless, having descended from stray and possibly generations of abandoned house pets.

Impoundment means possession or seizure of an animal by Brunswick County Animal Services for placement in the county's animal shelter or any other appropriate facility.

(Ord. No. 2007-1001, Art. XII, (1), 10-26-2007; Ord. No. 2007-1003, 10-26-2007)

Sec. 4-182. Impoundment.

Not inconsistent with the proceeding articles of this chapter, any healthy animal, with the exception of a feral cat, which appears to be lost, strayed or unwanted, or any dog or

cat which is found not wearing a current valid rabies vaccination tag, or any wild or exotic animal or poisonous reptile which has escaped or poses the danger of escaping may be confined to the animal shelter or any other appropriate facility in a humane manner for a minimum period of five days, unless otherwise specified by this chapter, for redemption by the owner. Any animal not redeemed within five days shall become the property of Brunswick County and shall be disposed of pursuant to this chapter. Brunswick County Animal Services is authorized to obtain suitable board, maintenance and care from any available source for any impoundment animal for which the animal shelter is not equipped to care. The owner of any animal impounded and cared for under this provision of the ordinance may redeem the animal upon payment of all costs for maintenance, transportation and care plus regular redemption fees provided in this article.

(Ord. No. 2007-1001, Art. XII, (2), 10-26-2007; Ord. No. 2007-1003, 10-26-2007)

Sec. 4-183. Feral cats.

A feral cat shall be held for three working days for redemption by a possible owner. If the feral cat is not redeemed within three working days, it may be euthanized pursuant to this chapter. Before a feral cat is euthanized, a panel of three persons must unanimously declare the cat a feral cat. If the panel cannot agree unanimously, the cat must be held for five days. The panel is to be made up of three animal services staff members, each with a minimum of one year's experience with animal services.

(Ord. No. 2007-1001, Art. XII, (3), 10-26-2007; Ord. No. 2007-1003, 10-26-2007)

Sec. 4-184. Notice.

A good faith effort shall be made to notify known owners of impounded animals. If the owner is known, a written notice of impoundment shall be served on the owner or affixed to the owner's premises. The written notice shall describe the animal, state the date, time and place the animal was picked up and inform the owner of the conditions whereby the animal may be redeemed. Instructions on how to determine if an animal has been impounded shall be posted at the animal shelter. The posting of these instructions at the animal shelter shall constitute adequate notice to an unknown owner.

(Ord. No. 2007-1001, Art. XII, (4), 10-26-2007; Ord. No. 2007-1003, 10-26-2007)

Sec. 4-185. Boarding fees.

The animal services director, with the assistance of shelter personnel, shall charge to the owner the following fees, which must be paid before an animal may be redeemed:

Boarding fee for dogs, per day \$10.00

Boarding fee for cats, per day 10.00

Boarding fee for all other animals kept at the animal shelter, per day 10.00

Boarding fee for all other animals not kept at the animal shelter The actual amount charged by the caretaker or boarder of the animal.

Nonroutine charge for transporting the animal The actual amount charged by the person providing the transportation.

The above fees are in addition to the redemption fees set forth in article VIII and are subject to adjustment or change by the Brunswick County Board of County Commissioners at any time.

(Ord. No. 2007-1001, Art. XII, (5), 10-26-2007; Ord. No. 2007-1003, 10-26-2007)

Secs. 4-186--4-230. Reserved.

ARTICLE VII. CIVIL PENALTIES

Sec. 4-231. Civil penalties.

Animal services is authorized to assess civil penalties for violations of this chapter. Any assessed civil penalty not paid within 20 days of issuance may be turned over to a collection agency or efforts made to collect in civil court.

Failure to wear rabies tag \$50.00

Failure to vaccinate 100.00

Failure to notify, or provide information of a bite 100.00

Manner of keeping and treating animals 100.00

Failure to give notice of injuring animal 50.00

Failure to give notice of injured animal on property 50.00

Unprovoked dog bite while running at large 500.00

Animals running at large 1st time 50.00

2nd time 75.00

3rd time 100.00

4 or more 150.00

Failure to confine dog/cat in estrus 75.00

Animal public nuisance 1st time 50.00

2[nd] or more 75.00

Harboring stray animals 50.00

Dangerous dog violations 100.00

Violation of exotic animal ordinance (per day) 50.00

Interference with officer 150.00

Interference with trap or cage 100.00

Unspecified violations of the ordinance (each) 50.00

Miscellaneous fees--Euthanasia by request 10.00

Tranquilize small animal by request 10.00

Tranquilize large animal by request 15.00

Lost darts 10.00

These amounts may be changed by the Brunswick County Board of Commissioners at any time.

(Ord. No. 2007-1001, Art. XIII, 10-26-2007; Ord. No. 2007-1003, 10-26-2007)

Secs. 4-232--4-275. Reserved.

**ARTICLE VIII.
REDEMPTION OF ANIMALS**

Sec. 4-276. Redemption of animals.

An owner of an animal, which has been impounded by animal services, may resume possession of the animal, except as already provided or in other articles of this chapter, upon compliance with the following provisions:

(1) *Proof and acknowledgement of ownership.* Any person attempting to redeem an impounded animal shall present proof sufficient to satisfy shelter personnel of ownership of the animal. Evidence of ownership may include but is not limited to any of the following.

- a. License tag from another county;
- b. Rabies tag for the animal;
- c. Ownership documents, pedigree papers, bill of sale and any other document identifying the person as owner of the animal;
- d. Photographs of the animal with the owner or other family members; or
- e. Affidavit from two people in the community stating that the animal has been seen in the presence or possession of the person attempting to resume possession.

Any person attempting to redeem an animal on behalf of an owner shall present proof sufficient to satisfy shelter personnel that he or she is acting as agent for the owner.

(2) *Time of redemption.* Any person attempting to redeem an animal must make contact with the animal shelter within five days of the animal being impounded at the animal shelter or some other appropriate facility. After making contact, that person shall be given a reasonable amount of time to prove ownership of the animal not to exceed five additional days.

(3) *Payment of redemption fees, boarding fees and civil penalties.* The owner of an impounded animal must pay all redemption fees, boarding fees and civil penalties assessed against the animal before it can be released from the shelter. Any person, after presenting sufficient proof of ownership, may redeem the animal after paying the following fees and costs:

1st Redemption by owner \$50.00 + Boarding fee + Civil penalty

2nd Redemption by owner 75.00 + Boarding fee + Civil penalty

3rd Redemption by owner 100.00 + Boarding fee + Civil penalty

4th and subsequent redemption 150.00 + Boarding fee + Civil penalty

If an owner cannot prove a current rabies vaccination, he/she will be charged an additional \$10.00 for a rabies vaccination certificate.

These amounts may be changed by the Brunswick County Board of Commissioners at any time. The animal shall become the property of Brunswick County if the owner fails

to pay all amounts due and if the appropriate holding period has passed, and will then be disposed of as provided by this chapter.

(Ord. No. 2007-1001, Art. XIV, (1), 10-26-2007; Ord. No. 2007-1003, 10-26-2007)

Secs. 4-277--4-300. Reserved.

ARTICLE IX. DISPOSITION AND ADOPTION OF IMPOUNDED ANIMALS

Sec. 4-301. Disposition of impounded animals.

If an animal is not redeemed by its owner within the allowed time for redemption, the animal shall become the property of Brunswick County without any further notice to the owner. Once the animal becomes the property of Brunswick County, the animal services director is authorized to adopt the animal out or euthanize it. Any sick or diseased animal, which appears to be lost, strayed or unwanted and is found not wearing a rabies vaccination tag or any other form of identification may be euthanized immediately by order of the animal services director. Any sick or diseased animal, with proof of ownership, confined in the county animal shelter, may be euthanized by order of the animal services director after recommendation of a licensed veterinarian.

(Ord. No. 2007-1001, Art. XV, (1), 10-26-2007; Ord. No. 2007-1003, 10-26-2007)

Sec. 4-302. Adoption fees.

Adoption fees shall be set by the board of county commissioners.

All dogs over six months \$65.00

Includes a physical examination, heartworm test, rabies vaccination, and spay or neuter.

All dogs under six months 46.00

Includes a physical examination, rabies vaccination, and spay or neuter.

All female cats and kittens 55.00

Includes a physical examination, feline leukemia/F.I.V. test, rabies vaccination, and spay or neuter.

All male cats 35.00

Includes a physical examination, feline leukemia/F.I.V. test, rabies vaccination, and spay or neuter.

Bonafide rescue groups 5.00

Nonprofit animal rescue groups that provide their own medical services and documentation thereof to animal services are entitled to this reduced rate.

(Ord. No. 2007-1001, Art. XV, (2), 10-26-2007; Ord. No. 2007-1003, 10-26-2007)

Sec. 4-303. Recovery of adopted animal.

The animal services director is authorized to recover, reclaim or repossess an animal and dispose of the animal according to this chapter if the adopting party violates the adoption agreement.

(Ord. No. 2007-1001, Art. XV, (3), 10-26-2007; Ord. No. 2007-1003, 10-26-2007)

Secs. 4-304--4-335. Reserved.

**ARTICLE X.
SERVICE AND RETURN OF SERVICE**

Sec. 4-336. Method of service and return.

Unless otherwise specified in this chapter, all notices or citations required to be sent or delivered pursuant to this chapter shall be served and return of service made as follows:

(1) *Personal service.* The animal services director or animal services officer may deliver notices or citations to all persons due a notice or citation pursuant to this chapter. If he does so, he must get the person to sign a certificate verifying that the notice or citation was in fact received, and the animal services director or animal services officer shall sign a return of service certificate verifying that he is fact served the notice or citation. If the person being served refuses to sign the notice or citation verifying receipt of the same, the person making service shall write in the appropriate space "refused to sign". The person's refusal shall not invalidate the service. The animal services director or animal services officer may leave the notice or citation with anyone of suitable age and discretion at the residence or place of business of the person being served. The person serving said notice or citation shall have the recipient sign the service certificate.

(2) *Registered or certified mail.* The animal services director may serve notices or citations by registered or certified mail, return receipt requested.

(Ord. No. 2007-1001, Art. XVI, (1), 10-26-2007; Ord. No. 2007-1003, 10-26-2007)

Secs. 4-337--4-365. Reserved.

ARTICLE XI. APPEALS AND REQUESTS FOR REVIEW

Sec. 4-366. Appeal procedure.

All civil citations may be appealed in writing. The notice of appeal must be addressed to Brunswick County Animal Services,

Attention:

Animal Services Director,

P.O. Box 92,

Supply, NC 28462

and postmarked or personally delivered within 20 days of receipt of the citation.

(Ord. No. 2007-1001, Art. XVII, (1), 10-26-2007; Ord. No. 2007-1003, 10-26-2007)

Sec. 4-367. Appeal hearing.

(a) Appeals of animal services civil citations shall be heard within 30 days of the notice of appeal, unless a continuance is mutually agreed upon. The appeal hearing shall be held by the health director or his designee. All testimony offered in a hearing held pursuant to this article shall be given under oath and recorded by tape recording or any other reasonable manner. The hearing shall be open to the public. The person requesting the hearing may be represented by an attorney. The animal services director or animal services officer shall have the burden of proving that this chapter has been violated and that the proposed sanction is in accordance with the ordinance. The person requesting the hearing will then be given the opportunity to prove that this chapter has not been violated and/or that the sanction is not in compliance with the ordinance. The person requesting the hearing may admit the violation and confine his proof to showing that the sanction is not in accordance with the ordinance. The animal services director will then be given the opportunity to address any conflicts or inconsistencies created by the evidence or statements.

(b) The health director or his designee will render a decision and a notice of decision will be furnished to all parties concerned (complainant, bite victim, animal owner, etc.). If the sanctions/penalties are upheld, the animal owner will have 20 days to pay any fines or fees before collection efforts are initiated. The animal owner may further appeal the

decision of the health director or his designee to Brunswick County Superior Court within ten days of the service of the notice of decision.

(Ord. No. 2007-1001, Art. XVII, (2), 10-26-2007; Ord. No. 2007-1003, 10-26-2007)

Secs. 4-368--4-400. Reserved.

ARTICLE XII. GENDER

Sec. 4-401. Gender statement.

In this chapter, words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders, words importing the singular number shall include the plural number, and vice versa.

(Ord. No. 2007-1001, Art. XVIII, 10-26-2007; Ord. No. 2007-1003, 10-26-2007)

Secs. 4-402--4-435. Reserved.

ARTICLE XIII. SEVERABILITY

Sec. 4-436. Severability.

If any section, subsection, sentence, clause, phrase or portion of this chapter is for any reason held invalid or unconstitutional in any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and

such holding shall not affect the validity of the remaining portions of this chapter.

(Ord. No. 2007-1001, Art. XIX, 10-26-2007; Ord. No. 2007-1003, 10-26-2007)

Secs. 4-437--4-465. Reserved.

ARTICLE XIV. ENFORCEMENT AND EFFECT OF THIS CHAPTER

Sec. 4-466. Enforcement.

The animal services director or any other person duly authorized to initiate legal action on behalf of Brunswick County may take necessary legal steps to enforce this chapter. This chapter shall be enforced by imposing the specific sanctions, penalties, fines and

other remedies described herein, by seeking injunctive relief, orders of abatement, orders of custody and any other means prescribed by statute or common law. Any violation of this chapter, which does not carry a specific sanction, penalty or fine, shall be punishable as a general criminal misdemeanor as defined by North Carolina law.

(Ord. No. 2007-1001, Art. XX, (1), 10-26-2007; Ord. No. 2007-1003, 10-26-2007)

Secs. 4-467--4-479. Reserved.

ARTICLE XV. SEA TURTLE SANCTUARY

Sec. 4-480. Activities within sea turtle sanctuaries.

(a) The areas within the village limits above the mean low water mark, including the foreshore, are hereby declared to be a sea turtle sanctuary.

(b) It shall be unlawful for any person to willfully take any sea turtle or to take any action that may or will disturb or destroy any sea turtle, including but not limited to green, hawksbill, Kemp's ridley, loggerhead, and leatherback turtles, their nests, hatchlings, or eggs within the sea turtle sanctuary.

(c) Commercial fishing activities permitted by law that are conducted as specified in the General Statutes shall not be governed by this section.

(d) Notwithstanding article VII of this chapter, any violations of this article shall be deemed a civil violation, punishable by a civil fine of \$100.00. In addition, violation of this section shall be punishable pursuant to G.S. 14-4 as a class 3 misdemeanor with a fine that shall not exceed \$500.00 in the discretion of the court. Any violation of this section may also result in criminal charges as provided in G.S. 113-189 and 113-337. Nothing contained in this section shall prevent the village from taking such other lawful action as is necessary to prevent or remedy any violation.

(Ord. No. 2009-0901, 9-18-2009)

Secs. 4-481--4-499. Reserved.

ARTICLE XVI. LIVESTOCK AND WILD ANIMALS

Sec. 4-500. Definitions.

Livestock means horses, mules, cattle, swine, goats, sheep, poultry and any and all other animals typically maintained individually or in flocks for productive or useful purposes and whether or not an animal is maintained by any specific individual as a pet.

Wild animals shall include any animal which is:

(1) Not normally domesticated or, because of its size or vicious propensities, or any other physical characteristics, propensities, or traits poses a potential danger to persons, animals or property, including but not limited to poisonous reptiles, wild cats, wolves, foxes, bears, raccoons, alligators, deer, otters, and possums; or

(2) Classified as a wild animal by the State Wildlife Resources Commission.

(Ord. No. 2009-0901, 9-18-2009)

Sec. 4-501. Feeding or harassment of wild animals is prohibited.

(a) It shall be unlawful for any person to intentionally feed any wild animal within the confines of the village.

(b) It shall be unlawful for any person to intentionally annoy, harass, provoke, injure or otherwise infuriate or enrage a wild animal within the confines of the village.

(Ord. No. 2009-0901, 9-18-2009)

Sec. 4-502. Possession of livestock or wild animals prohibited.

(a) It shall be unlawful for any person to bring or keep any livestock or wild animals within the confines of the village.

(b) Any violations of this article shall be deemed a civil violation, punishable by a civil fine pursuant to article VII of this chapter. To the extent article VII does not apply to a violation of this article, the violation shall be punishable by civil fine of \$50.00. Each day during or on which the violation continues to occur shall be deemed a separate offense. In addition, a violation of this section shall be punishable pursuant to G.S. 14-4 as a class 3 misdemeanor with a fine that shall not exceed \$500.00 in the discretion of the court.

(Ord. No. 2009-0901, 9-18-2009)

Secs. 4-503 - 4-519. Reserved.

**ARTICLE XVII.
UNRESTRAINED DOGS**

Sec. 4-520. Definitions.

Leash means a physical tether not to exceed ten feet in length, one end of which is attached to a dog and the other is held by the dog's owner or custodian and by which such owner or custodian is physically capable of controlling the dog.

Owner means any person owning, keeping, or harboring a dog or cat. The head of the household shall be presumed to be the owner of any dog or cat kept or harbored by any person residing in the household.

Turtle season means that period of time from May 1 through November 15 of each year.

Unrestrained dog means any dog which is not:

- (1) Under the immediate control of its owner;
- (2) Within the limits and boundaries of the private property on which its owner or any person authorized by the owner to keep the animal shall reside; or
- (3) On or in any vehicle being operated or parked upon any public or private street and physically confined within the vehicle so as to prevent exit therefrom.

(Ord. No. 2009-0901, 9-18-2009)

Sec. 4-521. Unrestrained dogs prohibited.

(a) It shall be unlawful for any owner to maintain an unrestrained dog within the confines of the village, whether by intentional or negligent act or omission of the owner.

(b) From sunset to sunrise of every day during turtle season, any dog on any beach must be physically restrained by a leash.

(c) The owner or custodian of any dog or cat that excretes any feces on public property, including the beach strand, or on private property without the consent of the owner or person in lawful possession thereof shall immediately remove such feces deposited by such animal and dispose of the feces in an appropriate manner.

(d) Any violations of this article shall be deemed a civil violation, punishable by a civil fine pursuant to article VII of this chapter. To the extent article VII does not apply to a violation of this article, the violation shall be punishable by a civil fine of \$50.00. In addition, a violation of this section shall be punishable pursuant to G.S. 14-4 as a class 3 misdemeanor with a fine that shall not exceed \$500.00 in the discretion of the court.

(Ord. No. 2009-0901, 9-18-2009)

Chapter 5 RESERVED

Chapter 6 BUILDINGS AND BUILDING REGULATIONS*

* **Cross References:** ch. 10; fire prevention and protection, ch. 12; floods, ch. 14; solid waste management, ch. 20; stormwater management, ch. 22; streets, sidewalks and other public places, ch. 24; subdivisions, ch. 26; utilities, ch. 30; zoning, ch. 32; nonconforming uses, § 32-221 et seq.

State Law References: to regulate the construction of buildings, G.S. 160A-415.

Article I. In General

Secs. 6-1--6-20. Reserved.

Article II. Inspections

Division 1. Generally

Sec. 6-21. Key boxes required on all commercial structures.

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Sec. 6-34. Mechanical code adopted.

Sec. 6-35. Electrical code adopted.

Sec. 6-36. Residential building code.

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Sec. 6-131. Duty of inspection department.

Secs. 6-132--6-160. Reserved.

Article III. Fire Districts

Sec. 6-161. Districts established.

Sec. 6-162. Primary fire district.

Sec. 6-163. Secondary fire district.

Sec. 6-164. Occupancy.

Sec. 6-165. Pre-existing usage.

ARTICLE I. IN GENERAL

Secs. 6-1--6-20. Reserved.

ARTICLE II. INSPECTIONS*

DIVISION 1. GENERALLY

Sec. 6-21. Key boxes required on all commercial structures.

(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:

Building inspector means and refers to the village building official or his duly authorized designee.

Commercial structure means any structure defined by the state fire prevention code as a commercial building.

Key Box means a secure box of approved design in which shall be located a building key, which shall permit access to such structure by the village fire-rescue department in the event of a fire alarm emanating from such structure and which is referenced in section 506 of the state fire prevention code.

(b) *Approval by building inspector.* No commercial structure shall be constructed, nor any certificate of occupancy issued therefor, unless the owner thereof shall have installed a key box approved in design, with the location approved by the building inspector, and the means of access to such box having been delivered to the chief of emergency services of the village fire-rescue department. Further, such key box shall

be continuously thereafter maintained so as to permit access to such structure by the chief of emergency services or his duly authorized designee in the event of a fire or medical emergency therein or alarm indicating the presence of fire or medical emergency.

(c) *Violations.* Violation of this section shall constitute a class 3 misdemeanor, punishable by a fine not to exceed \$500.00. Each day during which such violation exists shall constitute a separate violation of this section.

(Ord. No. 2003-005, §§ 1--3, 3-21-2003)

Secs. 6-22--6-30. Reserved.

* **State Law References:** inspection, G.S. 160A-411 et seq.

**DIVISION 2.
ADOPTION OF REGULATORY CODES BY REFERENCE**

Sec. 6-31. Scope of article and codes.

The provisions of this article and of regulatory codes adopted in this article and the regulatory codes adopted in this article shall apply to the following:

(1) The location, design, materials, equipment, construction, reconstruction, alteration, repair, maintenance, moving, demolition, removal, use, and occupancy of every building or structure or any appurtenances connected or attached to such building or structure;

(2) The installation, erection, alteration, repair, use and maintenance of plumbing systems consisting of house sewers, building drains, waste and vent systems, hot and cold water supply systems, and all fixtures and appurtenances thereof;

(3) The installation, erection, alteration, repair, use and maintenance of mechanical systems consisting of heating, ventilating, air conditioning, and refrigeration systems, fuel burning equipment, and appurtenances thereof;

(4) The installation, erection, alteration, repair, use and maintenance of electrical systems and appurtenances thereof.

(Ord. No. 2, art. I, § 1-1, 1-27-1986)

Sec. 6-32. Building code adopted.

The latest edition of the state building code, (volume I, General Construction), as adopted by the state building code council and as amended, is hereby adopted by reference as fully as though set forth in this article.

(Ord. No. 2, art. I, § 1-2, 1-27-1986)

Sec. 6-33. Plumbing code adopted.

The latest edition of the state plumbing code (state building code, volume II, Plumbing) as adopted by the state building code council and as amended, is hereby adopted by reference as fully as though set forth in this article.

(Ord. No. 2, art. I, § 1-3, 1-27-1986)

Sec. 6-34. Mechanical code adopted.

The latest edition of the state mechanical code (state building code, volume III, Mechanical) as adopted by the state building code council and as amended, is hereby adopted by reference as fully as though set forth in this article.

(Ord. No. 2, art. I, § 1-4, 1-27-1986)

Sec. 6-35. Electrical code adopted.

The latest edition of the state electrical code (state building code, volume IV, Electrical), as adopted by the state building code council and as amended, is hereby adopted by reference as fully as though set forth in this article.

(Ord. No. 2, art. I, § 1-5, 1-27-1986)

Cross References: ch. 30.

Sec. 6-36. Residential building code.

The latest edition of the state uniform residential building code (state building code, volume I-B, Residential), as adopted by the state building code council is hereby adopted by reference as fully as though set forth in this article.

(Ord. No. 2, art. I, § 1-6, 1-27-1986)

Sec. 6-37. Amendments to codes.

Amendments to the regulatory codes adopted by reference in this article, which are from time to time adopted and published by the agencies or organizations referred to in this article shall be effective in the village at the time such amendments are filed with the village clerk or building inspector as provided in section 6-39.

(Ord. No. 2, art. I, § 1-7, 1-27-1986)

Sec. 6-38. Compliance with codes.

(a) All buildings or structures which are hereafter constructed, reconstructed, erected, altered, extended, enlarged, repaired, demolished, or moved shall conform to the requirements, minimum standards, and other provisions of either the state building code, General Construction, volume I, or the state building code, volume I-B, Residential, whichever is applicable, or of both if both are applicable.

(b) Every building or structure intended for human habitation, occupancy, or use shall have plumbing, plumbing systems, or plumbing fixtures installed, constructed, altered, extended, repaired, or reconstructed in accordance with the minimum standards, requirements, and other provisions of the state plumbing code (state building code, volume II, Plumbing).

(c) All mechanical systems consisting of heating, ventilating, air conditioning, and refrigeration systems, fuel burning equipment, and appurtenances shall be installed, erected, altered, repaired, used and maintained in accordance with the minimum standards, requirements, and other provisions of the state mechanical code (state building code, volume III, Mechanical).

(d) All electrical wiring, installations and appurtenances shall be erected, altered, repaired, used and maintained in accordance with the minimum standards, requirements, and other provisions of the state electrical code (state building code, volume IV, Electrical).

(Ord. No. 2, art. I, § 1-8, 1-27-1986)

Sec. 6-39. Copies of codes filed with clerk.

An official copy of each regulatory code adopted in this article, and official copies of all amendments thereto, shall be kept on file in the office of the village clerk or building inspector. Such copies shall be the official copies of the codes and the amendments.

(Ord. No. 2, art. I, § 1-9, 1-27-1986)

Secs. 6-40--6-60. Reserved.

**DIVISION 3.
INSPECTION DEPARTMENT**

Sec. 6-61. Organization of department.

The village does hereby create an inspection department of the village government which shall consist of a building inspector who shall be licensed by the state department of insurance as a plumbing inspector and a mechanical inspector. The inspection

department shall consist of any other inspectors or deputy or assistant inspectors as may be authorized from time to time by the village council.

(Ord. No. 2, art. II, § 2-1, 1-27-1986)

Sec. 6-62. General duties of department and inspectors.

It shall be the duty of the inspection department to enforce all of the provisions of this article and the provisions of G.S.160A-412.

(Ord. No. 2, art. II, § 2-2, 1-27-1986)

Sec. 6-63. Conflicts of interest.

No officer or employee of the inspection department shall be financially interested in the furnishing of labor, material, or appliances for the construction, alteration, or maintenance of a building or any part thereof, or in the making of plans or specifications therefor in violation of G.S. 160A-415.

(Ord. No. 2, art. II, § 2-3, 1-27-1986)

Sec. 6-64. Reports and records.

The inspection department, and each inspector, shall keep complete, permanent, and accurate records in convenient form of all applications received, permits issued, inspections, and reinspections made, and all other work and activities of the inspection department. Periodic reports shall be submitted to the village council, and to other agencies, as required.

(Ord. No. 2, art. II, § 2-4, 1-27-1986)

Sec. 6-65. Inspection procedure.

(a) *Inspections generally.*

(1) The inspection department shall inspect all buildings and structures and work therein for which a permit of any kind has been issued as often as necessary in order to determine whether the work complies with this article and the appropriate codes.

(2) When deemed necessary by the appropriate inspector, materials and assemblies may be inspected at the point of manufacture or fabrication, or inspections may be made by approved and recognized inspection organizations; provided, no approval shall be based upon reports of such organizations unless the appeals are in writing and certified by a responsible officer of such organization.

(3) All holders of permits or their agents shall notify the inspection department and the appropriate inspector at each of the following stages of construction so that approval may be given before work is continued:

a. *Foundation inspection.* The foundation inspections shall be made after trenches are excavated and the necessary reinforcement forms are in place, and before concrete is placed. Drilled footings, piles, and similar types of foundations shall be inspected as installed.

b. *Framing inspection.* The framing inspection shall be made after all structural framing is in place and all roughing-in of plumbing and electrical and heating has been installed, after all fire blocking, chimneys, bracing and vents are installed, but before any of the structure is enclosed or covered. Poured in place concrete structural elements shall be inspected before each pour of any structural member.

c. *Fireproofing inspection.* The fireproofing inspection shall be made after all areas required to be protected by fireproofing are lathed, but before the plastering or other fireproofing is applied.

d. *Final inspection.* The final inspection shall be made after the building or structure has all doors hung, fixtures set, and is ready for occupancy, but before the building is occupied.

(b) *Calls for inspection.* Request for inspections may be made to the office of the inspection department or to the appropriate inspector. The inspection department shall make inspections as soon as practicable after request is made therefor, provided such work is ready for inspection at the time the request is made.

(c) *Reinspections.* Reinspections may be made at the convenience of the inspector. No work shall be inspected until it is in proper and completed condition ready for inspection. All work which has been concealed before the inspection and approval shall be uncovered at the request of the inspector and placed in condition for proper inspection. Approval or rejection of the work shall be furnished by the appropriate inspector in the form of a notice posted on the building or given to the permit holder or his agent. Failure to call for inspections or proceeding without approval at each stage of construction shall be deemed a violation of this article.

(d) *Certificate of occupancy.* No new building or part thereof shall be occupied, and no addition or enlargement of any existing building shall be occupied, and no existing building, after being altered or moved, shall be occupied, and no change of occupancy shall be made in any existing building or part thereof, until the inspection department has issued a certificate of occupancy therefor. A temporary certificate of occupancy may be issued for a portion of a building which may safely be occupied prior to final completion and occupancy of the entire building. Application for a certificate of occupancy may be made by the owner or his agent after all final inspections have been made for new buildings, or, in the case of existing buildings, after supplying the

information and data necessary to determine compliance with this article, the appropriate regulatory codes and chapter 32, pertaining to zoning, for the occupancy intended. The inspection department shall issue a certificate of occupancy when, after examination and inspection, it is found that the building in all respects conforms to the provisions of this article, the regulatory codes, and chapter 32, pertaining to zoning, for the occupancy intended.

(Ord. No. 2, art. II, § 2-5, 1-27-1986)

Sec. 6-66. Oversight not to legalize violation.

No oversight or dereliction of duty on the part of any inspector or other official or employee of the inspection department shall be deemed to legalize the violation of any provision of this article or any provision of any regulatory codes adopted in this article.

(Ord. No. 2, art. II, § 2-6, 1-27-1986)

Sec. 6-67. Powers of inspection officials.

(a) *Authority.* Inspectors are hereby authorized, empowered, and directed to enforce all the provisions of this article and the regulatory codes adopted in this article.

(b) *Right-of-entry.* With an appropriate warrant or permission from the owner or occupant, inspectors shall have the right-of-entry to any premises within the jurisdiction of the regulatory codes adopted in this article at reasonable hours for the purpose of inspection or enforcement of the requirements of this article and the applicable regulatory codes.

(c) *Stop orders.* Whenever any building or structure or part thereof is being demolished, constructed, reconstructed, altered, or repaired in a hazardous manner, or in violation of any provision of this article or any other village ordinance, or in violation of any provision of any regulatory codes adopted in this article, or in violation of the terms of the permit issued therefor, or in such manner as to endanger life or property, the appropriate inspector may order such work to be immediately stopped in accordance with G.S. 160A-421.

(Ord. No. 2, art. II, § 2-7, 1-27-1986)

Secs. 6-68--6-80. Reserved.

**DIVISION 4.
ENFORCEMENT**

Sec. 6-81. Registration of contractors.

Every person carrying on the business of building contractor, plumbing contractor, mechanical contractor, or electrical contractor within the village shall register at the office of the inspection department, giving the name and place of business.

(Ord. No. 2, art. III, § 3-1, 1-27-1986)

Sec. 6-82. Permit required.

(a) *Building permit.*

(1) No person shall commence or proceed with the construction, reconstruction, alteration, repair, removal, or demolition of any building or other structure or any part thereof without a written permit therefor from the building inspector in accordance with G.S. 160A-417.

(2) In all cases of removal or demolition of a building or structure, a good and sufficient bond may be required to be posted by the property owner or his contractor at the time of application for a permit, to ensure complete removal or demolition, including all rubble and debris. Failure on the part of the property owner or his contractor to completely demolish, remove, and clear the premises, after 30 days' notice by the building inspector, shall be cause for forfeiture of such bond.

(b) *Plumbing permit.* No person shall commence or proceed with the installation, extension, or general repair of any plumbing system without a written permit therefor from the plumbing inspector; provided, however, no permit shall be required for minor repairs or replacements on the house side of a trap to an installed system of plumbing if such repairs or replacements do not disrupt the original water supply or the waste or ventilating system.

(c) *Mechanical permit.* No person shall commence or proceed with the installation, extension, alteration or general repair of any heating or cooling equipment system without a written permit from the mechanical inspector; provided, however, no permit shall be required for minor repairs or minor burner services or filter replacements of warm air furnaces or cooling systems.

(d) *Electrical permit.* No person shall commence or proceed with the installation, extension, alteration, or general repair of any electrical wiring, devices, appliances or equipment without a written permit therefor from the electrical inspector; provided, however, no permit shall be required for minor repair work such as the replacement of lamps or the connection of portable devices to suitable receptacles which have been permanently installed; provided, further, no permit shall be required for the installation, alteration, or repair of the electrical wiring, devices, appliances, and equipment installed by or for an electrical public utility corporation for the use of such corporation in the generation, transmission, distribution, or metering of electrical energy.

(Ord. No. 2, art. III, § 3-2, 1-27-1986)

Sec. 6-83. Application for permit.

Written application shall be made for all permits required by this article and shall be made on forms provided by the inspection department. Such application shall be made by the owner of the building or structure affected or by his authorized agent or representative and in addition to such other information as may be required by the appropriate inspector to enable him to determine whether the permit applied for should be issued, shall show the following:

- (1) Name, residence, and business address of owner;
- (2) Name, residence, and business address of authorized representative or agent, if any;
- (3) Name and address of the contractor, if any, together with evidence that he has obtained a certificate from the appropriate state licensing board for such contractors, if such be required for the work involved in the permit for which application is made.

(Ord. No. 2, art. III, § 3-4, 1-27-1986)

Sec. 6-84. Plans and specifications.

Detailed plans and specifications shall accompany each application for a permit when the estimated total cost of the building or structure is in excess of \$45,000.00 and for any other building or structure where plans and specifications are deemed necessary by the appropriate inspector in order for him to determine whether the proposed work complies with the appropriate regulatory codes. Plans shall be drawn to scale with sufficient clarity to indicate the nature and extent of the work proposed, and the plans and specifications together shall contain information sufficient to indicate that the work proposed will conform to the provisions of this article and the appropriate regulatory codes. Where plans and specifications are required, copies of them shall be kept at the work until all authorized operations have been completed and approved by the appropriate inspector.

(Ord. No. 2, art. III, § 3-5, 1-27-1986)

Sec. 6-85. Limitations on issuance of permits.

- (a) No building permit shall be issued for any building or structure, the estimated total cost of which is more than \$30,000.00, unless the work is to be performed by a licensed general contractor, or unless the applicant furnishes evidence that he is exempt from the provisions of the law licensing general contractors.
- (b) No building permit shall be issued for any building or structure unless the plans bear the state seal of a registered architect or a registered engineer, except the following:

(1) A family residence, up to eight units attached with grade level exit, which is not part of or physically connected with any other buildings or residential units;

(2) An institutional or commercial building having a total value not exceeding \$90,000.00;

(3) An institutional or commercial building having a gross floor area not exceeding 2,500 square feet.

(c) Where any provisions of the General Statutes or of any ordinance requires that work be done by a licensed specialty contractor of any kind, no permit for such work shall be issued unless it is to be performed by such licensed specialty contractor.

(d) Where detailed plans and specifications are required under this article, no building permit shall be issued unless such plans and specifications have been provided.

(Ord. No. 2, art. III, § 3-6, 1-27-1986)

Sec. 6-86. Issuance of permit.

When proper application for a permit has been made, and the appropriate inspector is satisfied that the application and the proposed work comply with the provisions of this article and the appropriate regulatory codes, he shall issue such permit, upon payment of the proper fee or fees as provided in section 6-90.

(Ord. No. 2, art. III, § 3-7, 1-27-1986)

Sec. 6-87. Revocation of permits.

The appropriate inspector may revoke and require the return of any permit by notifying the permit holder in writing stating the reason for such revocation. Permits shall be revoked for any material departure from the approved application, plans or specifications; for refusal or failure to comply with proper orders of the inspector; for refusal or failure to comply with requirements of this article and the appropriate regulatory codes; or for false statements or misrepresentations made in securing such permit.

(Ord. No. 2, art. III, § 3-8, 1-27-1986)

State Law References: provisions, G.S. 160A-422.

Sec. 6-88. Time limitations on validity of permits.

All permits issued under this article shall expire by limitation six months after the date of issuance if the work authorized by the permit has not been commenced. If after commencement the work is discontinued for a period of twelve months, the permit

therefor shall immediately expire. No work authorized by any permit which has expired shall thereafter be performed until a new permit therefor has been secured.

(Ord. No. 2, art. III, § 3-9, 1-27-1986)

State Law References: provisions, G.S. 160A-418.

Sec. 6-89. Changes in work.

After a permit has been issued, changes or deviations from the terms of the application and permit, or changes or deviations from the plans or specifications involving any work under the jurisdiction of this article or of any regulatory code adopted in this article, shall not be made until specific written approval of such changes or deviations has been obtained from the appropriate inspector.

(Ord. No. 2, art. III, § 3-10, 1-27-1986)

State Law References: provisions, G.S. 160A-419.

Sec. 6-90. Permit fees; land use development review fees.

Fees for permits shall be based upon the total estimated cost of the proposed work, including all subcontractors, if any, but in no case shall the total estimated cost be less than the market value of similar completed work in the village as determined by the appropriate inspector. Fees for the review of land use development plans shall be listed on the permit fee schedule, as may be amended from time to time,, shall be maintained in the office of the village clerk and is hereby incorporated by reference as part of this article.

(Ord. No. 2, art. III, § 3-11, 1-27-1986; Ord. No. 2001-018, § 3, 8-25-2001)

Secs. 6-91--6-110. Reserved.

DIVISION 5. CONDEMNATION, REPAIR, AND DEMOLITION OF UNSAFE BUILDINGS*

* **Cross References:** ch. 10.

Sec. 6-111. Duty of inspection department.

The inspection department shall be charged with enforcing the provisions of G.S. 160A-426--G.S. 160A-434, relating to the condemnation, repair, and demolition of unsafe buildings, upon the direction of the village council.

(Ord. No. 2, art. IVI, § 4-1, 1-27-1986)

Secs. 6-112--6-130. Reserved.

**DIVISION 6.
ENFORCEMENT OF HOUSING CODE**

Sec. 6-131. Duty of inspection department.

The inspection department shall be responsible for the enforcement of any ordinances or codes adopted by the village council relating to the repair, closing, and demolition of dwellings unfit for human habitation, pursuant to G.S. 160A-411 et seq.

Secs. 6-132--6-160. Reserved.

**ARTICLE III.
FIRE DISTRICTS***

* **Cross References:** prevention and protection, ch. 12.

State Law References: of fire districts required, G.S. 160A-435.

Sec. 6-161. Districts established.

Attached and incorporated in this article by reference is a map of the village designating the perimeter boundary of a primary fire district labeled thereon and a secondary fire district similarly labeled thereon. The area of the village designated on the map as the primary fire district is established as the primary fire district pursuant to G.S. 160A-435 with and incorporating the limits defined therefor on the map attached. The area of the village designated on the map as the secondary fire district is hereby established as the secondary fire district pursuant to G.S. 160A-435 with and incorporating the limits defined therefor on the map attached.

(Ord. No. 40, § 1, 6-18-1994)

Sec. 6-162. Primary fire district.

Within the primary fire district of the village as established in this article, no frame or wooden building or structure or addition thereto shall be erected, altered, repaired or moved either into the primary fire district or from one place to another within the district except upon the permit of the village building inspector as approved by the commissioner of insurance.

(Ord. No. 40, § 2, 6-18-1994)

Sec. 6-163. Secondary fire district.

Within the secondary fire district and pursuant to G.S. 160A-437, no frame or wooden building or structure or addition thereto shall be erected, altered, repaired or moved either into the district or from one place to another within the district except in accordance with the following requirements which shall be in addition to all other state building code and/or fire code requirements for the construction of such buildings:

(1) *Monitored smoke detection systems on new structures.* All newly constructed commercial buildings or structures containing in excess of 500 square feet and all new residential buildings or structures shall be equipped with monitored smoke detection systems in conformity with the standards and specifications for the construction and installation thereof as shall be set forth in the National Fire Prevention Association (referred to in this article as "NFPA") Pamphlet 72 as applicable, as the Pamphlet shall, from time to time, be amended by the NFPA, the terms and specifications of which are hereby incorporated by reference.

(2) *Monitored smoke detection systems in pre-existing commercial structures.* All pre-existing commercial buildings or commercial structures containing in excess of 500 square feet shall be equipped, not later than January 1, 2009, with monitored smoke detection systems in conformity with the standards and specifications for the installation thereof as set forth in the National Fire Prevention Association (referred to in this article as "NFPA") Pamphlet 72, the terms and specifications of which are hereby incorporated by reference.

(3) *Fire sprinkling systems.*

a. Any commercial buildings or structures which shall contain at least 400 square feet and are composed of two or more stories or which shall have an occupancy rating in excess of 75 persons shall be equipped with a fire sprinkling system in conformity with the standards and specifications for construction and installation thereof as shall be set forth in NFPA pamphlets 13R and 13D, as applicable, and as the same shall from time to time be amended by the NFPA, the terms and specifications of which are hereby incorporated by reference.

b. Any residential building or structure designed or constructed for occupancy by more than one family unit shall be equipped with fire sprinkling systems in conformity with the standards and specifications for construction and installation thereof as shall be set forth in NFPA pamphlets 13R and 13D, as applicable, and as the same shall from time to time be amended by the NFPA, the terms and specifications of which are hereby incorporated by reference, except for such buildings and structures as shall have been designed or constructed for occupancy by two-family units which shall have no common horizontal separating walls and which shall be separated by vertical separating walls having at least a two-hour firewall rating as specified by Underwriters' Laboratories.

(4) *Roofing materials.* All frame or wooden buildings or structures shall be roofed with materials rated as class B materials, or better, as such roofing materials are specified by the state building code.

(5) *Garages.* Any building or structure or portion thereof which shall be designed, constructed or used for permanent or temporary storage of any electrically powered vehicle shall be constructed such that any portion thereof which is designed, constructed or used for such storage shall contain interior wall and ceiling assemblies which shall meet one-hour firewall specifications as defined by Underwriters' Laboratory.

(Ord. No. 40, § 3, 6-18-1994; Ord. No. 2008-0301, 3-14-2008)

Sec. 6-164. Occupancy.

The building inspector for the village shall be empowered to enforce the provisions of this article by and through the village ordinance providing for building inspection and occupancy permits, and no occupancy permit shall be issued to any structure located within the secondary fire district of the village until the article shall be in conformity herewith.

(Ord. No. 40, § 4, 6-18-1994)

Sec. 6-165. Pre-existing usage.

Any repair or alteration to any frame or wooden building or structure located within the secondary fire district and pre-existing the adoption of this article shall be in conformity herewith unless such repair or alteration shall be occasioned by destruction or damage to such pre-existing building or structure by fire, hurricane or other disaster which shall have damaged the building or structure such that the proposed repair or alteration thereof shall cost less than 50 percent of the value of the building or structure immediately prior to such disaster.

(Ord. No. 40, § 5, 6-18-1994)

Chapter 7 RESERVED

Chapter 8 CIVIL EMERGENCIES*

* **Cross References:** ch. 2; fire prevention and protection, ch. 12.

State Law References: and civil disorders, G.S. 14-288.1 et seq.; North Carolina Emergency Management Act, G.S. 166A-1 et seq.

Article I. In General

Secs. 8-1--8-30. Reserved.

Article II. State of Emergency

Sec. 8-31. Declaration.

Sec. 8-32. Proclamation imposing prohibitions and restrictions.

Sec. 8-33. Evacuation.

Sec. 8-34. Curfew.

Sec. 8-35. Restrictions on possession, consumption or transfer of alcoholic beverages.

Sec. 8-36. Restrictions on possession, transportation and transfer of dangerous weapons and substances.

Sec. 8-37. Restrictions on access to areas.

Sec. 8-38. Prohibitions or restrictions of movement of people, operation of businesses.

Sec. 8-39. Removal of prohibition and restrictions.

Sec. 8-40. Superseding and amendatory proclamation.

Sec. 8-41. Termination of proclamation.

Sec. 8-42. Absence of the mayor.

Sec. 8-43. Penalty for violation of article.

ARTICLE I. IN GENERAL

Secs. 8-1--8-30. Reserved.

ARTICLE II. STATE OF EMERGENCY*

* **State Law References:** to enact ordinances to deal with states of emergency, G.S. 14-288.12.

Sec. 8-31. Declaration.

(a) A state of emergency shall be deemed to exist whenever there is a time of public crisis, disaster, catastrophe or similar public emergency; for any reason, public safety

authorities are unable to maintain public order or afford adequate protection for lives, safety or property; or whenever the occurrence of any such condition is imminent.

(b) In the event of an existing or threatened state of emergency endangering the lives, safety, health and welfare of the people within the village or any part thereof, or threatening damage to or destruction of property, the mayor is hereby authorized and empowered under G.S. 14-288.12 and 166A-8 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 people within the municipality, to place in effect any or all of the restrictions authorized in this article.

(c) The mayor is hereby authorized and empowered to limit by the proclamation the application of all or any part of such restrictions to any area specifically designated or described within the municipal limits and to specific hours of the day or night, and to exempt from all or any part of such restrictions, while acting in the line of and within the scope of their respective duties, public safety officers, firefighters, rescue squad members and other public employees, on-duty public utility employees, public transportation company employees and such other classes of persons as may be essential to the preservation of public order and necessary to serve the safety, health and welfare needs of the people within the village.

(Ord. No. 18, § 1, 10-15-1988)

Sec. 8-32. Proclamation imposing prohibitions and restrictions.

(a) The mayor or his designee, by proclamation, may impose the prohibitions and restrictions specified in sections 8-33-- 8-38 of this article in the manner described in those sections. He may impose as many of those specified prohibitions and restrictions as he deems necessary, because of an emergency, to maintain an acceptable level of public order and services, and to protect lives, safety and property. The mayor or his designee shall recite his finding in the proclamation.

(b) The proclamation shall be in writing. Reasonable steps shall be taken to give notice of the terms of the proclamation to those affected by it and a copy of it shall be posted in the town hall. Copies of the text of the proclamation shall be retained and upon request certified copies of it used as evidence.

(Ord. No. 18, § 2, 10-15-1988)

Sec. 8-33. Evacuation.

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

the evacuation may be set forth or amended in a subsequent proclamation which shall be well publicized.

(Ord. No. 18, § 3, 10-15-1988)

Sec. 8-34. Curfew.

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

(b) Unless otherwise specified, the proclamation shall apply during the specified period until the proclamation removes the curfew.

(Ord. No. 18, § 4, 10-15-1988)

Sec. 8-35. Restrictions on possession, consumption or transfer of alcoholic beverages.

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

(Ord. No. 18, § 5, 10-15-1988)

Sec. 8-36. Restrictions on possession, transportation and transfer of dangerous weapons and substances.

(a) The proclamation may prohibit the transportation or possession, off one's own premises, or sale or purchase of any dangerous weapon or substance.

(b) The term "dangerous weapon or substance" means:

(1) Any deadly weapon, ammunition, explosive, incendiary device, radioactive material or device as defined in G. S. 14-288.8(c)(5), gasoline, or other instrument or substance designed for a use that carries a threat of serious bodily injury or destruction of property.

(2) Any other instrument or substance that is capable of being used to inflict serious bodily injury or destruction of property, when the circumstances indicate, that there is some probability that such instrument or substance will be so used.

(c) If imposed, the restrictions shall apply throughout the jurisdiction of the village or such part thereof, as designated in the proclamation.

(Ord. No. 18, § 6, 10-15-1988)

Cross References: and miscellaneous provisions, ch. 16.

Sec. 8-37. Restrictions on access to areas.

(a) The proclamation may prohibit obtaining access or attempting to obtain access to any area designated in the manner described in this section, in violation of any order, clearly posted notice or barricade indicating that access is denied or restricted.

(b) Areas to which access is denied or restricted shall be designated by the public safety officer when directed in the proclamation to do so by the mayor. If directed to do so, the public safety officer may restrict or deny access to any area, street or location within the village. Such restriction or denial shall be reasonably necessary to promote efforts being made to overcome the emergency or to prevent further aggravation of it.

(Ord. No. 18, § 7, 10-15-1988)

Sec. 8-38. Prohibitions or restrictions of movement of people, operation of businesses.

The proclamation may prohibit or restrict:

(1) Movements of people in public places;

(2) Operation of offices, business establishments and other places to or from which people may travel or at which they may congregate;

(3) Other activities or conditions the control of which may be reasonably necessary to maintain order and protect lives or property during the state of emergency, within the area designated in the proclamation.

(Ord. No. 18, § 8, 10-15-1988)

Sec. 8-39. Removal of prohibition and restrictions.

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

(Ord. No. 18, § 9, 10-15-1988)

Sec. 8-40. Superseding and amendatory proclamation.

The mayor, in his discretion, may invoke the restrictions authorized by this article in separate proclamations, and may amend any proclamations by means of an superseding proclamation in accordance with the procedures set forth in section 8-32.

(Ord. No. 18, § 10, 10-15-1988)

Sec. 8-41. Termination of proclamation.

Any proclamation issued under this article shall expire five days after its last imposition unless sooner terminated, in writing, under the same procedures set forth in section 8-32 for proclamations.

(Ord. No. 18, § 11, 10-15-1988)

Sec. 8-42. Absence of the mayor.

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

(Ord. No. 18, § 12, 10-15-1988)

Sec. 8-43. Penalty for violation of article.

A violation of this article shall subject the offender to a civil citation and civil fine of \$50.00 per offense. Any individual cited for violation of this article shall pay the civil penalty at the office of the village clerk within 48 hours of the issuance thereof. In addition to any civil sanctions imposed in this article, violation of this article shall constitute a class 3 misdemeanor, punishable by imprisonment and/or fine not to exceed \$500.00.

(Ord. No. 18, § 13, 10-15-1988; Ord. No. 2001-022, § 1, 10-26-2001)

**Chapter 9
RESERVED**

**Chapter 10
ENVIRONMENT***

* **Cross References:** Animals, ch. 4; buildings and building regulations, ch. 6; condemnation, repair, and demolition of unsafe buildings, § 6-111 et seq.; floods, ch. 14; parks and recreation, ch. 18; solid

waste management, ch. 20; stormwater management, ch. 22; streets, sidewalks and other public places, ch. 24; subdivisions, ch. 26; utilities, ch. 30; zoning, ch. 32.

State Law References: Environmental Policy Act, G.S. 113A-1--113A-7.

Article I. In General

Secs. 10-1--10-30. Reserved.

Article II. Nuisances

Division 1. Generally

Sec. 10-31. Beach Vitex (*Vitex rotundifolia*).

Secs. 10-32--10-50. Reserved.

Division 2. Junk Vehicles

Sec. 10-51. Definitions.

Sec. 10-52. Responsibility of removal.

Sec. 10-53. Authority of removal.

Sec. 10-54. Cost of removal and notice.

Sec. 10-55. Refusal to pay or owner identity unknown.

Sec. 10-56. Disposition of sale proceeds.

Sec. 10-57. Disposition of junked motor vehicles.

Sec. 10-58. Disposition of unidentified vehicles.

Sec. 10-59. Sale proceeds.

Sec. 10-60. Immunity.

Sec. 10-61. Exempt vehicles.

Secs. 10-62--10-80. Reserved.

Article III. Artificial Lighting

Sec. 10-81. Definitions.

Sec. 10-82. Purpose.

Sec. 10-83. Beaches; new developments; exterior lighting.

Sec. 10-84. Existing homes; exemptions.

Sec. 10-85. Building permits.

Sec. 10-86. Penalty for violation of article.

Secs. 10-87--10-120. Reserved.

Article IV. Dunes Protection

Sec. 10-121. Definitions.

Sec. 10-122. Public beach access points.

Sec. 10-123. Private accesses--Permit required.

Sec. 10-124. Same--Construction requirements.

Sec. 10-125. Same--Application for permit.

Sec. 10-126. Nonconforming private accesses.

Sec. 10-127. Penalty for violation of article.

Secs. 10-128--10-160. Reserved.

Article V. Groinfield Protection

Sec. 10-161. Definitions.

Sec. 10-162. Walking on or damaging tubes prohibited.

Sec. 10-163. Penalty for violation of this article.

Article VI. Beach Equipment

Sec. 10-164. Definitions.

Sec. 10-165. Placement and storage of beach equipment.

Sec. 10-166. Penalty for violation of article.

ARTICLE I. IN GENERAL

Secs. 10-1--10-30. Reserved.

ARTICLE II. NUISANCES*

* **State Law References:** Authority to define and abate nuisances, G.S. 160A-193.

DIVISION 1. GENERALLY

Sec. 10-31. Beach Vitex (*Vitex rotundifolia*).

(a) *Declaration of public nuisance.* The plant known as Beach Vitex (*Vitex rotundifolia*), is hereby found and declared to be a public nuisance due to the significant negative impacts this plant has upon the public beaches and sand dunes and loggerhead turtles, piping plovers, and native vegetative noted above. It is estimated that there are five acres of Beach Vitex on Bald Head Island located in at least 32 different locations.

(b) *Planting of Beach Vitex prohibited.* It shall be unlawful for any person to plant or cause to be planted Beach Vitex (*Vitex rotundifolia*) on any property located on Bald Head Island in the County of Brunswick.

(c) *Eradication and restoration.* In cooperation with the following organizations (others may be added) Bald Head Island Conservancy, U.S. Fish and Wildlife Service, N.C. Cooperative Extension, South Carolina Beach Vitex Taskforce, North Carolina Beach Vitex Taskforce, N.C. State University, a program(s) will be developed to eradicate Beach Vitex from Bald Head Island. As eradication precedes restoration of these areas with native plants and other appropriate plants will be accomplished. The village will cooperate with private land owners in this task but reserves the right to proceed with the eradication and restoration project even if the land owner objects.

(d) *Disposal.* Since Beach Vitex has the ability to generate new plants from seeds, stem sections and root sections, the proper disposal of plants and plant parts is important. The village will collect Vitex separately from other yard waste and will treat it appropriately. Beach Vitex clippings will not be chipped and shredded into mulch and distributed around the island.

(e) *Financing of this project.* The Village of Bald Head Island will provide funding for this project with the expectation that grants will be made available at a later date to provide cost sharing and/or reimbursement for the cost of this project. It is anticipated that it will take three to five years to completely eradicate Beach Vitex from Bald Head Island. Estimated cost is \$5,000.00 per acre over this period of three to five years. It is recognized that future programs of education and/or eradication may be necessary and the village may undertake such as the council may from time to time approve.

(Ord. No. 2005-014, §§ 1--5, 10-21-2005)

Secs. 10-32--10-50. Reserved.

DIVISION 2. JUNK VEHICLES*

* **Cross References:** Traffic and vehicles, ch. 28.

State Law References: Authority to remove and dispose of junked and abandoned vehicles, G.S. 160A-303.

Sec. 10-51. 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 motor vehicle means any motor vehicle located within the confines of the village, including but not limited to, motorized golf carts, and which is:

- (1) Left unattended upon a street or right-of-way within the village for longer than 12 hours;
- (2) Left unattended on property owned or operated by the village other than a street or right-of-way for a period of more than 24 hours; or
- (3) Left on private property without the consent of the owner, occupant or lessee thereof for a period in excess of 12 hours.

Junked motor vehicle means any abandoned motor vehicle which has no current license plate or displays no village sticker and is also found to be:

- (1) Inoperable;
- (2) Partially dismantled or wrecked; or
- (3) More than five years old and worth less than \$100.00.

Registration certificate means the certificate issued by the village police office upon registration of the motor vehicle with the village police office.

(Ord. No. 37, § 1, 9-18-1993)

Cross References: Definitions generally, § 1-2.

Sec. 10-52. Responsibility of removal.

Whenever any motor vehicle is abandoned or junked upon the public streets or highways of the village or any property owned by the village, it shall be the duty and responsibility of the owner of such motor vehicle to cause the removal thereof immediately and to pay for all costs incidental thereto. It shall be unlawful for any person to allow a motor vehicle owned by that person to remain abandoned upon a public street or highway or upon any property owned by the village after notice has been given to such person for the removal of the vehicle.

(Ord. No. 37, § 2, 9-18-1993)

Sec. 10-53. Authority of removal.

Any motor vehicle which is abandoned or junked upon the public streets or highways of the village or on property owned by the village or on private property owned by individuals other than the owner of such vehicle may be removed by or under the direction of the village building inspector or village police to a storage garage or other area, provided no such vehicle shall be removed from private property without the written request or permission of the owner, lessee or occupant of such property unless the council or a duly authorized city official shall find in writing that the aesthetic benefits of removing a vehicle outweigh the burdens imposed upon the owner of such property. Such finding shall be based upon a balancing of the monetary loss of the apparent owner against the corresponding gain to the public by promoting or enhancing community appearances. The following factors shall be considered in making such a determination:

- (1) Protection of property values;
- (2) Promotion of tourism and other economic development and 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. No. 37, § 3, 9-18-1993)

Sec. 10-54. Cost of removal and notice.

(a) When an abandoned or junked motor vehicle is removed by village agents or officers or their agents from private property at the request of the owner, lessee or occupant thereof, the person at whose request such vehicle is removed shall be required to pay or otherwise indemnify the village for any expenses incurred by reason of the removal and/or storage of such vehicle.

(b) The owner of any vehicle removed pursuant to this division from any public street or highway or from any property owned by the village or any private property shall pay to the village all reasonable costs incidental to the removal and storage of such vehicle and the location of the owner thereof and if such costs have already been paid by a property owner, the costs may be reimbursed to the property owner by the village upon receipt.

(c) Written notice of each removal of any abandoned or junked vehicle and of the possible sale or disposition thereof shall be given as promptly as possible to the owner

thereof at the owner's last known address according to the latest registration certificate of title on file with the state division of motor vehicles or the village police office and shall describe the vehicle, place of storage and procedure for recovery thereof.

(d) Notice need not be given to the registered owner when the vehicle does not display a license plate or a valid village registration certificate.

(e) Any time that an abandoned or junked vehicle shall be removed to a place of storage, the village shall collect the currently required towing fee and the currently required daily storage fee. Any owner shall have the right to a prompt hearing to determine whether the vehicle was abandoned or junked within the village in order to contest the towing and/or storage. The hearing shall be heard by the village manager who shall determine by preponderance of the evidence as to whether the same was in fact abandoned or junked. The right of appeal from such decision shall be to the district court for the county. At the conclusion of the hearing the village manager shall render his decision. The decision shall be further reduced to writing and forwarded to the owner or other individual seeking such hearing. Upon the mailing of the notice of decision by the village council, the owner or other individual seeking a hearing shall be entitled to appeal to the district court for the county by giving due notice of appeal within ten days of the date that the notice of the village manager's decision shall have been mailed to the individual appealing. Pending any hearing or appeal in this division, the owner or other individual may obtain a release of the vehicle at any time after the towing and/or storage fee is paid or by posting a bond with the village in the form of cash in the amount of the towing and/or storage fees. Unless the cash bond shall be paid, storage fees shall continue to accrue pending resolution of the appeal.

(Ord. No. 37, § 4, 9-18-1993)

Sec. 10-55. Refusal to pay or owner identity unknown.

If an abandoned motor vehicle is worth \$100.00 or more and should the owner thereof refuse to pay the costs referenced in section 10-54(b) above or should the identity or the whereabouts of such owner be unknown and unascertainable after a diligent search, it shall, after being held by the village for 30 days and after seven days' advertisement in a local newspaper and after 20 days' written notice to the registered owner at the last known address, if his identity is known, and to the holders of any liens of record against the vehicle and to the state division of motor vehicles, be sold by the police chief at public auction; provided, however, that any person having an interest in the vehicle may redeem it at any time prior to the sale by paying all costs accrued to date. Such costs shall include advertisement fees.

(Ord. No. 37, § 5, 9-18-1993)

Sec. 10-56. Disposition of sale proceeds.

The proceeds of the sale of any abandoned motor vehicle shall be paid to the village treasurer who shall, from such proceeds, pay the costs of removal, storage, investigation, sales and liens, in that order. The remainder of the proceeds of sale, if any, shall be paid over to the registered owner or held by the village clerk for 60 days if the registered owner cannot be located with due diligence. If the owner does not claim the remainder of the proceeds within 60 days after the sale, the funds shall be deposited into the village general fund and the owner's rights therein shall be forever extinguished.

(Ord. No. 37, § 6, 9-18-1993)

Sec. 10-57. Disposition of junked motor vehicles.

(a) With the consent of the owner, the police chief may dispose of any vehicle as a junked motor vehicle without holding it for any prescribed period of time. If an unclaimed abandoned motor vehicle appears to be worth less than \$100.00, then the police chief may dispose of the vehicle as a junked vehicle.

(b) Any unclaimed junked motor vehicles as defined by this division shall be held for a period of at least 15 days and the owner of such vehicle may claim the vehicle during the 15 day retention period by exhibiting proof of ownership to the police chief and after paying all reasonable costs incidental to the removal and storage of the vehicle plus administrative expenses. If, after the vehicle has been held for 15 days, it shall remain unclaimed, the vehicle may be destroyed, or sold at private sales as junk. Within 15 days after disposition of a junked motor vehicle, the written notice thereof shall be given to the division of motor vehicles that the vehicle has been determined to be a junked motor vehicle and accordingly disposed of. The notice shall contain as full and accurate description of the vehicle as can be reasonably determined.

(Ord. No. 37, § 7, 9-18-1993)

Sec. 10-58. Disposition of unidentified vehicles.

Vehicles not displaying a registration plate or other identification numbers or current village registration certificate and having no reasonable means of identification of the owners thereof may be destroyed or sold at private sale without regard to value, after being held for a period of 48 hours.

(Ord. No. 37, § 8, 9-18-1993)

Sec. 10-59. Sale proceeds.

The proceeds of the sale of a junked motor vehicle, after all costs of removal, storage, investigation and sale, and satisfaction of any liens of record on the vehicle, shall be held by the village clerk for 30 days and paid to the registered owner upon demand. If the owner does not appear to claim the net proceeds within 30 days after disposition of

the vehicle, the funds shall be deposited into the village general fund and the owner's rights therein shall be forever extinguished.

(Ord. No. 37, § 9, 9-18-1993)

Sec. 10-60. Immunity.

Neither the village nor any employee, agent, officer or other individual acting pursuant to village authority under this division shall be held to answer in any civil or criminal action to any owner or other person legally entitled to the possession of any abandoned, lost or stolen vehicles for disposing of such vehicle as provided in this division.

(Ord. No. 37, § 10, 9-18-1993)

Sec. 10-61. Exempt vehicles.

Nothing in this division shall apply to any vehicle in any enclosed building or any vehicle on the premises of a business enterprise being operated in a lawful place and manner if the vehicle is regularly used in the operation of the enterprise or for personal use or for any vehicle in any appropriate storage place or depository maintained in a lawful place and manner by or within the village.

(Ord. No. 37, § 11, 9-18-1993)

Secs. 10-62--10-80. Reserved.

**ARTICLE III.
ARTIFICIAL LIGHTING**

Sec. 10-81. 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:

Artificial light means any source of light emanating from a manmade device, including but not limited to incandescent, mercury vapor, metal halide, sodium lamps, flashlights, spotlights, streetlights, vehicular lights, construction or security lights.

Baffled lights means any artificial light which is attached directly to a building and is shielded from horizontal view.

Beach means that area extending landward from the mean lowwater line to the stable line of natural vegetation.

Floodlight means any reflector-type light fixture which is attached directly to a building and is unshielded.

Low profile luminaries means any light fixture set on a base which raises the source of the light no higher than 48 inches off the ground and designed in such a way that light is directed downward from a hooded light source.

New development means construction of buildings or other sources of artificial light undertaken after June 15, 1996, and shall include remodeling of existing structures.

Pole light means any light fixture set on a base or pole where the point of light is higher than 48 inches off the ground.

(Ord. No. 42, § 1, 6-15-1996)

Cross References: Definitions generally, § 1-2.

Sec. 10-82. Purpose.

The purpose of this article is to protect the flora and fauna and specifically to protect threatened sea turtles which nest along the beaches of Bald Head Island by safeguarding nesting females and the hatchlings from dangers associated with exposure to artificial light. It is the policy of the village that nesting female and hatchling loggerhead sea turtles not be exposed to artificial sources of light while on the beaches of the village.

(Ord. No. 42, § 2, 6-15-1996)

Sec. 10-83. Beaches; new developments; exterior lighting.

(a) It shall be unlawful for any individual to illuminate, by artificial light, any portion of the beach within the confines of the village between the hours of sunset and sunrise from May 1 through October 31 except by such frequencies of red light as do not disturb nesting or hatchling sea turtles.

(b) No new development within the village shall be undertaken except that which includes exterior lighting which shall conform to the requirements set forth in this article.

(c) No exterior lighting of any kind shall be permitted except the following: low profile luminaries and baffled lights, except that pole lights shall be permitted in commercial areas; marinas, lighthouses, fire stations, the public rights-of-way or multi-family areas located more than 100 feet landward of the stable line of natural vegetation. The lighting standard shall be approved by the village council. In addition, low voltage up-lights are permitted in commercial areas, lighthouses, fire stations, the public right-of-way and multi-family areas located more than 600 feet landward of the stable line of vegetation along beach and turtle habitats. Such lights are also permitted in the marina area if

located more than 150 feet landward of the stable line of vegetation. These low-voltage up-lights shall be rated at a maximum of 50 watt/850 CP (candle power) and shall be oriented such that the thrown light is reflected against the natural vegetation. Non-reflected light is not allowed.

(Ord. No. 42, § 3, 6-15-1996; Ord. No. 2009-0501, 5-15-2009)

Sec. 10-84. Existing homes; exemptions.

(a) Existing homes located within the village shall, within one year of June 15, 1996, have exterior lighting which conforms to the requirements of section 10-83 hereof.

(b) Old Baldy is specifically exempted from this article.

(Ord. No. 42, § 4, 6-15-1996)

Sec. 10-85. Building permits.

No building permit shall be issued by the building inspection department nor shall any certificate of occupancy be issued for any structure which shall, in any manner, fail to conform to the requirements for exterior lighting contained in this article.

(Ord. No. 42, § 5, 6-15-1996)

Sec. 10-86. Penalty for violation of article.

Any person violating the provisions of this article shall be subject to a civil penalty in the amount of \$100.00 for each offense. The offender shall be provided with 30 days to correct the violation. Failure to correct such violation within 30 days shall constitute a class 3 misdemeanor, punishable by a fine not to exceed \$500.00 and/or imprisonment, pursuant to G.S. 14-4. Nothing contained in this article shall prevent the village from taking such other lawful action as is necessary to prevent or remedy any violation.

(Ord. No. 42, § 6, 6-15-1996; Ord. No. 2001-027, § 1, 10-26-2001)

Secs. 10-87--10-120. Reserved.

**ARTICLE IV.
DUNES PROTECTION***

***Charter References**— Sand dunes, § 8.2.

State Law References— Coastal area management, G.S. 113A-100 et seq.

Sec. 10-121. 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:

Access means those artificial walkways designated as the means of entry to the beach over the frontal sand dune.

Beach access point shall be any public access as duly permitted or preexisting and conforming private access.

Buildable lot means a lot where a dwelling unit may be constructed.

Frontal dune means the first mounds of sand located landward of the ocean beach with sufficient vegetation, height, and configuration to offer protection from ocean storms.

Owner means the corporation, or other entity owning the real estate on or from which the access is to be located.

Private access means an access intended for or restricted to the use of a particular person, group, or class.

Public access means an access intended for use by the general public.

Street means any public thoroughfare or privately owned street, which affords a means of access to abutting property.

Vegetation means any significant plant growth, both naturally occurring and planted, on or along the frontal dune such that the plant growth affords stabilization to the frontal dune.

Waterfront lot means a buildable lot from which a perpendicular line drawn from the midpoint of the water-facing property line will reach the mean low tide line without crossing any portion of any buildable lot.

(Ord. No. 2001-047, § 1, 10-27-2001; Ord. No. 2006-1103, 11-17-2006)

Cross References—Definitions generally, § 1-2.

Sec. 10-122. Public beach access points.

(a) It shall be unlawful for any person to traverse or walk upon, over or across or to damage, in any manner whatsoever, the frontal dune at any point within the corporate limits of the village other than at "beach access points." There shall be maintained at the office of the village clerk a schedule of points designated as "public beach access points" which are approved for use by the general public and which shall be duly marked as to be readily identifiable as public beach access points.

(b) No private access shall hereafter be constructed, erected, remodeled, refaced, relocated, expanded or otherwise altered until such time as a building permit and CAMA permit thereof have been obtained from the building inspector in accordance with the provisions of this article.

(Ord. No. 2001-047, § 2, 10-27-2001)

Sec. 10-123. Private accesses--Permit required.

Any person desiring to construct, erect, remodel, reface, relocate, expand or otherwise alter any private access shall make application to the village inspection department for a permit therefor. Applications for permits shall contain or have attached to them the following information:

- (1) The street address, lot number, and tax parcel number of the property from which the private access will be located.
- (2) Names, addresses, and telephone numbers of the applicant, owner of the property, and the person or contractor constructing the access.
- (3) A site or plat plan of the property, showing accurate location of the proposed access in relation to existing structures, property lines and setbacks.
- (4) Two detailed scaled drawings of the plans and specifications of the private access to be constructed. Such plans shall include but shall not be limited to details of dimensions, materials to be used and topographical information.
- (5) Other information as the building inspector may require to determine compliance with this and other applicable local, state or federal regulations affecting the construction, erection, remodeling, refacing, relocating, expansion or other alteration thereof.

(Ord. No. 2001-047, § 3, 10-27-2001)

Sec. 10-124. Same--Construction requirements.

Private accesses shall be constructed in accordance with the following standards and any permit therefor shall require conformity to the following:

- (1) Width shall be no more than 48 inches;
- (2) Height above grade shall be at least 18 inches, but no more than 24 inches;
- (3) Pilings shall be installed at least three feet deep, but no more than five feet in depth;

(4) Stairs shall be used only when necessary to protect the integrity of the dune system and shall be allowed in the discretion of the building inspector for such purpose only;

(5) Construction of any private access shall be in accordance with the state building code;

(6) Handrails on any private access shall be prohibited unless otherwise required by the state building code;

(7) Permitted private accesses shall be constructed to follow the natural contour of the frontal dune; and

(8) Private accesses shall be permitted only from waterfront properties.

(Ord. No. 2001-047, § 4, 10-27-2001)

Sec. 10-125. Same--Application for permit.

The building inspector shall review any applications for construction, erection, remodeling, refacing, relocation, expansion or other alteration of any private access. Any application for such permit which lacks any of the requirements of section 10-123 or which shows nonconformity to the construction standards set forth in section 10-124 shall be rejected as either incomplete or nonconforming. Complete and conforming applications shall be reviewed and a permit issued therefor unless the building inspector shall determine that the proposed access shall diminish the affected frontal dune's capacity to serve as a protective barrier. Any permit issued shall require conformity to the construction criteria set forth in section 10-152, shall be conditioned upon conformity to plans and specifications of the application and shall permit no alterations to the frontal dune other than those permitted by regulations promulgated pursuant to the Coastal Area Management Act. Any such alterations shall require that the affected portions of the frontal dune be returned to its condition prior to construction within 21 days of such alteration or other disruption.

(Ord. No. 2001-047, § 5, 10-27-2001)

Sec. 10-126. Nonconforming private accesses.

(a) Any private access existing on the date of the adoption of this article and which is for any reason noncompliant herewith or any private access which, subsequent to the adoption of this article, becomes noncompliant herewith is hereby determined to be a nonconforming beach access ("nonconforming access"). Owners with a nonconforming access should bring the access into compliance with the specifications herein within six months following the date of adoption of this article or six months following that date the access becomes noncompliant subsequent to the adoption of this article. A nonconforming access may continue to be used during said six-month period. Following the expiration of this six-month period, a nonconforming access may no longer be used

and access to the beach will only be permitted through a public access and/or private access that complies with this article. use of any nonconforming access following this six-month period shall be a violation of this article, and subject to the civil and/or criminal penalties set forth herein.

(b) Any owner who fails to bring a private access into compliance with the regulations of this article shall have a period of two years from the date of adoption of this article or the date the access becomes noncompliant subsequent to the adoption of this article either to bring such private access into compliance or completely remove the nonconforming access. This two-year period in no way permits the continued use of a nonconforming access beyond the six-month period referenced herein.

(c) Any and all improvements, repairs, remodeling, relocation, expansion or other alteration of any private access shall be subject to the provisions of this article. Any expenses to bring a nonconforming access into compliance herewith shall be the sole responsibility of the owner. Any expenses to remove a nonconforming access shall be the sole responsibility of the owner.

(Ord. No. 2006-1103, 11-17-2006)

Editors Note—Ord. No. 2006-1103, adopted Nov. 17, 2006, repealed § 10-126, in its entirety and enacted new provisions to read as herein set out. Prior to amendment, § 10-126 pertained to existing private accesses. See Code Comparative Table for derivation.

Sec. 10-127. Penalty for violation of article.

Any person who shall violate this article shall be subject to a civil penalty in an amount of the fine imposed for the first offense and any continuing violations shall be \$500.00 for each offense and any continuing violation thereof shall be deemed a separate offense for each day during or on which the violation shall continue. Any civil penalty shall be payable to the village within 48 hours of issuance of a civil citation. Further, any person who shall violate this article shall be guilty of a class 3 misdemeanor, punishable by imprisonment and/or a fine of \$500.00, for each violation, pursuant to North Carolina General Statutes 14-4(a). Additionally, this article may be enforced by injunction and orders of abatement, together with all other remedies available to the village under G.S. 160A-175(e) or other state law.

(Ord. No. 2001-047, § 7, 10-27-2001; Ord. No. 2005-003, § 1, 3-15-2005)

Secs. 10-128--10-160. Reserved.

**ARTICLE V.
GROINFIELD PROTECTION**

Sec. 10-161. 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:

Geo-textile tube shall mean and include any of those sand-filled tubes purchased and installed by the Village of Bald Head Island upon the beaches of the island and/or extending along such beaches out into the Atlantic Ocean or Cape Fear River and installed for stabilization of the said beaches.

(Ord. No. 48, § 1, 10-12-1996; Ord. No. 2005-013, § 1, 7-15-2005)

Cross References—Definitions generally, § 1-2.

Sec. 10-162. Walking on or damaging tubes prohibited.

(a) It shall be unlawful for any person to walk upon, traverse, come in contact with, or conduct any activity from any geo-textile tube below the mean high-water mark thereof.

(b) It shall be unlawful for any person to damage, in any manner whatsoever, any geo-textile tube or portion thereof.

(Ord. No. 48, §§ 2, 3, 10-12-1996)

Sec. 10-163. Penalty for violation of this article.

Any person who shall violate this article shall be guilty of a class 3 misdemeanor, punishable by a fine not to exceed \$500.00 pursuant to G.S. 14-4(a).

(Ord. No. 48, § 4, 10-12-1996; Ord. No. 2005-013, § 2, 7-15-2005)

**ARTICLE VI.
BEACH EQUIPMENT***

***Charter reference**—Beach regulation, § 8.3.

Sec. 10-164. 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.

Beach means the area of sand that extends landward from the mean low water line to the stable line of natural vegetation.

Beach equipment means any apparatus or paraphernalia that is designed or manufactured for use, or actually used, on the beach, or in the adjacent tidal waters. Examples include, without limitation: chairs, tables, lounges, umbrellas, tents, boats or sailboats, personal watercraft, trailers, canoes, kayaks, paddle vessels, sailboards, surfboards, fishing gear, sporting equipment, rafts, flotation devices, beach toys, baskets, bags, towels, coolers, other personal effects, vehicles allowed on the beach (see section 28-34), and equipment used by concessionaires, such as tables, podiums, booths, or storage boxes. Beach equipment shall not include municipal trash containers, signage or structures, or items placed by a bona fide nature conservation agency or organization, such as signs or turtle nest protection.

(Ord. of 4-20-2007)

Sec. 10-165. Placement and storage of beach equipment.

(a) Unless allowed by a specific provision of this Code, or unless it is in the active use and personal presence of the owner or a permitted user, beach equipment must be removed by its owner or permitted user from the beach between the hours of 9:00 p.m. and 8:00 a.m., year around, and placed in a lawful location.

(b) Vehicular traffic on the beach is regulated by section 28-34. Vehicles that are not in use may not be stored on the beach at any time.

(c) A business that rents beach furniture may place one freestanding structure on the beach during its regular business hours only. This structure may be a table, podium, booth, or storage box and it must be removed by its owner from the beach after business hours to a lawful location.

(d) All beach equipment shall be set at least ten feet from any sea turtle nest or dune vegetation.

(e) The village manager, upon advance request, may grant a variance from section 10-165 in appropriate cases for bona fide recreational, scientific, environmental or educational purposes.

(Ord. of 4-20-2007)

Sec. 10-166. Penalty for violation of article.

Any person who shall violate this article shall be subject to a civil penalty in an amount of \$500.00 for each offense. Any civil penalty shall be payable to the village within 24 hours of issuance of a civil citation.

(Ord. of 4-20-2007)

Chapter 11 RESERVED

Chapter 12 FIRE PREVENTION AND PROTECTION*

* **Cross References:** and building regulations, ch. 6; fire districts, § 6-161 et seq.; civil emergencies, ch. 8.

State Law References: protection in municipalities, G.S. 160A-291--160A-293.

Article I. In General

Secs. 12-1--12-30. Reserved.

Article II. Open Burning

Division 1. Generally

Secs. 12-31--12-50. Reserved.

Division 2. Permit

Sec. 12-51. Required; tidal waters.

Sec. 12-52. Penalty for violation of division.

Sec. 12-53. Exemptions.

Sec. 12-54. Contents of application.

Sec. 12-55. Application review.

Sec. 12-56. Conditions.

Sec. 12-57. Revocation.

ARTICLE I. IN GENERAL

Secs. 12-1--12-30. Reserved.

ARTICLE II. OPEN BURNING*

* **State Law References:** to abate public health nuisances, G.S. 160A-193.

**DIVISION 1.
GENERALLY**

Secs. 12-31--12-50. Reserved.

**DIVISION 2.
PERMIT**

Sec. 12-51. Required; tidal waters.

Except as noted in section 12-53 of this division, no burning shall be allowed without the specified permit, nor shall any burning be permitted between the low-water mark of any tidal waters adjacent to the village and the high-water mark of the waters.

(Ord. No. 31, § 5, 11-16-1991; Ord. No. 2001-040, § 3, 10-26-2001)

Sec. 12-52. Penalty for violation of division.

Violation of any portion of this division or failure to comply with any of its requirements, including violation of conditions, special exceptions, and safeguards included in an approval permit shall constitute a class 3 misdemeanor pursuant to N.C.G.S. 14-4(a), punishable by imprisonment and/or fine not to exceed \$500.00. Nothing herein contained shall prevent the Village of Bald Head Island from taking such other lawful action as is necessary to prevent or remedy any violation. In addition, a violation of this division shall subject the offender to a civil citation and civil fine in the amount of \$500.00 per offense. Any individual cited for violation of this division shall pay said civil penalty at the Office of the Village Clerk of the Village of Bald Head Island within 48 hours of the issuance thereof.

(Ord. No. 31, § 7, 11-16-1991; Ord. No. 2001-040, § 4, 10-26-2001; Ord. No. 2005-005, § 2, 5-20-2005)

Sec. 12-53. Exemptions.

It shall be unlawful for any individual to start, maintain, or permit any fire to exist within in the Village of Bald Head Island except as shall be specifically permitted by the fire chief pursuant to section 12-54 and only to the extent and under the conditions therefore as set forth on the permit. The following fires shall be exempt from the provisions of this division:

- (1) Fires constructed and contained entirely within any enclosed building;
- (2) Cooking fires contained in portable outdoor cooking appliances but only to the extent that such appliance shall be located at least ten feet from any structure and shall not be located upon any deck attached to such structure or underneath any such structure; and

(3) Cooking fires with the use of a LP gas burning container.

(Ord. No. 31, § 1, 11-16-1991; Ord. No. 2001-040, § 1, 10-26-2001; Ord. No. 2001-048, § 1, 11-17-2001; Ord. No. 2005-005, § 1, 5-20-2005)

Sec. 12-54. Contents of application.

The fire chief is authorized and directed to issue permits for any fire for which a permit is required pursuant to section 12-53 of this division. The fire chief shall be authorized to receive applications for a permit to burn from citizens, residents or other individuals seeking to burn objects within the village. The fire chief shall create a form for application for the issuance of such permits, which form shall be completed by the applicant and which shall contain at least the following information and such additional information as the fire chief shall require:

- (1) The date of the proposed burning;
- (2) The location thereof, including street address and lot number, if any;
- (3) Material to be burned and approximate amount in cubic yards;
- (4) Owner of the land on which the proposed burning shall take place;
- (5) Means of fire control which shall be present at the time of burning;
- (6) Closest proximity to any structures; and
- (7) Means of access for firefighting apparatus.

(Ord. No. 31, § 2, 11-16-1991)

Sec. 12-55. Application review.

Upon receipt of an application as set forth in section 12-54, the fire chief shall examine the application in order to determine that the same shall be fully answered and in order to determine whether any further information shall be necessary. Upon determination that the application is complete in all respects, including any additional inquiry that the fire chief shall make, the fire chief shall review the circumstances and conditions under which the proposed burning shall take place, the materials of which the applicant shall seek disposal by burning, proximity to structures, firefighting apparatus which shall be at hand, existing and forecast weather conditions, and any and all other conditions which the fire chief shall find to be relevant and may issue the burning permit if the chief finds, from all of the conditions and circumstances then existing, that the proposed burning shall not present an undue risk of danger to persons or property as a result thereof.

(Ord. No. 31, § 3, 11-16-1991)

Sec. 12-56. Conditions.

Any permit issued by the fire chief pursuant to this division shall be subject to the following conditions which shall appear on the face of the permit:

- (1) Permits shall be valid only for the date issued during those hours specified on the permit by the fire chief.
- (2) The applicant shall maintain a reliable means of communication with the fire department at all times during the course of the burning.
- (3) An operable means of control of the fire shall be on site and ready for immediate use at any time that the fire shall exist.
- (4) The fire shall be extinguished and any and all burning is to cease if constant wind velocity shall reach or exceed ten miles per hour.
- (5) No burning shall be conducted within 50 feet of any structure. In the case of a hardship, the fire chief will consider a closer distance.
- (6) The applicant shall, at all times, maintain clear access to enable any firefighting equipment to gain immediate access to the fire.
- (7) At no time during the permitted burning shall the fire exceed size or intensity which shall render the fire beyond the control of the applicant and the applicant shall be and remain at the site of the fire constantly during the duration thereof and shall be solely responsible for maintaining complete control thereof during the course of the burn. The applicant shall maintain a signed copy of the permit at the burning site for so long as the fire shall exist and shall exhibit the permit to any member of the volunteer fire department or employee of the village who shall request to view the permit.
- (8) Any other conditions which the fire chief shall find to be necessary to promote the reasonable safety and welfare of persons and property within the village.

(Ord. No. 31, § 4, 11-16-1991; Ord. No. 2001-040, § 2, 10-26-2001)

Sec. 12-57. Revocation.

Upon determination by the fire chief that any of the matters contained in the application for a fire permit are inaccurate or upon a determination by the fire department that conditions are such that a previously permitted fire represents an unreasonable risk of danger to persons or property located within the village, the fire chief may immediately revoke the previously issued permit; and upon revocation thereof, the applicant shall immediately extinguish any existing fire and shall not resume burning until specifically permitted to do so.

(Ord. No. 31, § 6, 11-16-1991)

Chapter 13 RESERVED

Chapter 14 FLOODS*

* **Cross References:** and building regulations, ch. 6; environment, ch. 10; streets, sidewalks and other public places, ch. 24; subdivisions, ch. 26; utilities, ch. 30; zoning, ch. 32.

State Law References: regulation, G.S. 143-215.51 et seq.; authority to enact and enforce floodway regulations, G.S. 160A-458.1.

Article I. In General

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

Article II. Flood Damage Prevention

Division 1. Generally

Subdivision 1. Coastal Regular Phase

Sec. 14-31. Statutory authorization.

Sec. 14-32. Findings of fact.

Sec. 14-33. Statement of purpose.

Sec. 14-34. Objectives.

Sec. 14-35. Definitions.

Subdivision 2. General Provisions

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

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

Sec. 14-38. Establishment of building permit.

Sec. 14-39. Compliance.

Sec. 14-40. Abrogation and greater restrictions.

Sec. 14-41. Interpretation.

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

Sec. 14-43. Penalties for violation.

Secs. 14-44--14-60. Reserved.

Division 2. Administration

Sec. 14-61. Designation of floodplain administrator.

Sec. 14-62. Application, building permit and certification requirements.

Sec. 14-63. Duties and responsibilities of the floodplain administrator.

Sec. 14-64. Corrective procedures.

Sec. 14-65. Variance procedures.

Secs. 14-66--14-80. Reserved.

Division 3. Provisions for Flood Hazard Reduction

Sec. 14-81. General standards.

Sec. 14-82. Specific standards.

Sec. 14-83. Reserved.

Sec. 14-84. Coastal high hazard areas (zones VE and V1-30).

Sec. 14-85. Legal status provisions.

Article III. Minor Developments

Division 1. Generally

Sec. 14-101. Administrative policy.

Secs. 14-102--14-120. Reserved.

Division 2. Permits

Sec. 14-121. Purposes.

Sec. 14-122. Definition.

Sec. 14-123. Requirements.

Sec. 14-124. Permit application.

Sec. 14-125. Appeal procedures.

Sec. 14-126. Injunctive relief and penalties.

Sec. 14-127. Amendment procedures.

ARTICLE I. IN GENERAL

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

ARTICLE II. FLOOD DAMAGE PREVENTION*

* **Editors Note:** ordinance adopted Sep. 26, 2008, repealed art. II, divs. 1--3, §§ 14-31--14-43, 14-61--14-65, 14-81--14-84, in its entirety and enacted new provisions to read as herein set out.

DIVISION 1. GENERALLY

Subdivision 1. Coastal Regular Phase

Sec. 14-31. Statutory authorization.

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

(Ord. of 9-26-2008, Art. 1, § A)

Sec. 14-32. Findings of fact.

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

(b) These flood losses are caused by the cumulative effect of obstructions in floodplains causing increases in flood heights and velocities and by the occupancy in floodprone areas of uses vulnerable to floods or other hazards.

(Ord. of 9-26-2008, Art. 1, § B)

Sec. 14-33. Statement of purpose.

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

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

(Ord. of 9-26-2008, Art. 1, § C)

Sec. 14-34. Objectives.

The objectives of this article are:

- (1) To protect human life and health;
- (2) To minimize expenditure of public money for costly flood control projects;
- (3) To minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
- (4) To minimize prolonged business losses and interruptions;
- (5) To minimize damage to public facilities and utilities (i.e. water and gas mains, electric, telephone, cable and sewer lines, streets, and bridges) that are located in floodprone areas;
- (6) To help maintain a stable tax base by providing for the sound use and development of floodprone areas; and

(7) To ensure that potential buyers are aware that property is in a special flood hazard area.

(Ord. of 9-26-2008, Art. 1, § D)

Sec. 14-35. Definitions.

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

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

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

Appeal means a request for a review of the Floodplain Administrator's interpretation of any provision of this article.

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

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

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

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

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

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

Building see "Structure".

CAMA--North Carolina's Coastal Area Management Act. This act, along with the Dredge and Fill Law and the Federal Coastal Zone Management Act, is managed through North Carolina Department of Environment and Natural Resources' (NCDENR's) Division of Coastal Management (DCM).

CBRS means coastal barrier resources system.

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

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

Coastal high hazard area means a special flood hazard area extending from offshore to the inland limit of a primary frontal dune along an open coast and any other area subject to high velocity wave action from storms or seismic sources. The area is designated on a FIRM, or other adopted flood map as determined in section 14-37, of this article, as zones VE or V1-30.

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

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

Elevated building means a nonbasement building which has its reference level raised above ground level by foundation walls, shear walls, posts, piers, pilings, or columns.

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

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

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

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

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

Flood insurance study (FIS) means an examination, evaluation, and determination of flood hazard, corresponding water surface elevations (if appropriate), flood insurance risk zones, and other flood data in a community issued by the Federal Emergency Management Agency. The flood insurance study report includes flood insurance rate maps (FIRMs).

Floodprone area see "Floodplain".

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

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

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

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

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

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

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

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

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

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

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

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

Historic structure means any structure that is:

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

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

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

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

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

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

New construction means structures for which the "start of construction" commenced on or after, 15 May, 1986 the effective date of the original version of this article and includes any subsequent improvements to such structures.

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

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

OPA means an otherwise protected area.

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

Pre-FIRM means construction or other development which started before the effective date of the initial flood insurance rate map for the area.

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

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

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

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

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

Reference level is the portion of a structure or other development that must be compared to the regulatory flood protection elevation to determine regulatory compliance. For structures within special flood hazard areas designated as zone A1-A30, AE, A, A99 or AO, the reference level is the top of the lowest floor or bottom of lowest attendant utility including ductwork, whichever is lower. For structures within special flood hazard areas designated as zones VE or V1-V30, the reference level is the bottom of the lowest horizontal structural member of the lowest floor or bottom of lowest attendant utility including ductwork, whichever is lower.

Regulatory flood protection elevation means the elevation, in relation to mean sea level, to which the reference level of all structures and other development located within special flood hazard areas must be protected. Where base flood elevations (BFEs) have been determined, this elevation shall be the BFE plus zero feet of freeboard.

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

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

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

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

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

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

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

Special flood hazard area (SFHA) means the land in the floodplain subject to a one percent or greater chance of being flooded in any given year as determined in section 14-37, of this article.

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

Structure means a walled and roofed building, a manufactured home, or a gas or liquid storage tank that is principally above ground. For floodplain management purposes, principally above ground means that at least 51 percent of the actual cash value of the structure is above ground.

Substantial damage means damage of any origin sustained by a structure during any one-year period whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred. See definition of "substantial improvement". Substantial damage also means flood-related damage sustained by a structure on two separate occasions during a ten-year period for which the cost of repairs at the time of each such flood event, on the average, equals or exceeds 25 percent of the market value of the structure before the damage occurred.

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

- (1) Any correction of existing violations of state or community health, sanitary, or safety code specifications which have been identified by the community code enforcement official and which are the minimum necessary to assure safe living conditions; or
- (2) Any alteration of a historic structure provided that the alteration will not preclude the structure's continued designation as a historic structure.

Variance is a grant of relief from the requirements of this article.

Violation means the failure of a structure or other development to be fully compliant with the community's floodplain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in divisions 2 and 3, of this article, is presumed to be in violation until such time as that documentation is provided.

Water surface elevation (WSE) means the height, in relation to mean sea level (existing grade in case of zone AO), of floods of various magnitudes and frequencies in the floodplains of coastal or riverine areas.

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

(Ord. of 9-26-2008, Art. 2)

Subdivision 2. General Provisions

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

This chapter shall apply to all special flood hazard areas within the jurisdiction of Brunswick County and the municipality of the village.

(Ord. of 9-26-2008, Art. 3, § A)

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

The special flood hazard areas are those identified by the Federal Emergency Management Agency (FEMA) or produced under the cooperating technical state (CTS) agreement between the State of North Carolina and FEMA in its flood hazard boundary map (FHBM) or flood insurance study (FIS) and its accompanying flood maps such as the flood insurance rate map(s)(FIRM) and/or the flood boundary floodway map(s)(FBFM), for Brunswick County and the municipality of the Village of Bald Head Island dated June 2, 2006, and in addition physical map revision on October 16, 2008, which, with accompanying supporting data, including letters of map amendment or revision, are adopted by reference and declared to be a part of this article. The special flood hazard areas also include those defined through standard engineering analysis for private developments or by governmental agencies, but which have not yet been incorporated in the FIRM. This includes, but is not limited to:

- (1) Detailed flood data generated as a requirement of division 2, of this article;
- (2) Preliminary FIRMs where more stringent than the effective FIRM; or
- (3) Post-disaster flood recovery maps.

(Ord. of 9-26-2008, Art. 3, § B)

Sec. 14-38. Establishment of building permit.

A building permit shall be required in conformance with the provisions of this article prior to the commencement of any development activities within special flood hazard areas as determined in section 14-37.

(Ord. of 9-26-2008, Art. 3, § C)

Sec. 14-39. Compliance.

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

(Ord. of 9-26-2008, Art. 3, § D)

Sec. 14-40. Abrogation and greater restrictions.

This chapter is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this article and another conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

(Ord. of 9-26-2008, Art. 3, § E)

Sec. 14-41. Interpretation.

In the interpretation and application of this article, all provisions shall be:

- (1) Considered as minimum requirements;
- (2) Liberally construed in favor of the governing body; and
- (3) Deemed neither to limit nor repeal any other powers granted under state statutes.

(Ord. of 9-26-2008, Art. 3, § F)

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

The degree of flood protection required by this article is considered reasonable for regulatory purposes and is based on scientific and engineering consideration. Larger floods can and will occur. Actual flood heights may be increased by man-made or natural causes. This chapter does not imply that land outside the special flood hazard areas or uses permitted within such areas will be free from flooding or flood damages. This chapter shall not create liability on the part of the village or by any officer or employee thereof for any flood damages that result from reliance on this article or any administrative decision lawfully made hereunder.

(Ord. of 9-26-2008, Art. 3, § G)

Sec. 14-43. Penalties for violation.

Violation of the provisions of this article or failure to comply with any of its requirements, including violation of conditions and safeguards established in connection with grants of variance or special exceptions, shall constitute a misdemeanor. Any person who violates this article or fails to comply with any of its requirements shall, upon conviction thereof, be fined not more than \$50.00 or imprisoned for not more than 30 days, or both. Each day such violation continues shall be considered a separate offense. Nothing herein contained shall prevent the village from taking such other lawful action as is necessary to prevent or remedy any violation.

(Ord. of 9-26-2008, Art. 3, § H)

Secs. 14-44--14-60. Reserved.

DIVISION 2. ADMINISTRATION

Sec. 14-61. Designation of floodplain administrator.

The village building inspector, hereinafter referred to as the "floodplain administrator", is hereby appointed to administer and implement the provisions of this article.

(Ord. of 9-26-2008, Art. 4, § A)

Sec. 14-62. Application, building permit and certification requirements.

(a) *Application requirements.* Application for a building permit shall be made to the floodplain administrator prior to any development activities located within special flood hazard areas. The following items shall be presented to the floodplain administrator to apply for a floodplain development permit:

(1) A plot plan drawn to scale which shall include, but shall not be limited to, the following specific details of the proposed floodplain development:

- a. The nature, location, dimensions, and elevations of the area of development/disturbance; existing and proposed structures, utility systems, grading/pavement areas, fill materials, storage areas, drainage facilities, and other development;
- b. The boundary of the special flood hazard area as delineated on the FIRM or other flood map (DFIRM) as determined in section 14-37, or a statement that the entire lot is within the special flood hazard area;
- c. Flood zone(s) designation of the proposed development area as determined on the FIRM or other flood map (DFIRM) as determined in section 14-37;
- d. The base flood elevation (BFE) where provided as set forth in section 14-37; division 2, or section 14-84;
- e. The old and new location of any watercourse that will be altered or relocated as a result of proposed development;
- f. Include COBRA areas and otherwise protected areas.

(2) Proposed elevation and method thereof, of all development within a special flood hazard area including but not limited to:

- a. Elevation in relation to mean sea level of the proposed reference level (including basement) of all structures;

b. Elevation in relation to mean sea level to which any nonresidential structure in zone AE, A or AO will be floodproofed;

c. Elevation in relation to mean sea level to which any proposed utility systems will be elevated or floodproofed.

(3) If floodproofing, a floodproofing certificate (FEMA Form 81-65) with supporting data and an operational plan that includes, but is not limited to, installation, exercise, and maintenance of floodproofing measures.

(4) A foundation plan drawn to scale which shall include details of the proposed foundation system to ensure all provisions of this article are met. These details include but are not limited to:

a. The proposed method of elevation, if applicable (i.e., fill, solid foundation perimeter wall, solid backfilled foundation, open foundation on columns/posts/piers/piles/shear walls);

b. Openings to facilitate equalization of hydrostatic flood forces on walls in accordance with division 3, section 14-82(2), when solid foundation perimeter walls are used in zones A, AO, AE, and A1-30.

c. The following in coastal high hazard areas, in accordance with division 3, section 14-82:

i. V-zone certification form with accompanying plans and specifications verifying the engineered structure and any breakaway wall designs;

ii. Plans for open wood latticework or insect screening, if applicable;

iii. Plans for nonstructural fill, if applicable.

(5) Usage details of any enclosed areas below the regulatory flood protection elevation.

(6) Plans and/or details for the protection of public utilities and facilities such as sewer, gas, electrical, and water systems to be located and constructed to minimize flood damage;

(7) Copies of all other local, state and federal permits required prior to building permit issuance (wetlands, endangered species, erosion and sedimentation control, CAMA, riparian buffers, mining, etc.)

(8) A description of proposed watercourse alteration or relocation, when applicable, including an engineering report on the effects of the proposed project on the flood-carrying capacity of the watercourse and the effects to properties located both upstream

and downstream; and a map (if not shown on plot plan) showing the location of the proposed watercourse alteration or relocation.

(b) *Permit requirements.* The building permit shall include, but not be limited to:

(1) A description of the development to be permitted under the flood damage prevention ordinance.

(2) The special flood hazard area determination for the proposed development per available data specified in section 14-37.

(3) The regulatory flood protection elevation required for the reference level and all attendant utilities.

(4) The regulatory flood protection elevation required for the protection of all public utilities.

(5) All certification submittal requirements with timelines.

(6) A statement that no fill material shall encroach into the floodway or nonencroachment area of any watercourse, as applicable.

(7) The flood opening requirements, if in zones AE.

(8) Limitations of use of enclosures below the lowest floor (if applicable), (i.e. parking, building access and limited storage only.)

(9) A statement, if in zone VE, that there shall be no alteration of sand dunes which would increase potential flood damage.

(10) A statement, if in zone VE, that there shall be no fill used for structural support.

(c) *Certification requirements.*

(1) *Elevation certificates:* A final as-built elevation certificate (FEMA Form 81-31) is required after construction is completed and prior to certificate of compliance/occupancy issuance. It shall be the duty of the permit holder to submit to the floodplain administrator a certification of final as-built construction of the elevation of the reference level and all attendant utilities. Elevation certification shall be prepared by, or under the direct supervision of, a registered land surveyor or professional engineer and certified by same. The floodplain administrator shall review the certificate data submitted. Deficiencies detected by such review shall be corrected by the permit holder immediately and prior to certificate of compliance/occupancy issuance. In some instances, another certification may be required to certify corrected as-built construction. Failure to submit the certification or failure to make required corrections shall be cause to withhold the issuance of a certificate of compliance/occupancy.

(2) *Floodproofing certificates*: If nonresidential floodproofing is used to meet the regulatory flood protection elevation requirements, a floodproofing certificate (FEMA Form 81-65) is required prior to the actual start of any new construction. It shall be the duty of the permit holder to submit to the floodplain administrator a certification of the floodproofed design elevation of the reference level and all attendant utilities, in relation to mean sea level. Floodproofing certification shall be prepared by or under the direct supervision of a professional engineer or architect and certified by same. The floodplain administrator shall review the certificate data submitted. Deficiencies detected by such review shall be corrected by the permit holder prior to the beginning of construction. Failure to submit the certification or failure to make required corrections shall be cause to deny a floodplain development permit. Failure to construct in accordance with the certified design shall be cause to withhold the issuance of a certificate of compliance/occupancy.

(3) If a watercourse is to be altered or relocated, a description of the extent of watercourse alteration or relocation; an engineering report on the effects of the proposed project on the flood-carrying capacity of the watercourse and the effects to properties located both upstream and downstream; and a map showing the location of the proposed watercourse alteration or relocation shall all be submitted by the permit applicant prior to issuance of a building permit.

(4) A V-zone certification with accompanying design plans and specifications is required prior to issuance of a floodplain development permit within the coastal high hazard areas. It shall be the duty of the permit applicant to submit to the floodplain administrator said certification to ensure the design standards of this article are met. A registered professional engineer or architect shall develop or review the structural design, plans, and specifications for construction and certify that the design and methods of construction to be used are in accordance with accepted standards of practice for meeting the provisions of this article. This certification is not a substitute for an elevation certificate.

(Ord. of 9-26-2008, Art. 4, § B)

Sec. 14-63. Duties and responsibilities of the floodplain administrator.

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

(1) Review all floodplain development applications and issue permits for all proposed development within special flood hazard areas to assure that the requirements of this article have been satisfied.

(2) Review all floodplain development within the special flood hazard areas to assure that all necessary local, state, and federal permits have been received.

(3) Notify adjacent communities and the North Carolina Department of Crime Control and Public Safety, Division of Emergency Management, State Coordinator for the

National Flood Insurance Program prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Emergency Management Agency (FEMA).

(4) Assure that maintenance is provided within the altered or relocated portion of said watercourse so that the flood-carrying capacity is maintained.

(5) Obtain actual elevation (in relation to mean sea level) of the reference level (including basement) and all attendant utilities of all new or substantially improved structures, in accordance with section 14-62(c).

(6) Obtain the actual elevation (in relation to mean sea level) to which the new or substantially improved structures and all utilities have been floodproofed, in accordance with section 14-62(c).

(7) Obtain actual elevation (in relation to mean sea level) of all public utilities in accordance with 14-62(c).

(8) When floodproofing is utilized for a particular structure, obtain certifications from a registered professional engineer or architect in accordance with section 14-62(c) and 14-82(2).

(9) Where interpretation is needed as to the exact location of boundaries of the special flood hazard areas (for example, where there appears to be a conflict between a mapped boundary and actual field conditions), make the necessary interpretation. The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in this article section 14-65.

(10) When base flood elevation (BFE) data has not been provided in accordance with section 14-37, obtain, review, and reasonably utilize any base flood elevation (BFE) data, along with floodway data or nonencroachment area data available from a federal, state, or other source in order to administer the provisions of this article.

(11) When the exact location of boundaries of the special flood hazard areas conflict with the current, natural topography information at the site, the property owner may apply and be approved for a letter of map amendment (LOMA) by FEMA. Maintain a copy of the letter of map amendment (LOMA) issued by FEMA in the building permit file.

(12) Permanently maintain all records that pertain to the administration of this article and make these records available for public inspection.

(13) Make on-site inspections of work in progress. As the work pursuant to a floodplain development permit progresses, the floodplain administrator shall make as many inspections of the work as may be necessary to ensure that the work is being done according to the provisions of the local ordinance and the terms of the permit. In exercising this power, the floodplain administrator has a right, upon presentation of

proper credentials, to enter on any premises within the jurisdiction of the community at any reasonable hour for the purposes of inspection or other enforcement action.

(14) Issue stop-work orders as required. Whenever a building or part thereof is being constructed, reconstructed, altered, or repaired in violation of this article, the floodplain administrator may order the work to be immediately stopped. The stop-work order shall be in writing and directed to the person doing the work. The stop-work order shall state the specific work to be stopped, the specific reason(s) for the stoppage, and the condition(s) under which the work may be resumed. Violation of a stop-work order constitutes a misdemeanor.

(15) Revoke building permits as required. The floodplain administrator may revoke and require the return of the building permit by notifying the permit holder in writing stating the reason(s) for the revocation. Permits shall be revoked for any substantial departure from the approved application, plans, or specifications; for refusal or failure to comply with the requirements of state or local laws; or for false statements or misrepresentations made in securing the permit. Any building permit mistakenly issued in violation of an applicable state or local law may also be revoked.

(16) Make periodic inspections throughout all special flood hazard areas within the jurisdiction of the community. The floodplain administrator and each member of his or her inspections department shall have a right, upon presentation of proper credentials, to enter on any premises within the territorial jurisdiction of the department at any reasonable hour for the purposes of inspection or other enforcement action.

(17) Follow through with corrective procedures of section 14-64.

(18) Maintain a current map repository to include, but not limited to, the FIS report, FIRM and/or other official flood maps/studies adopted under section 14-37, of this article, including any revisions thereto including letters of map change), issued by state and/or FEMA. Notify state and FEMA of mapping needs.

(Ord. of 9-26-2008, Art. 4, § B)

Sec. 14-64. Corrective procedures.

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

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

(1) That the building or property is in violation of the flood damage prevention ordinance;

(2) That a hearing will be held before the floodplain administrator at a designated place and time, not later than ten days after the date of the notice, at which time the owner shall be entitled to be heard in person or by counsel and to present arguments and evidence pertaining to the matter; and,

(3) That following the hearing, the floodplain administrator may issue an order to alter, vacate, or demolish the building; or to remove fill as appears appropriate.

(c) *Order to take corrective action.* If, upon a hearing held pursuant to the notice prescribed above, the floodplain administrator shall find that the building or development is in violation of the flood damage prevention ordinance, he or she shall issue an order in writing to the owner, requiring the owner to remedy the violation within a specified time period, not less than 60 days, nor more than 90 days. Where the floodplain administrator finds that there is imminent danger to life or other property, he or she may order that corrective action be taken in such lesser period as may be feasible. Provisions of section 14-43 for penalties for violation shall be imposed.

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

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

(Ord. of 9-26-2008, Art. 4, § C)

Sec. 14-65. Variance procedures.

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

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

(c) Variances may be issued for:

(1) The repair or rehabilitation of historic structures upon the determination that the proposed repair or rehabilitation will not preclude the structure's continued designation

as a historic structure and that the variance is the minimum necessary to preserve the historic character and design of the structure.

(2) Functionally dependant facilities if determined to meet the definition as stated in 14-35, of this chapter, provided they meet all applicable nonelevation design requirements of this chapter.

(3) Any other type of development provided it meets the requirements stated in this section.

(d) In passing upon variances, the Board of Adjustment shall consider all technical evaluations, all relevant factors, all standards specified in other sections of this article, and:

(1) The danger that materials may be swept onto other lands to the injury of others;

(2) The danger to life and property due to flooding or erosion damage;

(3) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;

(4) The importance of the services provided by the proposed facility to the community;

(5) The necessity to the facility of a waterfront location as defined under 14-35, of this article as a functionally dependant facility, where applicable;

(6) The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use;

(7) The compatibility of the proposed use with existing and anticipated development;

(8) The relationship of the proposed use to the CAMA LUP and updated long range plan for that area;

(9) The safety of access to the property in times of flood for ordinary and emergency vehicles;

(10) The expected heights, velocity, duration, rate of rise, and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site; and

(11) The costs of providing governmental services during and after flood conditions including maintenance and repair of public utilities and facilities such as sewer, gas, electrical and water systems, and streets and bridges.

(e) A written report addressing each of the above factors shall be submitted with the application for a variance.

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

(g) Any applicant to whom a variance is granted shall be given written notice specifying the difference between the base flood elevation (BFE) and the elevation to which the structure is to be built and that such construction below the base flood elevation increase the risks to life and property, and that the issuance of a variance to construct a structure below the base flood elevation will result in increased premium rates for flood insurance up to \$25.00 per \$100.00 of insurance coverage. Such notification shall be maintained with a record of all variance actions, including justification for their issuance.

(h) The floodplain administrator shall maintain the records of all appeals actions and report any variances to the Federal Emergency Management Agency and the State of North Carolina upon request:

(i) Conditions for variances:

(1) Variances shall not be issued when the variance will make the structure in violation of other federal, state, or local laws, regulations, or ordinances.

(2) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

(3) Variances shall only be issued upon:

a. A showing of good and sufficient cause;

b. A determination that failure to grant the variance would result in exceptional hardship; and

c. A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, or extraordinary public expense, create nuisance, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.

(Ord. of 9-26-2008, Art. 4, § D)

Secs. 14-66--14-80. Reserved.

DIVISION 3. PROVISIONS FOR FLOOD HAZARD REDUCTION

Sec. 14-81. General standards.

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

- (1) All new construction and substantial improvements shall be anchored to prevent flotation, collapse, and lateral movement of the structure.
- (2) All new construction and substantial improvements below the regulatory flood protection elevation shall be constructed with materials and utility equipment resistant to flood damage.
- (3) All new construction or substantial improvements shall be constructed by methods and practices that minimize flood damages.
- (4) Electrical, heating, ventilation, plumbing, air-conditioning equipment, and other service facilities shall be designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding. These include, but are not limited to, HVAC equipment, water softener units, bath/kitchen fixtures, ductwork, electric/gas meter panels/boxes, utility/cable boxes, appliances (washers, dryers, refrigerators, freezers, etc.), hot water heaters, and electric outlets/switches.
- (5) All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of floodwaters into the system.
- (6) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of floodwaters into the systems and discharges from the systems into floodwaters.
- (7) On-site waste disposal systems shall be located and constructed to avoid impairment to them or contamination from them during flooding.
- (8) Any alteration, repair, reconstruction, or improvements to a structure, which is in compliance with the provisions of this article, shall meet the requirements of "new construction" as contained in this chapter.
- (9) Nothing in this article shall prevent the repair, reconstruction, or replacement of a building or structure existing on the effective date of this article and located totally or partially within the floodway, nonencroachment area, or stream setback, provided that the bulk of the building or structure below the regulatory flood protection elevation in the floodway, nonencroachment area, or stream setback is not increased and provided that such repair, reconstruction, or replacement meets all of the other requirements of this chapter.
- (10) All development proposals shall be consistent with the need to minimize flood damage.
- (11) All development proposals shall have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize flood damage.

(12) All development proposals shall have adequate drainage provided to reduce exposure to flood hazards.

(Ord. of 9-26-2008, Art. 5, § A)

Sec. 14-82. Specific standards.

In all special flood hazard areas where base flood elevation (BFE) data has been provided, as set forth in section 14-37, the following provisions, in addition to section 14-81, are required:

(1) *Residential construction.* New construction or substantial improvement of any residential structure shall have the reference level, including basement, elevated no lower than the regulatory flood protection elevation, as defined in section 14-35, of this article.

(2) *Nonresidential construction.* New construction or substantial improvement of any commercial, industrial, or other nonresidential structure shall have the reference level, including basement, elevated no lower than the regulatory flood protection elevation, as defined in section 14-35 of this article. Structures located in A, AO, AE and A1-30 zones may be floodproofed to the regulatory flood protection elevation in lieu of elevation provided that all areas of the structure below the required flood protection elevation are watertight with walls substantially impermeable to the passage of water, using structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effect of buoyancy. A registered professional engineer or architect shall certify that the standards of this subsection are satisfied. Such certification shall be provided to the official as set forth in section 14-62(c), along with the operational and maintenance plans.

(3) *Elevated buildings.* Enclosed areas, of new construction or substantially improved structures, which are below the regulatory flood protection elevation:

a. Shall not be designed or used for human habitation, but shall only be used for parking of vehicles, building access, or limited storage of maintenance equipment used in connection with the premises. Access to the enclosed area shall be the minimum necessary to allow for parking of vehicles (garage door) or limited storage of maintenance equipment (standard exterior door), or entry to the living area (stairway or elevator). The interior portion of such enclosed area shall not be partitioned or finished into separate rooms, except to enclose storage areas. If total enclosed area located within a V-zone exceeds 300 square feet the applicant must get approval by the National Flood Insurance Agency.

b. Shall be constructed entirely of flood resistant materials below the regulatory flood protection elevation;

c. Shall include, in zones A, AO, AE, and A1-30, measures to automatically equalize hydrostatic flood forces on walls by allowing for the entry and exit of floodwaters. To meet this requirement, the openings must either be certified by a professional engineer or architect or meet the following minimum design criteria;

i. Provide a minimum of two openings on different sides of each enclosed area subject to flooding;

ii. The total net area of all openings must be at least one "clear" square inch for each square foot of enclosed area subject to flooding. Clear area does not include baffles, louvers, frame, etc.;

iii. If a building has more than one enclosed area, each area must have openings to allow floodwaters to automatically enter and exit;

iv. The bottom of all required openings shall be no higher than one-foot above the adjacent grade;

v. Openings may be equipped with screens, louvers, or other opening coverings or devices, provided they permit the automatic flow of floodwaters in both directions; and

vi. Foundation enclosures made of flexible skirting are not considered enclosures for regulatory purposes, and, therefore, do not require openings. Masonry or wood underpinning, regardless of structural status, is considered an enclosure and requires openings as outlined above.

d. Shall include, in coastal high hazard areas (zones VE and V1-30), breakaway walls, latticework or insect screening below the lowest floor, provided it is not part of the structural support of the building and is designed so as to breakaway, under abnormally high tides or wave action, without causing damage to the structural integrity of the building on which they are to be used, provided the following design specifications are met:

i. Material shall consist of open wood latticework or insect screening; or

ii. Breakaway walls shall meet the following design specifications:

1. Design safe loading resistance of each wall shall be not less than ten nor more than 20 pounds per square foot; or

2. Breakaway walls that exceed a design safe loading resistance of more than 20 pounds per square foot (either by design or when so required by state or local codes) shall be certified by a registered professional engineer or architect certifying that the designed wall will collapse from a water load less than that which would occur during the base flood event, and the elevated portion of the building and supporting foundation system shall not be subject to collapse, displacement, or other structural damage due to

the effects of wind and water loads acting simultaneously on all building components (structural and nonstructural). The water loading values used shall be those associated with the base flood. The wind loading values used shall be those required by the North Carolina State Building Code which designates Bald Head Island as 140 mph wind zone.

(4) Additions/improvements.

a. Additions and/or improvements to pre-FIRM structures when the addition and/or improvements in combination with any interior modifications to the existing structure are:

i. Not a substantial improvement, the addition and/or improvements must be designed to minimize flood damages and must not be any more nonconforming than the existing structure.

ii. A substantial improvement, the existing structure and the addition and/or improvements must comply with the standards for new construction.

b. Additions to post-FIRM structures with no modifications to the existing structure other than a standard door in the common wall shall require only the addition to comply with the standards for new construction.

c. Additions and/or improvements to post-FIRM structures when the addition and/or improvements in combination with any interior modifications to the existing structure are:

i. Not a substantial improvement, the addition and/or improvements only must comply with the standards for new construction.

ii. A substantial improvement, the existing structure and the addition and/or improvements must comply with the standards for new construction.

(5) Accessory structures. When accessory structures (sheds, detached garages, etc.) are to be placed within a special flood hazard area, the following criteria shall be met:

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

b. Accessory structures shall not be temperature-controlled;

c. Accessory structures shall be designed to have low flood damage potential;

d. Accessory structures shall be constructed and placed on the building site so as to offer the minimum resistance to the flow of floodwaters;

- e. Accessory structures shall be firmly anchored in accordance with section 14-81(1);
- f. All service facilities such as electrical shall be installed in accordance with section 14-81(4);
- g. Openings to relieve hydrostatic pressure during a flood shall be provided below regulatory flood protection elevation in conformance with section 14-82;

An accessory structure with a footprint less than 150 square feet that satisfies the criteria outlined above does not require an elevation or floodproofing certificate. Elevation or floodproofing certifications are required for all other accessory structures in accordance with section 14-62(c).

(Ord. of 9-26-2008, Art. 5, § B)

Sec. 14-83. Reserved.

Sec. 14-84. Coastal high hazard areas (zones VE and V1-30).

Coastal high hazard areas are special flood hazard areas established in section 14-37, and designated as Zones VE or V1-30. These areas have special flood hazards associated with high velocity waters from surges and, therefore, in addition to meeting all other provisions in this article with the exception of floodway and nonencroachment area provisions, the following provisions shall apply:

(1) All new construction and substantial development shall:

- a. Be located landward of the reach of mean high tide;
- b. Be located landward of the first line of stable natural vegetation; and
- c. Comply with all applicable CAMA setback requirements.

(2) All new and substantial improved structures shall be elevated so that the bottom of the lowest horizontal structural member of the lowest floor (excluding pilings or columns) is located no lower than the regulatory flood protection elevation. Floodproofing shall not be utilized on any structures in coastal high hazard areas to satisfy the regulatory flood protection elevation requirements.

(3) All space below the regulatory flood protection elevation shall be open so as not to impede the flow of water with the following exceptions:

- a. Open wood latticework or insect screening may be permitted below the lowest floor for aesthetic purposes only and must be designed to wash away in the event of abnormal wave action and in accordance with section 14-82(3)d. Design plans shall be submitted in accordance with section 14-62(a)(4)c.; or

b. Breakaway walls may be permitted below the lowest floor provided they meet the criteria set forth in section 14-82(4)b. Design plans shall be submitted in accordance with section 14-62(a)(4)c.

(4) All new and substantial improved structures shall be securely anchored on pilings or columns. All pilings and columns and the structures attached thereto shall be anchored to resist flotation, collapse, and lateral movement due to the effect of wind and water loads acting simultaneously on all building components.

a. Water loading values used shall be those associated with the base flood.

b. Wind loading values used shall be those required by the current edition of the North Carolina State Building Code which designates Bald Head Island as 140 mph wind zone.

(5) A registered professional engineer or architect shall certify that the design, specifications and plans for construction are in compliance with the provisions contained in section 14-62 and division 3, of this article on North Carolina's "National Flood Insurance Program V-Zone Certification" form dated May 1992 or newer.

(6) Fill shall not be used for structural support. Limited noncompacted and nonstabilized fill may be used around the perimeter of a building for landscaping/aesthetic purposes provided the fill will wash out from storm surge, thereby rendering the building free of obstruction prior to generating excessive loading forces, ramping effects, or wave deflection. Design plans shall be submitted in accordance with section 14-62(a)(4)c. The floodplain administrator may approve design plans for landscaping/aesthetic fill only after the applicant has provided an analysis by an engineer, architect, and/or soil scientist which demonstrates that the following factors have been satisfied:

a. Particle composition of fill material does not have a tendency for excessive natural compaction;

b. Volume and distribution of fill will not cause wave deflection to adjacent properties; and

c. Slope of fill will not cause wave run-up, ramping, or deflection.

(7) There shall be no alteration of sand dunes which would increase potential flood damage.

(Ord. of 9-26-2008, Art. 5, § D)

Sec. 14-85. Legal status provisions.

(a) Effect on rights and liabilities under the existing flood damage prevention ordinance. This article in part comes forward by re-enactment of some of the provisions of the flood

damage prevention ordinance enacted February 26, 1986 as amended, and it is not the intention to repeal but rather to re-enact and continue to enforce without interruption of such existing provisions, so that all rights and liabilities that have accrued thereunder are reserved and may be enforced. The enactment of this article shall not affect any action, suit or proceeding instituted or pending. All provisions of the flood damage prevention ordinance of the cillage enacted on February 26, 1986, as amended, which are not reenacted herein are repealed.

(b) Effect upon outstanding building permits. Nothing herein contained shall require any change in the plans, construction, size, or designated use of any development or any part thereof for which a building permit has been granted by the floodplain administrator or his or her authorized agents before the time of passage of this article; provided, however, that when construction is not begun under such outstanding permit within a period of six months subsequent to the date of issuance of the outstanding permit, construction or use shall be in conformity with the provisions of this article.

(Ord. of 9-26-2008, Art. 6, §§ A, B)

Secs. 14-86--14-100. Reserved.

ARTICLE III. MINOR DEVELOPMENTS*

* **State Law References:** Area Management Act, G.S. 113A-100 et seq.

DIVISION 1. GENERALLY

Sec. 14-101. Administrative policy.

(a) *Designation of responsible local officer.*

(1) *Appointment.* A permit officer is hereby appointed and authorized to carry out the duties described in this policy and required to implement the provisions of division 2 of this article.

(2) *Qualifications.* The permit officer shall be required to successfully complete, within the first 12 months of employment, the required course of study consisting of no more than two weeks duration that shall be developed by the department of environment and natural resources in cooperation with one or more of the state's institutions of higher learning.

(3) *General duties.* In discharging his duties the permit officer shall:

a. Administer and enforce in duly designated AECs the minor development permit process, all applicable local ordinances, and all other guidelines and standards established by the coastal resources commission (CRC) and the village pursuant to the CAMA.

b. Be familiar with existing state and federal permits required in this jurisdiction so that he can aid potential developers in determining when a major development permit rather than minor development permit is required, and to aid the developers in applying to the CRC when a major development permit is required.

c. Assist in identifying and assessing projects of greater than local concern and bringing them to the attention of the CRC. Such projects of regional, state or national concern are almost certain to require some other state permit and, therefore, require a major development permit from the CRC. Therefore, they will usually be brought to the attention of the CRC through the major development permit application.

d. Be responsible for implementing any procedures agreed on by the governing bodies of the jurisdictions to which this article applies for the purpose of coordinating the CAMA minor development permit with other locally required permits. Such locally required permits include, but are not limited to, plumbing permits, electrical permits, building permits, septic tank permits, sand dune permits, and certifications of compliance with zoning and subdivision regulations.

(4) *Records.* The permit officer shall prepare a quarterly summary of all permit applications and dispositions to be presented to the governing body of each of the jurisdictions to which this plan applies, to the CRC and to the secretary of the department of environment and natural resources. The permit officer shall keep correct and comprehensive records of all transactions related to minor development permit requests (applications, grants, denials, other dispositions) and shall maintain such records so long as any part of the structure or entity to which it relates remains in existence; or, in the case of denials or other instances, for a period of ten years.

(b) *Procedures for responding to complaints.*

(1) *Citizen complaints.* Upon receiving complaints from local citizens that the implementation and enforcement plan is not being properly administered and enforced the village council will investigate the situation and respond to the alleged deficiencies. If the person making the complaint is not satisfied, then he will be advised that he may take his complaint either in writing or in person to the CRC.

(2) *Response to the CRC.* Upon notification from the CRC concerning deficiencies in administration and enforcement of the plan, the village council will investigate the alleged problem and prepare a response for the CRC. If the allegation of deficiencies is found to be valid, the village council will, within 30 days of the original notification from the CRC, inform the CRC of its willingness and ability to correct the deficiency and prevent similar problems in the future. If the village council finds the CRC's allegation of

deficiencies invalid, they will so inform the CRC. If the CRC disagrees with that finding, the village council may request a hearing before the CRC or in some other manner attempt to reach a mutually acceptable agreement with the CRC within a 90-day period after receipt of the CRC's original notification of the deficiency. It is understood that if no such solution is reached within the 90-day period, then the authority to issue permits for minor development pursuant to this plan shall be automatically relinquished until such a time as the CRC is convinced that the program will be properly enforced.

(Ord. No. 6, §§ 1, 2, 6-27-1986)

Secs. 14-102--14-120. Reserved.

DIVISION 2. PERMITS*

* **State Law References:** for minor developments under expedited procedures, G.S. 113A-121.

Sec. 14-121. Purposes.

The purposes of this division are to:

- (1) Develop procedures for discharging the responsibilities of local permit-letting agencies as authorized by the North Carolina Coastal Area Management Act by issuing minor development permits in Areas of Environmental Concern (AECs) within the village;
- (2) Insure that minor development undertaken within AECs is in conformance with local land use plans and applicable state guidelines and regulations; and
- (3) Set forth the geographic extent of the jurisdiction of the local permit-letting program.

(Ord. No. 5, § 1, 1-27-1986)

Sec. 14-122. Definition.

For the purposes of this division, the term "minor development" is defined as any development which does not require permission, licensing, approval, certification, or authorization in any form from the environmental management commission, the department of human resources, the department of environment and natural resources, the department of administration, the state mining commission, the state pesticides board, or the state sedimentation control board; which occupies a land area of 20 acres or less; or which occupies on a single parcel a structure or structures with a ground area of 60,000 square feet or less.

(Ord. No. 5, § 2(c), 1-27-1986)

Cross References: generally, § 1-2.

Sec. 14-123. Requirements.

(a) *Permits required in AECs.* After the date designated by the secretary of environment and natural resources, every person shall obtain a development permit prior to undertaking any development activity within any area of environmental concern.

(b) *Permit officer.* For minor development within the village, the permit shall be obtained from the designated permit officer.

(c) *Posting requirements.* The following materials shall be posted by the permit officer on the administration building of the village:

(1) A precise description and map approximating all AECs within the village;

(2) A copy of the standards for development adopted by the coastal resources commission for each type of AEC found in the jurisdictions and the statutory grounds on which a permit may be denied or conditioned;

(3) A copy of this division together with locally adopted administrative policies for its enforcement;

(4) The name, location and mailing address of the permit officer designated in subsection (b) of this section.

(Ord. No. 5, § 2(a), (b), 1-27-1986)

Sec. 14-124. Permit application.

(a) *Required materials.* An application for a minor development permit shall consist of submitting the following to the permit officer and the secretary of environment and natural resources:

(1) A completed application using a form approved and adopted by the coastal resources commission. The application may be made in duplicate to the permit officer who will then forward a copy to the secretary of environment and natural resources.

(2) The currently required administration fee.

(b) *Time limits.* Upon receipt of a complete application for a minor development permit, the permit officer shall have 25 calendar days to make final disposition of the application unless the applicant is given written notice by registered mail of one additional 25-day extension. Such extensions may be made only in circumstances where the magnitude or complexity of the proposed development requires additional time for proper evaluation of the application.

(c) *Incomplete and inappropriate applications.* The permit officer shall return incomplete, insufficient, or unauthorized applications to the applicant within 15 calendar days. Any application received for any activity which constitutes major development shall be returned by the permit officer with instructions for submitting the application to the appropriate state agency.

(d) *Coordination with other local permits.* The permit officer shall determine from the application what other local permits are required for the development and shall inform the applicant of these other permit requirements.

(e) *Disposition of permit application.* After consideration of the evidence submitted with the application, the permit officer shall grant, deny, or give conditional approval to the minor development permit. The permit officer shall maintain a record of all evidence and all matters relevant to each minor development permit application. Such relevant information shall include, but is not limited to, applications, correspondence, public notices, responses to public notices, and a copy of the final disposition. Statutory grounds upon which a permit officer bases the denial, conditioned grant, or return of application shall be set out in writing. One copy shall be maintained by the permit officer and one copy shall be given to the applicant, either in person or by registered mail.

(1) *Grant.* A minor development permit shall be granted only if consideration of the application results in none of the appropriate findings listed in G.S. 113A-120(a).

(2) *Conditional approval.* The approval of a minor development permit may be conditioned upon the acceptance by the applicant of certain reasonable conditions as set out by the permit officer to protect the public interest with respect to the appropriate findings listed in subsection (e)(1) of this section. The applicant must sign the conditioned grant of approval as an acceptance of the amendments of the proposed project plans in a manner consistent with the conditions set out by the permit officer before the permit shall become effective.

(3) *Passive approval.* Failure of the permit officer to approve or deny a properly completed and filed application, or to give notice of an extension beyond the initial 25-day disposition period shall result in a passive grant. A passive approval shall have the full force and effect of an unconditioned approval.

(f) *Permit display.* The property owner shall cause the properly granted minor development permit to be displayed in full view on the site of the development. This requirement shall apply to every permit no matter how it is granted. It is, therefore, necessary that the property owner acquire a permit received by passive approval for purposes of posting on the site before proceeding with the development.

(g) *Notice of permits approved.* The permit officer shall give notice in a local newspaper of general circulation at least once each month of permit applications which have been approved either conditionally or unconditionally.

(Ord. No. 5, § 3, 1-27-1986)

State Law References: procedures, G.S. 113A-121.

Sec. 14-125. Appeal procedures.

(a) *Appeal to coastal resources commission.* Any person directly affected by the decision of the permit officer, including the secretary of the department of environment and natural resources may, within 20 days after notice of the permit officer's disposition, request a hearing before the commission. The hearing before the commission shall be a quasi-judicial hearing conducted in accordance with the requirements of the Coastal Area Management Act (CAMA), any applicable rules and regulations adopted by the commission, and any other state laws applicable to such procedures.

(b) *Appeal to superior court.* Any person directly affected by any final decision or order of the coastal resources commission may appeal such decision or order to the superior court of Brunswick County.

(c) *Appeal pending.* No action for which a minor development permit is required shall be taken while appeal of the permit officer's disposition of that permit request is pending.

(Ord. No. 5, § 4, 1-27-1986)

Sec. 14-126. Injunctive relief and penalties.

(a) *Injunctive relief.* Upon violation of this division, the permit officer may, either before or after the institution of proceedings for the collection of any penalty imposed by CAMA for such violation, institute a civil action in the general court of justice in the name of the affected local government for injunctive relief to restrain the violation and for such other or further relief in the premises as the court shall deem proper. Neither the institution of the action nor any of the proceedings thereon shall relieve any party to such proceedings from any penalty prescribed by CAMA for any violation of same.

(b) *Penalties.* Any person adjudged guilty of knowingly and wilfully undertaking any development without acquiring such a permit, or of conduct exceeding the authority of a permit granted, or of failure to observe the agreed modification of a conditioned grant, or of any other applicable regulations adopted by the village or the coastal resources commission pursuant to the CAMA shall be guilty of a misdemeanor, and for each violation shall be punished in accordance with G.S. 113A-126. In addition, if any person continues or further commits any of the above violations after written notice from the permit officer, the court may determine that each day during which the violation continues or is repeated constitutes a separate violation subject to the foregoing penalties.

(Ord. No. 5, § 5, 1-27-1986)

Sec. 14-127. Amendment procedures.

(a) *Consistency.* Amendments to this division shall be in accordance with the provisions of the Coastal Area Management Act and with appropriate rules, criteria, and requirements of the coastal resources commission.

(b) *Hearing requirements.* Prior to amendment of this division, a public hearing concerning the proposed amendment shall be held. Notice of the public hearing shall appear in a local newspaper of general circulation at least 15 calendar days prior to the date of the hearing. The permit officer shall compile and maintain a complete record of the hearing and written comments.

(c) *Request to waive formal amendment requirements.* Whenever a proposed amendment is deemed sufficiently insignificant by the village council, that body may petition the commission for a waiver of formal hearing and notice requirements.

(d) *Coastal resources commission approval.* Upon local acceptance of any amendment, the amendment shall be submitted to the coastal resources commission for approval. Upon coastal resources commission approval such amendment shall be adopted by the village council as a part of the ordinances implementing this division.

(Ord. No. 5, § 6, 1-27-1986)

**Chapter 15
RESERVED**

**Chapter 16
OFFENSES AND MISCELLANEOUS PROVISIONS***

* **Cross References:** on possession, transportation and transfer of dangerous weapons and substances, § 8-36; traffic and vehicles, ch. 28.

State Law References: criminal code, G.S. 14-1 et seq.

Article I. In General

Secs. 16-1--16-30. Reserved.

Article II. Offenses Against Property

Division 1. Generally

Secs. 16-31--16-50. Reserved.

Division 2. Village Property

Sec. 16-51. Definitions.

Sec. 16-52. Penalty for violation.

Sec. 16-53. Removal prohibited; exception.

Secs. 16-54--16-80. Reserved.

Article III. Offenses Against the Public Safety

Division 1. Generally

Sec. 16-81. Pyrotechnics restricted.

Secs. 16-82--16-100. Reserved.

Division 2. Weapons

Sec. 16-101. Concealed handguns prohibited.

Sec. 16-102. Discharge of firearms prohibited.

Secs. 16-103--16-130. Reserved.

Article IV. Offenses Against the Public Peace

Division 1. Generally

Secs. 16-131--16-150. Reserved.

Division 2. False Alarms

Sec. 16-151. Definitions.

Sec. 16-152. Commercial alarm users.

Sec. 16-153. Notice to owner of false alarms; civil penalties.

Sec. 16-154. Appeals.

**ARTICLE I.
IN GENERAL**

Secs. 16-1--16-30. Reserved.

**ARTICLE II.
OFFENSES AGAINST PROPERTY***

* **State Law References:** and other offenses to land and fixtures, G.S. 14-127 et seq.

DIVISION 1. GENERALLY

Secs. 16-31--16-50. Reserved.

DIVISION 2. VILLAGE PROPERTY

Sec. 16-51. 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 flotation device means any lifesaving ring or float and any ropes or attachments associated therewith distributed at points along the beaches of the village for the rescue of endangered swimmers.

Personal property means all tangible items of property which shall be readily and immediately removable from their location and shall further include such items as may be buried or fixed to the earth or screwed, hung or otherwise attached to poles, posts or other support imbedded in the earth.

(Ord. No. 34, § 1, 9-19-1992)

Cross References: generally, § 1-2.

Sec. 16-52. Penalty for violation.

A violation of this division shall subject the offender to a civil penalty of \$50.00. Any individual cited for violation of this division shall pay the civil penalty at the office of the village clerk within 48 hours of receipt of the citation. In addition to any civil sanctions imposed in this division, violation of this division shall constitute a class 3 misdemeanor punishable pursuant to G.S. 14-4 with a fine not to exceed \$500.00 and/or a term of imprisonment not to exceed a period of 30 days.

(Ord. No. 34, § 3, 9-19-1992; Ord. No. 2001-032, § 1, 10-26-2001)

Sec. 16-53. Removal prohibited; exception.

It shall be unlawful for any individual to destroy, damage, deface or remove from its designated location any item of personal property belonging to the village, the item having been located at its designated site for purposes of convenience and safety of the

residents and guests of the village. It shall not be unlawful to remove such item so long as the removal thereof is in accord with the usage of the item for emergency purposes if the item of personal property is an emergency flotation device and if the item shall in fact be used and returned immediately upon completion thereof to its designated location. Except as specified in this division, removal of such personal property shall constitute a violation of this division, regardless of the intent to permanently deprive the village of the possession thereof by the violator.

(Ord. No. 34, § 2, 9-19-1992)

Secs. 16-54--16-80. Reserved.

ARTICLE III. OFFENSES AGAINST THE PUBLIC SAFETY*

* **State Law References:** against the public safety, G.S. 14-278 et seq.

DIVISION 1. GENERALLY

Sec. 16-81. Pyrotechnics restricted.

The possession and/or use within the confines of the village of pyrotechnics by any individual except by special permit of the county is declared unlawful. Violation of this section shall be a civil violation punishable by a civil fine of \$100.00. Any individual cited for violation of this section shall pay the civil penalty at the office of the village clerk within 48 hours of the issuance of the citation. In addition, violation of this section shall constitute a class 3 misdemeanor punishable by a fine not to exceed \$500.00 and/or imprisonment pursuant to G.S. 14-4. Nothing in this section shall prevent the village from taking such other lawful action as is necessary to prevent or remedy any violation.

(Ord. No 41, § 1, 7-16-1994; Ord. No. 2001-036, § 1, 10-26-2001)

State Law References: G.S. 14-410 et seq.

Secs. 16-82--16-100. Reserved.

DIVISION 2. WEAPONS*

* **State Law References:** regulation, G.S. 14-409.39 et seq.; municipal regulation of firearms, G.S. 160A-189.

Sec. 16-101. Concealed handguns prohibited.

(a) Pursuant to G.S. 14-415.23, it shall be unlawful for any person wilfully and intentionally to carry a concealed handgun for which a permit has been issued pursuant to G.S. 14-415.11 onto or into any building, appurtenant premises or park owned, possessed or controlled by the village.

(b) A conspicuous notice of this prohibition set out in subsection (a) of this section shall be posted on all buildings, appurtenant premises and parks owned, possessed or controlled by the village.

(c) This section shall not apply to persons exempted under G.S. 14-269(b).

(d) Violation of this section shall constitute a violation of G.S. 14-269 and shall be punishable pursuant thereto.

(Ord. No. 45, § 1, 1-27-1996)

Sec. 16-102. Discharge of firearms prohibited.

(a) Pursuant to G.S. 160A-189, it shall be unlawful to discharge or cause to be discharged or allow a minor child under the age of 16 to discharge any type of firearm.

(b) Pursuant to G.S. 160A-190, it shall be unlawful to discharge or cause to be discharged or allow a minor child under the age of 16 to discharge any pellet gun, BB gun, or any other mechanism or device designed or used to project a missile by compressed air or mechanical action with less than deadly force.

(c) This section shall not apply to law enforcement personnel in the performance of their duties. Further, this section shall not apply to any individual who shall discharge a firearm within the village if such individual shall have a permit issued therefor by the chief of police pursuant to a depredation permit issued by the North Carolina Division of Wildlife Management to the village thereof if the discharge of such weapon shall be pursuant to the terms and conditions of such permit.

(d) A violation of this section shall subject the person violating this section to a civil citation and civil fine in the amount of \$50.00 per offense. Any individual cited for a violation of this section shall pay the civil penalty at the office of the village clerk within 48 hours of the issuance of the citation. In addition to any civil sanctions imposed in this section, violation of this section shall constitute a class 3 misdemeanor, punishable by imprisonment and/or a fine not to exceed \$500.00.

(Ord. No. 49, § 1, 4-19-1997; Ord. No. 2001-028, § 1, 10-26-2001; Ord. No. 2003-003, § 1, 2-5-2003)

Secs. 16-103--16-130. Reserved.

ARTICLE IV. OFFENSES AGAINST THE PUBLIC PEACE*

* **State Law References:** against the public peace, G.S. 14-269 et seq.

DIVISION 1. GENERALLY

Secs. 16-131--16-150. Reserved.

DIVISION 2. FALSE ALARMS

Sec. 16-151. 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:

Address means the mailing address of the owner as shown on the records of the village tax administrator.

Alarm company means any private individual or business entity that installs, monitors, or services any alarm system within the village.

Alarm system means any electronic or mechanical device transmitting an alarm signal outside the location, intended to alert law enforcement personnel to an actual or attempted unauthorized entry into a building or to the commission or attempted commission of a crime or intended to alert fire or emergency medical personnel to an actual or suspected fire or medical emergency. This definition shall include, but not limited to, silent, audible and direct telephone dialer alarms.

Commercial alarm user means an owner or authorized representative of a commercial structure who has access to a commercial structure.

Excessive false alarm means any false alarm occurring during a period beginning with the receipt of the notice of malfunction by any owner and ending 365 days thereafter.

False alarm means an alarm signal indicating that an entry or other crime was committed or attempted or that a fire or medical emergency exists when evidence indicates, upon inspection after response to the alarm, that the alarm was activated through the owner's negligence or equipment malfunction within the control of the owner or alarm business operator. An alarm signal caused by conditions of nature or other extraordinary circumstances or equipment malfunction shall not be deemed a false

alarm; provided that equipment malfunction must be verified by the alarm company that monitors the alarm or an alarm service technician.

Notice of malfunction means that notice forwarded to the owner by the chief as required by section 16-153.

Owner means the corporation, person, or other entity owning the real estate on which is located any fire detection system that produces any false alarm.

(Ord. No. 2000-23, § 1, 10-21-2000; Ord. No. 2001-049, § 1, 11-17-2001)

Cross References: generally, § 1-2.

Sec. 16-152. Commercial alarm users.

All commercial alarm users shall respond or cause a responsible representative to respond to the alarm site within 30 minutes when notified by officials. Each commercial alarm user shall furnish to the police and fire rescue departments, in writing, the names and telephone number of at least one, but no more than five persons authorized and able to deactivate the alarm system.

(Ord. No. 2001-049, § 5, 11-17-2001)

State Law References: to regulate noise, G.S. 160A-184.

Sec. 16-153. Notice to owner of false alarms; civil penalties.

(a) The police chief shall note and keep an official register of all responses to both monitored and unmonitored alarms by the police department. Likewise, the chief of emergency services shall keep an official register for all responses to both monitored and unmonitored alarms by the fire-rescue department for the village. Upon the reporting of two false alarms within 12 months from any single address, the appropriate chief shall cause to be mailed to the owner of such alarm system (in this division referred to as owner) by certified mail, return receipt requested, a notice of malfunction:

(1) Informing the owner that the police or fire-rescue departments has received two false alarms; and

(2) Containing a warning that the occurrence of additional false alarms to which the police or fire-rescue departments shall respond occurring within the next 365 days shall result in a civil penalty based on the following schedule:

| | |
|--------------------------------------|----------|
| 1st additional false alarm | \$ 50.00 |
| 2nd additional false alarm | 75.00 |

| | |
|--|--------|
| 3rd additional false alarm | 100.00 |
| 4th additional false alarm | 150.00 |
| 5th additional false alarm | 200.00 |
| 6th additional false alarm | 250.00 |
| 7th and each additional false alarm thereafter | 500.00 |

The notice of malfunction shall be forwarded to the record owner at the address shown on the records of the village tax administrator.

(b) Notice of assessment of a civil penalty shall be mailed by first class mail to the owner at his address. If any civil penalty is not paid within ten days of the date of mailing of such notice of assessment or the date on which any appeal is determined adversely to the owner, whichever comes later, the village may undertake a civil action to enforce the payment of such penalty. If the village is required to undertake a civil action to enforce the payment of such penalty, the defendant shall be liable for all costs incurred by the village in the pursuit of such action. In addition to any civil sanctions imposed in this section, violation of this division shall constitute a class 3 misdemeanor, punishable by imprisonment and/or fine not to exceed \$500.00 Nothing contained in this division shall prevent the village from taking such other lawful action as is necessary to prevent or remedy any violation.

(Ord. No. 2000-23, §§ 2,3, 10-21-2000; Ord. No. 2001-49, §§ 2,3, 11-17-2001)

Sec. 16-154. Appeals.

Any owner who has been assessed a civil penalty pursuant to section 16-153 may request, in writing, within ten days after mailing of the notice of assessment of the civil penalty, an informal hearing with the chief. At such hearing, the owner must show that:

- (1) Any false alarms for which he has been penalized were the result of violent conditions of nature or other extraordinary circumstances not reasonably subject to owner's control; and
- (2) The cause of such false alarm has been corrected or is not subject to repetition. Upon such a showing the chief may relieve the owner of penalty arising therefrom. Any decision of the chief shall be mailed in writing to the owner at his address and the chief shall inform the village manager. The decision of the chief may be appealed to the village manager. In such case the notice of appeal to the manager shall be in writing and shall be filed with the manager within ten days of mailing of the final decision by the

chief. The manager shall, upon receipt of the notice of appeal, schedule a hearing on the matter within 30 days from the date of receipt thereof. Appeal to the manager shall be de novo and the burden of proof shall be on the owner to show by the preponderance of the evidence the above two facts. The manager shall either uphold the civil penalty or strike the penalty. The decision of the village manager regarding the penalty shall be final and failure to perfect an appeal to the village manager within the time set forth in this section shall constitute a waiver of the right of appeal.

(Ord. No. 2000-23, § 4, 10-21-2000)

Chapter 17 RESERVED

Chapter 18 PARKS AND RECREATION*

* **Cross References:** ch. 10; streets, sidewalks and other public places, ch. 24.

State Law References: enabling law, G.S. 160A-350 et seq.

Article I. In General

Sec. 18-1. Personal watercraft safety.

Secs. 18-2--18-30. Reserved.

Article II. Creek Access

Sec. 18-31. Title.

Sec. 18-32. Authority.

Sec. 18-33. Jurisdiction.

Sec. 18-34. Purpose.

Sec. 18-35. Administration and penalties.

Sec. 18-36. General regulations.

ARTICLE I. IN GENERAL

Sec. 18-1. Personal watercraft safety.

(a) *Definition.* For purposes of this section, the term "personal watercraft" shall be as defined in the G.S. 75A-13.3(a).

(b) *Operator.* The restrictions for operation of a personal watercraft shall be as described in G.S. 75A-13.3(b), except that only persons at least 13 years of age but under 16 years of age may operate personal watercraft pursuant to subparagraphs (1) and (2) of that statute.

(c) *Speed.* In all village waters, no person may operate a personal watercraft in excess of headway speed, which shall not exceed six miles per hour:

(1) Within 50 feet of posted waterbird sanctuaries or management areas;

(2) Within 25 feet of the marsh or shore within the intracoastal waterway.

(d) *Wildlife.* In accordance with G.S. 113-291.1, it shall be unlawful for an operator of a personal watercraft on the waters in the county to chase, harass, molest, or disturb any wildlife except when lawfully angling for hunting or trapping such wildlife.

(e) *Sale.* At the time of purchase, a dealer in personal watercraft shall require the buyer of personal watercraft to receive instruction addressing safe operation of the watercraft.

(f) *Lease.* A personal watercraft livery owner or the livery's agent or employee shall:

(1) Require positive identification from all renters;

(2) Post personal watercraft regulations:

(3) Require all renters to read the regulations;

(4) Require all renters to sign a rental contract, containing a clause stating that the renter has read and understood all applicable safety regulations; and

(5) Instruct all renters in the safe operation of the personal watercraft.

(g) *Penalties.* Any person who shall violate the provisions of this section shall be guilty of a class 3 misdemeanor punishable by a fine of not more than \$500.00 or imprisonment of not more than 20 days, in the discretion of the court, as provided by G.S. 14-4.

(Ord. of 7-15-2000, § 1)

Secs. 18-2--18-30. Reserved.

ARTICLE II. CREEK ACCESS

Sec. 18-31. Title.

This article shall be known as the Village of Bald Head Island Creek Access Ordinance, Bald Head Island, North Carolina.

(Ord. No. 52, art. I, 11-15-1997)

Sec. 18-32. Authority.

The village hereby exercises its authority to adopt and enforce a creek access ordinance pursuant to the authority granted to the village by G.S. 160A-350 et seq.

(Ord. No. 52, art. II, 11-15-1997)

Sec. 18-33. Jurisdiction.

This article shall govern the use of village-owned property at designated creek access points lying within the municipal boundaries of the village, specifically the property known as the Bald Head Island Creek Access.

(Ord. No. 52, art. III, 11-15-1997)

Sec. 18-34. Purpose.

The purpose of this article is to regulate the use of village-owned property in a manner that encourages equitable use by all property owners in an effort to ensure that recreational facilities are adequately maintained and utilized. This article is designed to adhere to G.S. 160A-351, the declaration of state policy, in which making available adequate recreational opportunities for citizens is a subject of general interest, and a function requiring appropriate action by local government. This article shall govern the use of the creek access to further these goals. These regulations represent consideration of the character of creek access points on the island and have been enacted with a view of preserving the existing environment and/or ensuring the development of a future environment that realizes the greatest possible use and enjoyment of the creek access. In addition, this article seeks to provide a safe and attractive recreational area for village property owners.

(Ord. No. 52, art. IV, 11-15-1997)

Sec. 18-35. Administration and penalties.

(a) *Administration.* The village manager shall be responsible for administering the village creek access policy.

(b) *Violations.* Any failure to comply with a requirement, prohibition, or limitation imposed by the provisions of this article, shall constitute a violation of this article.

(c) *Criminal penalties.* Violation of the provisions of this article shall constitute a class 3 misdemeanor punishable by imprisonment and/or fine not to exceed \$500.00, as specified by G. S. 14-4. Each day that the violation continues to exist shall be considered a separate and distinct offense. Nothing contained in this subsection shall prevent the village from taking such other lawful action as is necessary to prevent or remedy any violation.

(d) *Civil penalties.*

(1) In addition to other remedies cited in this article for the enforcement of this article, violations of this article may subject the offender to civil penalties as set forth in subsections (2), (3), and (4) of this subsection (d). The village may recover this penalty by civil action if not paid at the village offices within 48 hours of the issuance of any civil citation. In addition, failure to pay the civil penalty within the 48-hour period may subject the offender to criminal sanctions as set forth in subsection (c) of this section.

(2) The following civil penalties are established for violations of section 18-36(a), (b) and (d):

a. First violation: Warning citation

b. Second citation; each successive occurring within six months: \$300.00

If violation has not been corrected within ten days after the first citation, the subject property shall be determined to be abandoned and may be seized and a fine will be assessed daily, until the violating party takes corrective action.

(3) The following civil penalties shall be enforced for violations other than those referenced above:

| | |
|--|----------|
| First citation | \$ 50.00 |
| Second citation for same offense | 100.00 |
| Sequential violations for same offense | 100.00 |

These civil penalties are in addition to any other penalties which may be imposed by the court of law for violations of the provisions of this article.

(4) In addition to the foregoing enforcement provisions, this article may be enforced by any remedy provided in G.S. 160A-175, including, but not limited to, all appropriate equitable remedies issued from a court of competent jurisdiction as provided in G.S. 160A-175(d) and particularly the remedy of injunction and order of abatement as allowed by G.S. 160A-175(e).

(e) *Abandoned vessels.*

(1) If the violator fails to remove his vessel from the creek access within the specified period of time allowed, the vessel will be determined to be abandoned and the village may seize such abandoned vessels. The owner of any vessel removed pursuant to this article from any property owned by the village or any private property shall pay to the village all reasonable costs incidental to the removal and storage of such vessel.

(2) Written notice of each removal of any abandoned vessel and of the possible sale or disposition thereof shall be given as promptly as possible to the owner thereof at the owner's last known address according to the latest registration certificate or certificates of title on file with the state division of motor vehicles or police department and shall describe the vessel, place of storage and procedure of recovery thereof. Notice need not be given to the registered owner when the vessel does not display a license plate or a valid registration certificate.

(3) Any time that an abandoned vessel shall be removed to a place of storage, the village shall collect the current towing fee and a daily storage fee. Any owner shall have the right to a hearing to determine whether the vessel was abandoned within the village in order to contest the towing and/or storage fees. The hearing shall be heard by the village manager who shall determine by preponderance of the evidence as to whether the vessel was in fact abandoned. The right of appeal from such decision shall be to the district court for Brunswick County. At the conclusion of the hearing the village manager shall render his decision; the decision shall be further reduced to writing and forwarded to the owner or other individual seeking a hearing who shall be entitled to appeal the decision to the district court for Brunswick County by giving due notice of appeal within ten days of the date that such notice shall have been mailed to the individual appealing. Pending any hearing or appeal pursuant to this article, the owner or other individual may obtain a release of the vessel at any time after the towing and/or storage fees are paid or by posting a bond with the village in the form of cash in the amount of the towing and/or storage fees. Unless the cash bond shall be paid, storage fees shall continue to accrue pending resolution of the appeal.

(4) If an abandoned vessel is worth \$100.00 or more and should the owner thereof refuse to pay the costs referenced in this section or should the identity or the whereabouts of such owner be unknown and unascertainable after a diligent search, it shall, after being held by the village for 30 days and after seven days advertisement in a local newspaper and after 20 days' written notice to the registered owner at the last known address, if his identity is known, and to the holders of any liens of record against the vessel and to the state division of motor vehicles, be sold by the police chief or his

designee at public auction; provided, however, that any person having an interest in the vessel may redeem it at any time prior to the sale by paying all costs accrued to date. Such costs shall include advertisement fees.

(Ord. No. 52, art. VI, 11-15-1997)

Sec. 18-36. General regulations.

(a) *Storage facilities.* The village creek access, located at 109 North Bald Head Wynd, is equipped with storage facilities for canoes, kayaks, and small Jon boats. These are the only vessels that may be stored in the village facility. Storage capacity is limited, due to the restricted amount of land area of the site. Property owners wanting to utilize the existing storage area may purchase a permit from the village at the currently required rate to be renewed annually at a cost to be determined by the village council. The amounts of such fees are on file and available in the clerk's office. These registration permits shall be nontransferable. Storage for such vessels shall be made available on a first come, first serve basis. The village manager may make provisions to utilize the available storage area in the most effective manner, while preserving the aesthetic beauty of the site. These permits shall be made available to the public on January 1 of each year, or the first working day thereafter. No vessel shall be stored at the facility without having affixed thereto a valid permit.

(b) *Parking areas.* The creek access offers property owners and guests a point of access to one of the island's most beautiful recreational assets. The access is intended to allow daily use of the facilities, with 13 parking spaces for boat trailers. This allows users a place to park their boat trailer while enjoying the attributes of the island's creeks. In an effort to be equitable to all property owners and users, parking facilities shall be limited to daytime use. Therefore, no overnight store of boat trailers is permitted.

(c) *Size limitations/restrictions.* Use of the creek access shall be limited to boats under 16 feet in length with motors smaller than 25 horsepower. To promote the purposes to be achieved by the no-wake zone in effect for the creeks of Bald Head Island, launching of boats with larger motors shall be prohibited.

(d) *Mooring of vessels.* No person shall allow a boat or other vessel owned by, registered in his name or under his control to be moored at the creek access overnight.

(e) *Prohibited activities.* In addition to other prohibited activities listed elsewhere in this article, the following activities are hereby prohibited on or at the creek access:

- (1) Littering;
- (2) Use of crabpots;
- (3) Cooking;

- (4) Cleaning of fish or shellfish;
- (5) Consumption of alcoholic beverages;
- (6) Blocking of creek access boat ramp or parking areas;
- (7) Launching of jet skis.

Signs stating the prohibition enacted in this section shall be posted at the access, notifying the public of their restriction.

(Ord. No. 52, art. V, 11-15-1997; Ord. No. 2001-011, § 1, 5-19-2001)

Chapter 19 RESERVED

Chapter 20 SOLID WASTE MANAGEMENT*

* **Cross References:** and building regulations, ch. 6; environment, ch. 10; utilities, ch. 30.

State Law References: G.S. 14-399; littering or discharge of sewage in waters and lakes, G.S. 75A-10; solid waste management, G.S. 130A-290 et seq.; authority to regulate the disposal of solid wastes, G.S. 160A-303.1.

Article I. In General

Sec. 20-1. Littering.

Secs. 20-2--20-30. Reserved.

Article II. Collection and Disposal

Sec. 20-31. Definition.

Sec. 20-32. Removal required.

Sec. 20-33. General requirements.

Sec. 20-34. Residential requirements.

Sec. 20-35. Commercial requirements.

Sec. 20-36. Pickup of major discarded items and yard debris.

Sec. 20-37. Regular solid waste collection.

Sec. 20-38. Special events.

Sec. 20-39. Signs.

Sec. 20-40. Authority to regulate.

ARTICLE I. IN GENERAL

Sec. 20-1. Littering.

(a) *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:

Litter means any rubbish, waste material, cans, refuse, garbage, trash, debris or discarded material of every kind and description.

Watercraft means any boat or vessel, whether motorized or not, used for transport upon or across the water.

(b) *Prohibited.* It shall be unlawful for any person, firm, organization or corporation to carelessly, recklessly, or intentionally throw, scatter, spill, or place or carelessly, recklessly, or intentionally permit to be blown, scattered, spilled, thrown or placed or otherwise disposed of any litter upon any public property or private property not owned by that person within the corporate limits or in the waters or marshlands located within the corporate limits of the village, including but not limited to all public highways, public parks, beaches, campgrounds, marshlands, roads, streets, alleys or waterways, except in such instances as the litter shall be deposited into litter receptacles in such a manner that the litter deposited therein shall be prevented from being carried away or deposited by the elements upon any part of such private or public property or waters.

(c) *Vehicles and watercraft.* When litter is carelessly, recklessly, or intentionally thrown, scattered, spilled or placed or carelessly, recklessly, or intentionally caused to be blown, scattered, spilled, thrown or placed from any vehicle or watercraft, the operator thereof shall be presumed to have committed such offense.

(d) *Violation and penalty.* A violation of this section shall subject the offender to a civil citation and civil fine in the amount of \$50.00 per offense. Any individual cited for violation of this section shall pay the civil penalty at the Village clerk within 48 hours of the issuance thereof. In addition to any civil sanctions imposed in this section, violation of this section shall constitute a class 3 misdemeanor, punishable by imprisonment and/or fine not to exceed \$500.00.

(Ord. No. 21A, § 1, 2-20-1998; Ord. No. 2001-026, § 1, 10-26-2001)

Secs. 20-2--20-30. Reserved.

ARTICLE II. COLLECTION AND DISPOSAL*

* **State Law References:** to regulate solid waste collection, G.S. 130A-309.

Sec. 20-31. Definition.

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:

Solid waste means all animal, fruit and vegetable matter; tin can; glassware and crockery in which such matter has been stored and discarded from a kitchen and all rags, papers and discarded refuse properly compacted, except building materials, wood scraps and tree or plant trimmings.

(Ord. No. 17A, § I, 7-13-1998)

Cross References: generally, § 1-2.

Sec. 20-32. Removal required.

Any solid waste that shall be a menace to public health and safety shall not be allowed to remain in any dwelling unit, restaurant, store, or other building, or on any premises, longer than reasonably necessary to remove and deposit in a container, properly shielded from view and protected from prowling animals.

(Ord. No. 17A, § II, 7-13-1998)

Sec. 20-33. General requirements.

(a) The occupant of each building, premises, or place where solid waste may be generated or exist, shall provide for himself a garbage container made of a nonrusting material in which he shall deposit all solid waste.

(b) All garbage containers shall be placed in a location that can be conveniently served by the sanitation worker.

(c) No garbage container shall be placed, or left on any public street for any purpose except for those serving the designated beach access points and street intersections.

(d) All garbage containers shall be kept reasonably clean and in an animalproof enclosure with a lid and door opening for access.

(Ord. No. 17A, § III, 7-13-1998)

Sec. 20-34. Residential requirements.

In order to receive solid waste collection at any residential structure the following requirements shall be met:

(1) All garbage containers shall be a size not to exceed a holding capacity of 33 gallons and shall be provided with handles and a tightfitting cover, made of the same material as the container, and shall be watertight. All garbage containers will be kept in an animalproof enclosure.

(2) Owners of dwelling units of up to four bedrooms shall provide a minimum of two garbage containers of no more than 33 gallons holding capacity for their units. For every dwelling unit with more than four bedrooms, the owner shall provide one additional 33-gallon container for every two bedrooms, or portion thereof.

(3) The owner or agency acting for the owner will be responsible for keeping the garbage enclosure clean and free of overflow solid waste.

(4) All cardboard boxes shall be flattened to reduce volume of the solid waste items.

(5) The garbage can enclosure shall be made animalproof by lining with hardware cloth or some other acceptable method.

(Ord. No. 17A, § IV, 7-13-1998)

Sec. 20-35. Commercial requirements.

In order to receive solid waste collection at any commercial establishment the following requirements shall be met:

(1) The occupants of each building engaged in commercial activities, shall be required to provide solid waste collection services at the expense of the owner. All cardboard boxes shall be flattened to require less space in this container.

(2) All restaurants must place their container on a concrete slab with proper drainage to meet the regulations of the county health department. The area around the container must be kept clean at all times.

(3) The village and its contractors shall not be responsible for commercial pickup.

(Ord. No. 17A, § V, 7-13-1998)

Sec. 20-36. Pickup of major discarded items and yard debris.

(a) *Major discarded items.* Discarded items such as appliances, furniture or scrapped vehicles that cannot be handled in regular garbage pick-up shall be removed at the expense of the owner. The placing or leaving of such articles along the streets is forbidden and each day, or portion of a day, that said articles are placed or left constitutes a separate violation. The public works department will provide assistance to owners in disposing of limited quantities of this type material on a schedule to be determined by the director and at a fee level to be determined by the village. This service will be provided with the following limitations:

- (1) Arrangements must be made in advance with the public works department.
- (2) If the items are too large or heavy, the property owner may request the assistance of village personnel to remove the items from the property as long as the property owner signs a waiver relieving village personnel from any damage occurred to the move.
- (3) Vehicles, tires and batteries are excluded from this service.

(b) *Yard debris.* The public works department will provide mulching or removal services for yard debris on a schedule to be determined by the director. This service will be provided with the following limitations:

- (1) Arrangements must be made in advance with the public works department.
- (2) Only yard debris generated by the owner as part of the maintenance of the property will be processed. Mulch will be left at the residence unless otherwise specified.
- (3) Yard debris is to be left in an accessible place adjacent to the road, but not impeding access on the road.
- (4) No yard debris in excess of six inches in diameter will be processed.
- (5) This service will not be provided for large quantities of debris generated by clearing a property for sale or construction, whether to work is carried out by the owner or by a contractor.
- (6) In all cases in which debris is generated by a contractor, the village will not be responsible for the removal of the waste generated.

(Ord. No. 2007-0401, 4-20-2007)

Editors Note: No. 2007-0401, adopted Apr. 20, 2007, repealed § 20-36, in its entirety and enacted new provisions to read as herein set out. Prior to amendment, § 20-36 pertained to pickup of major discarded items. See Code Comparative Table for derivation.

Sec. 20-37. Regular solid waste collection.

(a) Regular solid waste collection from Labor Day to Memorial Day shall be scheduled for one day each week. From Memorial Day through Labor Day (rental season), there will be two scheduled pickups each week. Any additional pickups of solid waste requested beyond the regular scheduled pickup, including rental agent requests, shall be the responsibility of the owner and may be obtained by contacting the village solid waste contractor.

(b) Solid waste will not be picked up if the provisions of this article are not followed.

(Ord. No. 17A, § VII, 7-13-1998)

Sec. 20-38. Special events.

Persons responsible for planning special events, such as fund raising cookouts, and other events, where solid waste is generated, shall contact the village solid waste contractor at least 96 hours prior to the event, to arrange for collection of solid waste, and add that cost to the sponsors overall event expenditures.

(Ord. No. 17A, § VIII, 7-13-1998)

Sec. 20-39. Signs.

A sign designated "yes" prominently displayed will indicate to the sanitation worker that there is solid waste in the container that needs to be picked up. A sign designated "no" or the lack of a sign will indicate to the collector that there is no solid waste to be picked up and will save his time in stopping. The village shall furnish one sign for each unit. Lost signs can be replaced at the currently required cost, such cost to be set from time to time and shall be available for review at the clerk's office.

(Ord. No. 17A, § IX, 7-13-1998)

Sec. 20-40. Authority to regulate.

G.S. 130A-309 gives a municipality the authority to regulate solid waste collection. A violation of this article shall subject the offender to a civil citation and civil fine of \$50.00 per offense. Any individual cited for violation of this article shall pay the the civil penalty at the office of the village clerk within 48 hours of the issuance thereof. In addition to any civil sanctions imposed in this section, violation of this article shall constitute a class 3 misdemeanor, punishable by imprisonment and/or fine not to exceed \$500.00.

(Ord. No. 17A, § X, 7-13-1998; Ord. No. 2001-021, § 1, 10-26-2001)

Chapter 21 RESERVED

Chapter 22 STORMWATER MANAGEMENT*

* **Cross References:** and building regulations, ch. 6; environment, ch. 10; utilities, ch. 30.

State Law References: to enact and enforce floodway regulations, G.S. 160A-458.1.

Sec. 22-1. Title.

Sec. 22-2. Goals and purposes.

Sec. 22-3. Definitions.

Sec. 22-4. Scope.

Sec. 22-5. Right of entry.

Sec. 22-6. Penalties.

Sec. 22-7. Appeals.

Sec. 22-8. Injunctive relief.

Sec. 22-9. General requirements.

Sec. 22-10. Summary of state regulations.

Sec. 22-11. Mandatory standards for existing development.

Sec. 22-12. Mandatory standards for new developments.

Sec. 22-13. Mandatory standards for construction activities.

Sec. 22-14. Mandatory standards for public education.

Sec. 22-15. A citizen's guide to identifying and reporting pollution problems.

Sec. 22-16. A citizen's guide to improving water quality on the village.

Sec. 22-1. Title.

This chapter may be cited as the "Village of Bald Head Island Stormwater Management Ordinance."

(Ord. of 5-20-2000, § 1)

Sec. 22-2. Goals and purposes.

The central environmental goals of the village are to restore and preserve water quality and the natural ecological functions of the surface waters and groundwaters that are included in its planning area and to reduce the potential for flooding residential areas. In order to meet these important goals, the village adopts this chapter to:

- (1) Regulate existing developments, new developments, and construction activities in accordance with state requirements and institute additional mandatory requirements to prevent careless pollution of surface waters, groundwaters and the creation of additional floodprone areas.
- (2) Establish the authority of the village to administer and enforce stormwater regulations.
- (3) Create public education programs so that the citizens of the village will have knowledge of how to reduce and prevent pollution from their homes and businesses.

(Ord. of 5-20-2000, § 2)

Sec. 22-3. 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:

Area of environmental concern means an area identified by the state coastal resources commission as environmentally fragile and economically important where uncontrolled or incompatible development could result in irreversible damage.

Built-upon area means that portion of an individual development project that is covered by impervious or partially impervious cover including buildings, pavement, compacted soil including coquina and marl, recreation facilities, gravel roads and parking areas, etc. Wood slatted decks and the water area of a swimming pool are not considered to be built-upon area.

CAMA means the Coastal Area Management Act which was adopted by North Carolina in 1974. The act established a comprehensive regional resource management program for the state's 20-county coastal area. The management program that has evolved since 1974 in North Carolina has land use planning, regulatory, land acquisition, and policy development components.

CAMA major development permit means the permit required by the coastal resources commission for developments that infringe on areas of environmental concern.

Coastal wetland means any salt marsh or other marsh subject to regular or occasional flooding by tides, including wind tides, whether or not the tide waters reach the marshland areas through natural or artificial watercourses, provided this shall not include hurricane or tropical storm tides. Coastal wetlands contain some, but not necessarily all, of ten indigenous wetland plant species. Included in this definition of coastal wetlands is such contiguous land as the secretary of the department of environment and natural resources (DENR) reasonably deems necessary to affect any such order in carrying out the purposes of the regulations. (G.S. 113-230(a)).

Development means any land disturbing activity which increases the amount of built-upon area or which otherwise decreases the infiltration of precipitation into the soil.

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

Erosion and sediment control plan means a written plan, including drawings or other graphic representations, for the control of soil erosion and sedimentation resulting from a land disturbing activity.

Estuarine shoreline means a nonocean shoreline connected to estuarine waters which are especially vulnerable to erosion, flooding, and other adverse effects of wind, water and gravity. Estuarine shorelines extend from the mean high water level in areas of tidal influence or normal water level in areas without tidal influence along the estuaries, sounds, bays, and brackish waters for a distance of 75 feet landward unless otherwise set by the coastal resources commission.

Estuarine waters means all the water of the Atlantic Ocean within the boundary of the state and all the waters of the bays, sounds, rivers, and tributaries thereto seaward of the dividing line between coastal fishing waters, as set forth in the most recent official published agreement adopted by the wildlife resources commission and the DENR.

Existing development means any land which has been utilized for a land disturbing activity as of May 20, 2000.

Groundwater means the subsurface water that occurs beneath the water table in soils and geologic formations that are fully saturated.

High density project means any project which exceeds 30 percent of the total area of the built upon area of the project. The control systems of the project must be infiltration systems, wet detention ponds or alternative stormwater management. The control systems must also be designed to control runoff from all surfaces generated by one inch of rainfall.

Infiltration system means a stormwater treatment system designed to allow runoff to pass or move (infiltrate) into the soil.

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

Low density project means the project must have a built-upon area of 30 percent or less; or proposes development of single-family residences on lots with one-third of an acre or greater with a built-upon area of 30 percent or less. Stormwater runoff must be transported primarily by vegetated conveyances. The conveyance system shall not include a discrete stormwater collection system. There shall also be a 30-foot-wide vegetative buffer.

New Development means any land which is utilized for a land disturbing activity after May 20, 2000.

NCAC means North Carolina Administrative Code.

North Carolina Coastal Resources Commission means the state policy-making organization with responsibility for the coastal region.

Ocean hazard area means an area where there exists a substantial possibility of excessive erosion and shoreline fluctuation. The seaward limit of this boundary is the mean low water line.

Redevelopment means any rebuilding activity which has no net increase in built-upon area or which provides equal or greater stormwater controls than the previous development.

SA waters means tidal salt waters of the highest quality which are suitable for commercial shellfishing, swimming, and all other tidal saltwater uses. The chloride concentration of SA waters must be at least 500 parts per million.

Sedimentation means the deposition of solid material, both mineral and organic, that has been transported from its site of origin by wind, water, or gravity.

Sedimentation/erosion control plan means a plan required by the division of land resources in which developers must describe the sedimentation and erosion control devices they will use for land disturbing activities that are one acre or greater.

State certification means one or more of the following documents: a CAMA permit application and accompanying CAMA permit from the division of coastal management, a stormwater certification or permit, as required, from the division of water quality (DWQ), and/or a sedimentation and erosion control plan that has been approved by the division of land quality.

Stormwater means the flow of water which results from precipitation and which occurs immediately following rainfall or a snowmelt.

Surface waters means rivers, streams, creeks, channels, lakes, reservoirs, ponds, drainage systems, springs, wetlands, wells, the Intracoastal Waterway, the Atlantic Ocean, and other bodies of surface or subsurface water, natural or artificial, lying within or forming part of the boundaries of the village. This term excludes privately owned ponds which have no entry or exit of water to or from waters of public domain.

Ten-year, 24-hour storm, means the storm of the largest intensity expected to occur statistically once every ten years and have a 24-hour duration.

25-year, 24-hour storm means the storm of the largest intensity expected to occur statistically once every 25 years and have a 24-hour duration.

Vegetative filter means an area of natural or planted vegetation through which stormwater flows in a diffuse manner so that runoff does not become channelized and which provides for control of stormwater runoff through infiltration of runoff and filtering of pollutants. The defined length of the filter shall be provided for the direction of stormwater flow.

Wet detention pond means a structure that provides for storage and treatment of runoff and includes a permanent pool of water.

(Ord. of 5-20-2000, § 3)

Cross References: generally, § 1-2.

Sec. 22-4. Scope.

This chapter shall apply to the following entities within the jurisdiction of the village:

- (1) All property owners, regardless of their previous practices, shall be subject to the regulations listed under section 22-11, mandatory standards for existing development.
- (2) All new developments shall be subject to the regulations listed under section 22-12, mandatory standards for new developments.
- (3) All construction activities, whether for new development or improvements on existing developments, shall be subject to the regulations listed under section 22-13, mandatory standards for construction activities.
- (4) The village shall be responsible for meeting the requirements of section 22-14, mandatory standards for public education.

(Ord. of 5-20-2000, § 4)

Sec. 22-5. Right of entry.

(a) The village shall have the power and authority to conduct inspections as may be reasonably necessary to carry out its duties pursuant to this chapter and to enforce the terms of this chapter. When necessary to carry out the village's duties pursuant to this chapter or to enforce the terms of this chapter, the designated representatives of the village may enter at reasonable times upon public or private property for the purpose of inspection. All persons owning real estate within the village shall allow the designated representative of the village to inspect such real estate to determine compliance with the terms and provisions of this chapter. No person shall refuse access to the designated representative of the village nor shall any person interfere with any such representative while in the process of carrying out his duties for the village at reasonable times. Any person who obtains a building permit, zoning permit, approval of a land use plan, subdivision approval or other development approval or permit, or which discharges into the village's stormwater system or surface waters, hereby consents to and gives permission to the designated representatives of the village to inspect their premises for compliance with the terms of this chapter.

(b) If it is determined that a person has failed to comply with this chapter, a notice of violation shall be served upon that person by registered or certified mail or other reasonable means to give actual notice. The notice shall set forth the measures necessary to achieve compliance with the plan and specify a reasonable time period within which such measures must be completed. The notice will warn that failure to correct the violation within the time period will result in the assessment of a civil penalty or other enforcement action. If the person in violation of this chapter fails to comply within the time specified, enforcement action will be initiated.

(Ord. of 5-20-2000, § 11)

Sec. 22-6. Penalties.

Violation of this chapter constitutes a class 3 misdemeanor punishable by imprisonment and/or fine not to exceed \$500.00 as provided by G.S. 14-4. In addition, violation of this chapter shall constitute a civil violation with a civil penalty in the amount of \$500.00 to be recovered by the village in a civil action in the nature of debt if the offender does not pay the civil penalty within 30 days after being cited for violation of this chapter. Each day's continuing violation shall be a separate and distinct offense. Nothing contained in this chapter shall prevent the village from taking such other lawful action as is necessary to prevent or remedy any violation.

(Ord. of 5-20-2000, § 13; Ord. No. 2001-033, § 1, 10-26-2001)

Sec. 22-7. Appeals.

(a) Any person who is found in violation of the requirements listed under section 22-11, 22-12, or 22-13 may appeal by submitting a written explanation of the appeal to the

stormwater appeals board within 30 days of the date of the notification of the fee. The appeals board shall consist of the current members of the village board of adjustment. This board shall render a decision on the appeal in writing within 30 days after the receipt of the written appeal. Any person aggrieved by any decision of the stormwater appeals board, or any taxpayer, officer, department or board of the village may present to a court of competent jurisdiction a petition, duly verified, setting forth that the decision is illegal and requesting review.

(b) Any citizen or developer who is found in violation of the requirements listed under section 22-11 or 22-12, may appeal by filing a written explanation of the appeal with the appropriate state agency within 30 days of the date of the notification of the fee.

(Ord. of 5-20-2000, § 12)

Sec. 22-8. Injunctive relief.

This chapter may also be enforced by appropriate equitable remedy issuing from a court of competent jurisdiction. The general court of justice shall have jurisdiction to issue such orders as may be appropriate to enforce the terms of this chapter. Upon a finding by the court of competent jurisdiction that a violation is occurring or is threatened, it shall enter such orders or judgments as are necessary to abate the violations or to prevent the threatened violations of this chapter. The institution of an action for injunctive relief under this section shall not relieve any party from any civil or criminal penalty prescribed for violations of this chapter.

(Ord. of 5-20-2000, § 14)

Sec. 22-9. General requirements.

(a) All visitors, residents, business owners, developers, and others who utilize the resources of the village shall take all reasonable measures to protect surface waters and groundwaters from damage resulting from their activities.

(b) Whenever conflicts exist between federal, state, or local laws and this chapter, the more restrictive provision shall apply.

(c) Any penalties imposed by the village shall be in addition to the penalties imposed by the state or county.

(Ord. of 5-20-2000, § 5)

Sec. 22-10. Summary of state regulations.

The responsibility for administering the state's stormwater regulations is shared by three divisions of the DENR. These divisions are the division of water quality, the division of coastal management, and the division of land quality.

(1) The division of water quality (DWQ) administers the requirements set forth in 15A NCAC 2H .1003. This section of the administrative code regulates the density of developments and mandates standards for engineered stormwater controls. DWQ recommends maintaining low density developments as the best means for managing stormwater. Low density developments limit built-upon surface areas so that grass, trees, and other vegetation may serve as filters for stormwater. This development option minimizes the need for costly engineered stormwater controls. High density developments must have engineered stormwater controls that are designed, constructed, and maintained according to state standards. These controls capture the stormwater runoff and hold it for a period of time. During the detention process, pollutants are removed by infiltration and/or sedimentation.

(2) The division of coastal management administers the Coastal Area Management Act (CAMA). CAMA's goal is to protect areas of environmental concern (AEC), which are fragile areas where incompatible development may result in irreversible damage. CAMA identifies four broad categories of AEC's: estuarine systems, ocean hazard areas, public water supplies, and natural and cultural resource areas. Within these broad categories, there are 14 subcategories. The subcategories that are most applicable to the village are: coastal wetlands, estuarine waters, estuarine shorelines, public trust areas, ocean erodible areas, high hazard flood areas, inlet hazard flood areas, and unvegetated beach areas. Any structure to be built in an AEC must be permitted by the division of coastal management and must meet general use standards which are listed in CAMA (15A NCAC 7H .0208). For a development in an AEC to be approved, it must be water-dependent and must minimize impacts to the area's soil and ecology. Some examples of water-dependent uses include bulkheads, piers, and marinas.

(3) The division of land resources administers the Sedimentation Pollution Control Act. This act requires developers to prepare erosion and sedimentation control plans for developments that are one acre or larger. The plan must describe the temporary and permanent control measures the developer will use to prevent accelerated erosion and off-site sedimentation. Sedimentation and erosion control plans must meet certain site performance standards, including restabilization of construction sites within a reasonable time period, maintenance of a buffer along any natural watercourse or lake, and protection from the ten-year storm. This act gives local agencies the authority to inspect land disturbing activities and to prosecute violators.

(Ord. of 5-20-2000, § 6)

Sec. 22-11. Mandatory standards for existing development.

(a) No landscaping using impervious materials such as solid plastic and vinyl that have a substantial or material impact on water percolation into the soil, will be permitted. Property owners must remove any such materials installed after May 20, 2000. Failure to comply within 30 days of notification is subject to a fine of \$50.00 for each incident and day of violation as well as any and all costs of removal.

(b) Yard wastes, including dredge spoil, leaves, and yard trimmings, may not be deposited into surface waters. Acceptable management practices for yard wastes include composting and land filling. Persons who deposit yard wastes into surface waters are subject to a fine of \$200.00 for each incident of violation as well as any and all costs of removal, cleanup and remediation.

(c) Septic systems must be pumped and maintained on a regular basis according to local regulations to prevent contaminated wastewater from discharging to surface waters. Owners of systems that are found to be discharging to surface waters will be given seven calendar days to correct such conditions. Property owners who fail to comply following this seven-day period will be subject to a fine of \$200.00 for each incident and day of violation as well as any and all costs of cleanup and remediation.

(d) Hazardous compounds must not be discharged to a septic system. Such compounds include but are not limited to paint, paint thinner, solvents, pesticides, and petroleum products. Persons who discharge these hazardous substances into septic systems are subject to a fine of \$200.00 for each incident of violation as well as any and all costs of removal, cleanup, and remediation.

(e) All label directions must be followed so that fertilizers and pesticides are mixed and applied correctly and at the proper time. The label is a legal document. Persons who incorrectly mix or apply chemicals are subject to a fine of \$200.00 for each incident of violation as well as any and all costs of removal, cleanup, and remediation.

(f) Chemicals on both commercial and residential property must be stored in properly built and maintained storage facilities. Persons who do not store chemicals safely will be given seven calendar days to correct such conditions. Failure to comply following this seven-day period will be subject to a fine of \$200.00 for each incident and day of violation as well as any and all costs of removal, cleanup, and remediation.

(g) Illegal discharges degrade water quality and are strictly prohibited. The following direct discharges resulting from the improper disposal of such materials into surface waters are unlawful. Violators will be subject to a fine of \$200.00 for each incident and day of violation as well as any and all costs of removal, cleanup, and remediation.

(1) Sewage or biosolids.

(2) Polluted household wastewater, including but not limited to laundry wash water and dishwater.

(3) Leaking sanitary sewers and connections which have remained uncorrected for three days or more after seven days' notice.

(4) Leaking water lines with flows sufficient to cause soil erosion which have remained uncorrected for three days or more after seven days notice.

- (5) Commercial, industrial, or public vehicle, vessel, or equipment wash discharge.
- (6) Solid, chemical, or sanitary waste.
- (7) Dead terrestrial animals or animal fecal waste.
- (8) Petroleum products or derivatives thereof.
- (9) Wrecked or discarded vehicles or equipment.
- (10) Trash, refuse, or garbage.

(Ord. of 5-20-2000, § 7)

Sec. 22-12. Mandatory standards for new developments.

Persons who fail to comply with these regulations after they have received notice from the village will be subject to a \$500.00 fine for each violation and other actions or penalties as may be authorized by the village.

(1) Developments that require state certification.

- a. For developments that are one acre or larger, the state will require a stormwater certification or permit from the division of water quality. The developer must submit a copy of the DWQ stormwater certification or permit to the village manager.
- b. The DWQ may also require a wetland 401 water quality certification and/or a dredge and fill permit. If so, the developer must submit copies of the permit application and the permit to the village manager.
- c. Developments that infringe upon state-defined areas of environmental concern (AEC) will require either a CAMA major from the division of coastal management or a CAMA minor permit from the village manager. If a CAMA major permit is required, then the developer must submit a copy of the permit application and the approved permit to the village manager.

(2) Developments that do not require state certification. A development which is under one acre and does not infringe upon any state-defined areas of environmental concern will usually not require state certification. However, such developments will be subject to the following requirements:

- a. When it is feasible, lots which are adjacent to waterways should be graded so that they drain away from the waterway. Bulkheads that have received the necessary approvals may be installed to accomplish this.

b. Direct outlet channels to surface waters are prohibited, except discharging of stormwater ponding by persons or entities permitted by the state or federal government and approved by the village will be allowed.

(3) *Village requirements.*

a. The village manager and the village building inspector have the authority to monitor development projects to ensure that developers comply with the state permits mentioned in this section. The village shall also have the authority to levy fines when the state permits have been violated.

b. The developer must submit a signed and notarized operation and maintenance plan or manual for stormwater systems, indicating what operation and maintenance actions are needed, what specific quantitative criteria will be used for determining when those actions are to be taken, and who is responsible for those actions to the village manager.

c. Where no stormwater collection system exists, site grading shall not be done in such a manner that stormwater runoff is directed onto adjoining lots.

d. Roadway drainage systems and stormwater control systems must be designed by a professional engineer licensed in the state.

(Ord. of 5-20-2000, § 8)

Sec. 22-13. Mandatory standards for construction activities.

Persons who fail to comply with these regulations after they have received notice from the village will be subject to a \$500.00 fine for each violation and other actions or penalties as may be authorized by the village.

(1) For construction activities that are one acre or larger, the state will require a sedimentation and erosion control plan from the division of land quality. The developer must submit a copy of the approved sedimentation and erosion control plan to the village manager.

(2) The village manager and the village building inspector have the authority to monitor construction activities to ensure that developers comply with the sedimentation and erosion control plan. The village shall also have the authority to levy fines when the sedimentation and erosion plan has been violated.

(3) Construction activities that are under one acre and infringe upon a state defined area of environmental concern will require a CAMA minor permit from the village manager.

(4) All debris and trash must be contained onsite during construction. All garbage receptacles must have high sides or covers to prevent the airborne transport of debris

such as plastic and paper. In addition, hazardous materials used during the construction process must be stored and disposed of properly to ensure that they do not enter surface waters. All equipment and/or tools should be covered when not in use.

(Ord. of 5-20-2000, § 9)

Sec. 22-14. Mandatory standards for public education.

(a) The village will promote, encourage, and facilitate public education programs on stormwater management.

(b) The public must be informed of how to identify and report pollution violations and water quality problems. Such actions and conditions shall be reported to the village manager. Serious violations may be reported to the department of environmental health in Wilmington. See section 22-15 for a suggested format for public distribution materials on this topic.

(c) The public must be informed of how to minimize water pollution in their homes and businesses. Some of the issues that shall be addressed are lawn and garden care, use of household chemicals, septic tank maintenance, and pet care. See section 22-16 for a suggested format for public distribution materials on this topic.

(Ord. of 5-20-2000, § 10)

Sec. 22-15. A citizen's guide to identifying and reporting pollution problems.

(a) It is very important for you, as a citizen of the village, to report problems when observed so that the appropriate government agency can take immediate action. Public reporting of pollution problems allows us to more efficiently keep our community clean and environmentally safe.

(b) Be on the lookout for these common pollution problems:

(1) *Unprotected areas of bare soil on a construction site or on any other site.* Construction sites must have erosion control structures such as siltation fences and vegetated filters. In addition, no construction site should be left without vegetation for longer than 30 working days after work on the site has been completed. Under no circumstances should bare soil be left within 50 feet of a wetland or waterway.

(2) *Illegal dumping and illegal dump sites.* Look for debris dumped in creeks and along roadsides by companies and individuals trying to avoid landfill fees.

(3) *Discharges to creeks, wetlands or the ocean.* Look for channels running directly from a home or business to a wetland or a natural waterway. In addition, look for pipes that discharge directly to a natural waterway.

(4) *Oil and other chemical spills.* Oil appears as a shiny slick on the surface of natural waters. Other chemical spills may be identified when water has an unusual color or odor.

(5) *Sewer and septic system leaks from pipes and manholes.* Usually, the best way to identify sewer and septic problems is the odor. If you sense a problem, try to identify the source.

(6) *Degraded water.* Some things to look for include bright green algae growth, unusual odors, and dead aquatic life.

(c) To report pollution problems:

(1) If you see a pollution violation such as illegal dumping in progress, write down important information such as license plate numbers and company names. If possible, you should take photographs as evidence. This information will be used to hold polluters accountable.

(2) Report pollution violations and water pollution problems to the village manager at 1-910-457-9700. At your request, the village manager will maintain your confidentiality.

(3) If the violation is of a very serious nature you may report problems directly to the state department of environment and natural resources in Wilmington at 1-910-395-3900. Once you describe the nature of the problem, you will be directed to the appropriate person and agency.

(Ord. of 5-20-2000, app. A)

Sec. 22-16. A citizen's guide to improving water quality on the village.

Clean water and a healthy environment start with you and your neighbors. This list offers many easy and inexpensive ideas that will benefit water quality within the village. By practicing these suggestions, you will be doing your part for a cleaner and healthier environment.

(1) *Lawn and garden care.* Well-maintained lawns and gardens can be a real benefit to water quality and the local community. They add beauty, control erosion, filter runoff from adjacent hard surfaces, reduce dust, and help moderate summer heat. However, lawns and gardens are often the reason for excessive water use and unnecessary applications of fertilizer. To help:

a. Reduce soil erosion by planting appropriate plant cover on bare patches of ground.

b. Do not apply pesticides or fertilizer if heavy rain is expected. Use only fertilizers that are really needed, based on soil tests and specific needs of your plants. The agricultural extension center will test soils for free, and some nurseries may also offer this service.

- c. Keep fertilizer off driveways and sidewalks where it will be washed into storm drains.
- d. Remember that it is illegal to dump yard waste into creeks, ponds, wetlands, and the ocean. Yard waste may be either composted or landfilled.
- e. When removing mildew from your house or roof, use the most dilute solution of cleaner that will do the job. If possible, use biodegradable products.
- f. Contact your county extension agent at (910) 253-4425 for information on plant and integrated pest management (reducing the application of chemicals by using natural controls).

(2) *Household chemicals.* Most households contain numerous chemicals that can be dangerous if released into the environment such as: spot remover, furniture polish, deodorizers, drain cleaner, oven cleaner, disinfectants, ammonia, paint and other finishes, thinners and solvents, and batteries. These chemicals can become pollutants if residues are poured down home drains or onto the land surface. To help:

- a. Select the least toxic products that will do the job and use only when necessary. Use only recommended amounts and do not mix chemicals.
- b. Do not apply chemicals near creeks, wetlands, or the ocean. Stuff used cans of paint with newspapers and allow to dry before putting the cans into the trash.
- c. Never pour household chemicals down the drain or onto the ground.

(3) *Motor vehicles.* The oil from a single automobile can produce an eight-acre oil slick, and a single quart of motor oil can contaminate as much as two million gallons of drinking water. Used oil, antifreeze, and other motor vehicle fluids are often dumped on land or into roadside ditches. To help:

- a. Maintain motor vehicles and repair leaks promptly.
- b. Dispose of used motor oil in oil recycling centers. Many auto parts stores will take used oil and car batteries.
- c. Arrange with local service stations or recycling centers to take your used antifreeze. Avoid gas tank overflows during refueling
- d. Take your car to a commercial car wash where the cleaning water is discharged to a treatment plant. If you do wash your car at home, use a nontoxic and biodegradable detergent.

(4) *Septic tanks.* Septic systems depend upon bacterial action and soils to absorb the discharge of household wastewater. If the drain field is damaged or the soil becomes saturated, nearby surface waters may become contaminated with sewage products.

- a. Do not overload the system by allowing an inappropriately large number of people to share a single dwelling.
- b. Avoid putting household chemicals down the drain that could destroy bacteria.
- c. Consider giving up garbage disposals that add unnecessary solids and grease to the system.
- d. Do not flush or pour down the drain: grease, coffee grounds, cigarettes, facial tissues and paper towels, sanitary products, and disposable diapers.
- e. Keep automobiles and heavy equipment off the system.
- f. Maintain adequate vegetative cover over the drain field.
- g. Follow the guideline below to determine how frequently to have your septic tank pumped.

Estimating Septic Tank Inspection and Pumping Frequency in Years

| <i>Tank Size</i> | <i>Number of People Using the System (gallons)</i> | | | | |
|------------------|--|------|----|------|-------|
| | 12 | 1468 | 68 | 2468 | 12468 |
| 900 | 11 | 5 | 2 | 1 | 1 |
| 1,000 | 12 | 6 | 3 | 2 | 1 |
| 1,250 | 16 | 8 | 3 | 2 | 1 |
| 1,500 | 19 | 9 | 4 | 3 | 2 |

Source: Adapted from "Estimated Septic Tank Pumping Frequency" by Karen Mand, 1984, Journal of Environmental Engineering, Volume 110.

(5) *Grinder pump stations.* Grinder pump stations are located on the lots within the village that have sewer service. These stations receive wastewater discharged from a residence or commercial site and hold it until a certain volume is being stored. At this point, the grinder pump turns on, grinding the solids in the wastewater while it is pumped to the wastewater treatment facility. If these pump stations are not properly maintained they may malfunction causing a discharge of untreated wastewater to nearby surface or groundwaters.

- a. Avoid putting household chemicals down the drain that could harm the pump or electrical connections.
- b. Consider giving up garbage disposals that add unnecessary grease to the system.

c. Do not flush or pour down the drain grease, coffee grounds, cigarettes, facial tissues and paper towels, sanitary products, and disposable diapers.

d. Keep automobiles and heavy equipment away from the pump station.

e. Assure that the high water alarms are working properly so that maintenance personnel may be notified upon failure of the system.

(6) *Hard surfaces.* Hard surfaces such as paved roads, driveways, rooftops, and parking lots cause rapid runoff of rainwater. As water flows from hard surfaces, it captures pollutants before it is discharged into our waterways. On the other hand natural, vegetated areas improve water quality by soaking up and cleansing rain. To help: On your property, try to limit the area of impervious surfaces such as concrete, brick, highly compacted gravel, crushed shell, coquina, and covered decks.

(7) *Boats.* Recreational boaters use a variety of cleaners, finishes, and antifouling compounds, and are often responsible for discharging garbage, sewage, and petroleum products into our waterways. Boats that create excessive wakes contribute to shoreline erosion and increase sediment loads to adjacent waterways. To help:

a. Avoid producing wakes within 500 feet of shore.

b. Scrub boats with brush and water instead of routinely using soap or detergent. If cleaners are needed to remove stains, use phosphate-free detergents.

c. Do not discharge boat sewage or trash into waterways.

d. Use a drop cloth when scraping boat hulls to catch toxic chips of paint or antifouling.

(8) *Animal waste.* Animal wastes are high in nutrients and bacteria which can contribute to excessive plant growth in waterways as well as closure of shellfishing beds and swimming areas. Clean up after pets and dispose of wastes in the trash or toilet.

(Ord. of 5-20-2000, app. B)

Chapter 23 RESERVED

Chapter 24 STREETS, SIDEWALKS AND OTHER PUBLIC PLACES*

* **Charter References:** regulation, § 10.2.

Cross References: ordinance dedicating, naming, establishing, locating, relocating, opening, widening, paving, etc., any street or public way in the village saved from repeal, § 1-9(6); any ordinance providing for local improvements and assessing taxes for such improvements saved from repeal, § 1-9(9); any ordinance establishing or prescribing street grades in the village saved from repeal, § 1-9(15); buildings and building regulations, ch. 6; environment, ch. 10; floods, ch. 14; parks and recreation, ch. 18; subdivisions, ch. 26; minimum design standards for streets, § 26-124; required improvements for streets, § 26-163; traffic and vehicles, ch. 28; utilities, ch. 30; zoning, ch. 32.

State Law References: authority relative to streets and sidewalks, G.S. 160A-296 et seq.

Article I. In General

Secs. 24-1--24-30. Reserved.

Article II. Intrusive Acts

Sec. 24-31. Definitions.

Sec. 24-32. Permit--Required.

Sec. 24-33. Same--Application; issuance.

Sec. 24-34. Motorized vehicles in excess of 4,000 pounds.

Sec. 24-35. Tracked vehicles.

Sec. 24-36. Penalty for violation of article.

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Article III. Location Identification for Buildings

Sec. 24-71. Definitions.

Sec. 24-72. Location identifiers required.

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Sec. 24-77. Violation.

ARTICLE I. IN GENERAL

Secs. 24-1--24-30. Reserved.

ARTICLE II. INTRUSIVE ACTS

Sec. 24-31. Definitions.

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

Excessive weight vehicle means any vehicle having a gross weight in excess of 16,000 pounds per axle.

Intrusive act and intrusive activity mean cutting, drilling, excavating, removal of subjacent support, and any and all other acts or activities by which the pavement of any public street or roadway or the subsurface supporting material therefor is breached, disrupted, penetrated or damaged in any manner.

Permit means a permit issued by the village manager pursuant to an application submitted for permission to conduct any intrusive activity.

Proposed intrusive act means the intrusive act or acts for which a permit is sought.

Public street or roadway means any roadway, street or other thoroughfare or parking lot owned by the village, including the paved surfaces thereof and all underlying substances placed there for the support and stability of the surface.

Special weight permit means a permit issued by the office of the village manager permitting certain specified operations of excessive weight vehicles on the streets and roadways of the village.

Tracked vehicle means any motorized vehicle which propels itself atop and by means of a metal track rather than atop and by means of a rubber tire or wheel, including but not limited to cranes, bulldozers and other such vehicles.

(Ord. No. 30, § 1, 8-17-1991)

Cross References: generally, § 1-2.

Sec. 24-32. Permit--Required.

It shall be unlawful for any person to intentionally conduct any intrusive activity upon any public street or roadway within the village unless he has obtained prior thereto a permit from the office of the village manager as provided in section 24-33.

(Ord. No. 30, § 2, 8-17-1991)

Sec. 24-33. Same--Application; issuance.

(a) *Criteria.* Any person desiring to conduct any intrusive activities on any public street or roadway within the village shall make application therefor to the village. The application shall contain such information as shall, from time to time, be determined by the village manager to be necessary to adequately assess the application for compliance with the intent of this article. The village manager shall review the application and shall permit the activity upon finding of the following:

(1) The proposed intrusive activity shall be reasonably necessary for the improvement or maintenance of the health, education or general welfare of the citizens and residents of the village;

(2) Provisions have been made for adequate warning to both vehicular and pedestrian traffic such that the proposed work shall not represent an unreasonable risk of injury or damage to the person or property of any individual;

(3) The proposed intrusive act is the least intrusive method by which the purposes to be achieved by the proposed act can be reasonably accomplished;

(4) Public inconvenience arising from the proposed intrusive activity will be minimized during the course of such activity; and

(5) The street or roadway shall be returned to its condition prior to the proposed intrusive act or as near thereto as shall be reasonably possible.

(b) *Additional conditions required.* Upon review of the application required by this section, the village manager shall determine whether the proposed activity shall meet the criteria set forth in subsection (a) of this section and, if so determined, the village manager shall issue a permit to the applicant upon such conditions as the village manager shall find to be necessary in order to accomplish the purposes of this article as set forth in subsection (a) of this section. Such conditions may include, but shall not be limited to:

(1) Specific dates during which the proposed intrusive activity may be carried on, including limitations on the number of days or hours per day during which any street or roadway or portion thereof shall be impassable to vehicular or pedestrian traffic due to the proposed intrusive activity;

(2) The manner in which the intrusive act shall be accomplished;

(3) The manner in which any reconstruction or repair work shall be effected in order to return the public street or roadway to its condition prior to the date of the intrusive act;

(4) The amount and conditions of bond to be posted by the applicant in favor of the village ensuring compliance with conditions of the permit and that the required repair work shall be accomplished within the time specified by the permit; and

(5) The effective and expiration dates of the permit.

(c) *Intrusive activity authorized by permit.* Any intrusive activity performed on any public street or roadway authorized by permit shall be done in accordance with the terms and conditions hereof. No intrusive activity shall be undertaken until at least one week's written notice has been given to the village manager of the proposed intrusive activity; the bond as required herein has been posted with the office of the village clerk; an appropriate written permit application has been submitted; and a permit has issued from the village.

The application shall provide the following information:

- Applicant's full legal name (and that of permittee, if different);
- Applicant's street and mailing addresses, phone and fax numbers (and those of permittee, if different);
- Description and purpose of the activity, including proposed dates thereof and diagrams, plans or specifications, if any;
- The date(s) in which the street or roadway will be passable/impassable;
- Whether final paving will be completed by the applicant or the village; and
- If the final paving is to be completed by the permittee, the date in which the repairs will be completed (must be within ten working days of the intrusive activity commencing);
- Other data or plans as the village may require.

The applicant or permittee shall furnish to the village a bond in the amount specified in the permit, which shall be not less than \$1,000.00, to secure the permittee's performance under the permit and hereunder. The bond shall be in cash or shall be in form acceptable to the village; shall be payable to the Village of Bald Head Island; shall be conditioned upon the performance of each and every condition of the permit; and shall provide for payment on behalf of permittee of any fines or village invoices levied hereunder. With the exception of an emergency that threatens the health, safety, or general welfare of Island citizens and visitors, as determined by the village manager, no intrusive activity shall be permitted on any street or roadway without the proper permit and bond being issued; in violation of any permit provision; or in violation of any other term or provision hereof. If intrusive activity is found to occur without the proper permit and bond being issued; or in violation of any permit provision; or in violation of any other term or provision hereof, the party responsible for the activity shall be subject to a fine in

the amount of \$200.00 per violation. Each day or portion thereof that a violation exists shall constitute a separate and distinct violation. In the event an intrusive activity is undertaken because of emergency circumstances, the applicant or person performing the activity shall report the activity to the village manager as soon thereafter as can reasonably occur.

Repairs completed by the permittee must be refurbished using 6" of ABC stone, mechanically compacted in 2" lifts and 1 1/2" of I-2 asphalt. The repair must be level with the existing road. The repair will be inspected by a village representative before the posted bond is refunded to the applicant. Repairs not within the above guidelines constitute a violation hereof.

Repairs which are to be completed by the village or which are completed by the village as a result of permittee's or any person's failure to comply herewith or with any permit provision, shall be charged to the bond and to the permittee or person responsible at a rate not less than the cost of repair of such intrusive activity as shown by the village's invoice. The invoice of the village shall be conclusive as to the cost of repair charged hereunder. Any such cost incurred by the village in excess of the amount of a cash or other bond shall be paid by the permittee or person responsible within seven days of notification of charges being mailed to the person responsible or to the permittee at the address shown on the application.

To any fine or village repair invoice not paid in full within ten calendar days of notification having been mailed to the permittee or person responsible shall be added an additional fine of \$50.00. Unpaid amounts shall accrue an additional amount monthly of one and one-half percent.

It shall be the responsibility of the applicant to amend the completion date, in writing, if repair or replacement work is expected to go past the completion date provided in the application or in the permit. All permit amendments or the grant of any permit shall be in village's sole discretion.

Carolina Power & Light Company/Progress Energy is specifically excluded from the provisions of the foregoing subparagraph (c) and is subject to prior ordinances specific to it.

(d) *Damaged village property.* Nothing herein shall be construed as a waiver, limitation or compromise of any rights or remedies the village may have against any applicant, permittee or other person or entity to seek legal redress for damages done to village property, including but not limited to claims the village may have arising under contract, negligence, trespass, conversion, nuisance or other theories of liability. Nor, except as expressly provided herein, shall this article be construed to modify, limit or waive any other laws, ordinances, regulations, rights or remedies of the village.

(e) *Interference with underground utilities prohibited.* Each permittee shall ensure that no intrusive act or activity shall interfere with any underground utilities, including but not

limited to electrical, cable television, water or telephone cable or conduit, and shall comply with all provisions of G.S. 87-100 et seq.; and no permit issued pursuant to this article shall be construed by the permittee or any other person to include certification that any proposed intrusive act shall comply with G.S. 87-100 et seq.

(f) *Signing of application; fee.* Each applicant for a permit issued pursuant to this section shall be required to sign the application therefor and shall deliver to the village manager the currently required application fee and which shall be nonrefundable and shall not be credited against the bond required by the village manager.

(Ord. No. 30, § 3, 8-17-1991; Ord. No. 2002-004, § 1, 2-16-2002; Ord. No. 2004-006, § 1, 9-17-2004)

Sec. 24-34. Motorized vehicles in excess of 4,000 pounds.

It shall be unlawful for any person to operate any motorized vehicle with a gross weight in excess of 4,000 pounds upon Stede Bonnet Wynd or Edward Teach Wynd and to use the vehicle for purposes of through traffic.

(Ord. No. 30, § 5, 8-17-1991)

Sec. 24-35. Tracked vehicles.

It shall be unlawful for any person to operate any tracked vehicle on the public streets or roadways of the village. Nothing contained in this article shall prevent any person from transporting any tracked vehicle on any trailer or other transportation device so long as the tracked vehicle shall not be in contact with the public street or roadway.

(Ord. No. 30, § 6, 8-17-1991)

Sec. 24-36. Penalty for violation of article.

Each violation of this article shall subject the offender to a civil penalty of \$50.00. Any individual cited for violation of this article shall pay the civil penalty at the office of the village clerk within 48 hours of receipt of the citation. In addition to any civil sanctions imposed in this article, violation of this article shall constitute a class 3 misdemeanor punishable by imprisonment and/or fine not to exceed \$500.00.

(Ord. No. 30, § 7, 8-17-1991; Ord. No. 2001-031, § 1, 10-26-2001)

Sec. 24-37. Minimum design standards for sidewalks.

Minimum design standards for a required four-foot and/or six-foot wide sidewalk must comply with the following design standards:

- (1) Construction joint every five feet.
- (2) Install ½-inch expansion joints every 50 feet using felt or rubber caulk.
- (3) Concrete must be at a minimum five inches thick.
- (4) One-inch tooled control edge must be used.
- (5) Six millimeter "poly" vapor barrier must be used.
- (6) #6, six inches by six inches square wire mesh must be used.
- (7) Typical broom finish.
- (8) One-inch by six inches forming mat must be used.
- (9) Compacted or plate tamped sub-graded.
- (10) Backfill to grade of top of sidewalk.
- (11) Concrete shall be a minimum of 3,000 psi at 28-day break.

As of the date of adoption of this section, any new sidewalks and/or repairs to existing sidewalks must meet the above requirements and be inspected by the building inspector prior to pouring of concrete. Contractors repairing sidewalks damaged during the construction process must repair the sidewalks to the above standards before a certificate of occupancy is issued for the structure.

(Ord. No. 2007-0702, 7-20-2007)

Secs. 24-38--24-70. Reserved.

ARTICLE III. LOCATION IDENTIFICATION FOR BUILDINGS

Sec. 24-71. 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:

Single building site means any tract or parcel of real estate planned or proposed to contain a single structure for occupancy by a single family or commercial occupant and whose access to a publicly dedicated right-of-way is over a driveway serving only that structure.

Cluster building site means any tract or parcel of real estate planned or proposed to contain either multiple structures or a single structure with divided or multiple ownership or occupancy thereof and which structure or structures, owners or occupants share access to a publicly dedicated right-of-way over one or more common driveways.

(Ord. No. 44, § 2, 3-16-1996)

Cross References: generally, § 1-2.

Sec. 24-72. Location identifiers required.

From and after March 16, 1996, no certificate of occupancy shall be issued for occupancy of any building constructed pursuant to a building permit issued after March 16, 1996, unless the completed structure shall include location identifiers in conformity herewith. Any such building shall be referred to hereinafter as new construction.

(Ord. No. 44, § 1, 3-16-1996)

Sec. 24-73. Specifications.

No certificate of occupancy shall be issued for the occupancy of any new construction constructed on a single building site unless the owner thereof shall install a location identification bollard in conformity with the following specifications:

- (1) The location identification bollard shall consist of a six-inch by six-inch pressure treated wooden post gray in color to enhance contrast with numbering.
- (2) Bollards shall have emblazoned on three sides thereof the street number of the structure, which numbers shall each be a minimum of three inches tall and shall be made of white reflective material.
- (3) Bollards shall be embedded into the ground at a point adjacent to the intersection of the driveway serving such structure and the publicly dedicated right-of-way.
- (4) Bollards shall be embedded in the ground in such a manner that they are permanently affixed thereto and shall stand at least 36 inches above ground level with numbering located at least 15 inches above ground level.
- (5) Numerals shall appear on three sides of the bollard, excluding only the side located opposite the publicly dedicated right-of-way.

(Ord. No. 44, § 3, 3-16-1996)

Sec. 24-74. Prominent display required.

No certificate of occupancy shall be issued for occupancy of new construction located on a cluster building site unless the owner thereof shall display prominently the location identifier of such structure in a location readily visible to emergency vehicles as approved by the building inspector. The location identifier shall be uniform in appearance and location for all structures or separately owned or occupied units within the cluster and shall be of a size, style and material as shall be approved by the building inspector for the village. Within cluster building sites where a specific developer or community association shall control exterior appearances of structures, the developer or association may, prior to any construction thereon, apply to the building inspector for a uniform preapproved location identifier and on which the developer or association may rely in its plan of development; provided, however, that the layout of the development with proposed construction sites and street locations therefor shall be presented to the building inspector prior to initiation of development. Upon request therefor the building inspector shall accumulate any additional relevant information and may then determine the preapproved appearance and location of the location identifiers for all structures within the cluster.

(Ord. No. 44, § 4, 3-16-1996)

Sec. 24-75. Obstruction prohibited.

No owner of any building or unit thereof which is subject to this article shall permit the location identifier to be obstructed by the growth of brush or shrubbery or the placement of any other obstruction which might limit, in any manner, the visibility of the location identifier from the nearest vehicular access.

(Ord. No. 44, § 5, 3-16-1996)

Sec. 24-76. Defacement, alteration, removal or destruction prohibited.

It shall be unlawful for any person to deface, alter, remove or destroy any location identifier erected pursuant to this article.

(Ord. No. 44, § 6, 3-16-1996)

Sec. 24-77. Violation.

Any violation of this article shall constitute a class 3 misdemeanor punishable in accordance with section 1-6.

(Ord. No. 44, § 7, 3-16-1996)

Chapter 25 RESERVED

Chapter 26 SUBDIVISIONS*

* **Cross References:** ordinance dedicating or accepting any subdivision plat saved from repeal, § 1-9(11); buildings and building regulations, ch. 6; environment, ch. 10; floods, ch. 14; streets, sidewalks and other public places, ch. 24; utilities, ch. 30; zoning, ch. 32.

State Law References: authority to regulate the subdivision of land, G.S. 160A-371.

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ARTICLE I. IN GENERAL

Sec. 26-1. Title of chapter.

This chapter shall be known and may be cited as the "Subdivision Ordinance of Bald Head Island, North Carolina," and may be referred to as the "subdivision ordinance."

(Ord. No. 8A, art. I, § I, 7-17-1998)

Sec. 26-2. Purpose of chapter.

The purpose of this chapter is to regulate and control the subdivision of land within the corporate limits of the village in order to promote the public health, safety, and general welfare of the community. They are designed to lessen congestion in streets and roadways; to further the orderly layout and use of land; to ensure proper legal description and proper monumenting of subdivided lands; to secure safety from fire, panic and other dangers; to provide adequate light and air; to prevent the overcrowding of land and avoid undue concentration of population; to facilitate adequate provisions for transportation, water, sewerage, open space, recreational areas and other public requirements; and to facilitate the further resubdivision of larger tracts into small parcels of land.

(Ord. No. 8A, art. I, § II, 7-17-1998)

Sec. 26-3. Authority to adopt chapter.

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

(Ord. No. 8A, art. I, § III, 7-17-1998)

Sec. 26-4. Jurisdiction of chapter.

This chapter governs each and every subdivision of land within the corporate limits of the village as indicated on the official corporate boundary map of the village.

(Ord. No. 8A, art. I, § IV, 7-17-1998)

State Law References: jurisdiction, G.S. 160A-360.

Sec. 26-5. Relation to other ordinances.

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

(Ord. No. 8A, art. I, § V, 7-17-1998)

Sec. 26-6. Intent of chapter.

For the purpose of interpreting this chapter, certain words or terms are defined in this article. Except as defined in this article, all other words used in this chapter shall have their everyday dictionary definition.

(Ord. No. 8A, art. II, § I, 7-17-1998)

Sec. 26-7. Subdivision defined.

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

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

(Ord. No. 8A, art. II, § II, 7-17-1998)

Cross References: generally, § 1-2.

State Law References: G.S. 160A-376.

Sec. 26-8. Other definitions.

Agent means any individual designated by the owner of any land which is the subject of a proposed subdivision as having full authority to act with regard to such proposed subdivision on behalf of the owner in all respects.

Alley means a private right-of-way primarily designed to serve as a secondary access to the side or rear of those properties whose principal frontage is on some other street.

Buffer means an area required by this chapter to provide insulation from a nonresidential tract.

Building means any structure built for the support, shelter, or enclosure of persons, animals, chattels, or moveable property of any kind.

Building footprint means the land area on which a proposed building is to be located.

Building setback line means line establishing the minimum allowable distance, as defined in chapter 32, zoning, between the nearest part of any building and the nearest edge of a street right-of-way or property line, when measured perpendicular thereto.

Dedication means an appropriation of land to some public use made by the owner thereof and accepted for such use by or on behalf of the public. Because a transfer of property rights is entailed, dedication must be made by written instrument and is completed with an acceptance by the village council.

Easement means grant by the property owner of an interest in land less than the fee simple title thereto for a specified purpose and use by the public, a corporation or persons.

Emergency vehicle means any vehicle operated by the police department, volunteer fire department or volunteer rescue squad.

Flood hazard area means any site designated by the Federal Emergency Management Authority (FEMA) as susceptible to flooding, and shown on the official flood hazard boundary map and/or flood insurance rate maps for the Bald Head Island area.

Lot means a parcel of land whose boundaries have been established by some legal instrument such as a recorded deed or a recorded map and which is recognized as a separate legal parcel for purposes of transfer of title. The lot types are as follows:

- (1) Corner lot means a lot located at the intersection of two or more streets.
- (2) Interior lot means a lot other than a corner lot with only one frontage on a street.
- (3) Through lot means a lot other than a corner lot with frontage on more than one street. Through lots abutting two streets may be referred to as double frontage lots.
- (4) Single tier lot means a lot which backs upon a limited access highway, a physical barrier, or another type of land use and to which access from the rear is usually prohibited.

Lot depth means the average horizontal distance between the front and the rear lot lines.

Lot of record means a lot which is part of a subdivision, a plat of which has been recorded in the office of the register of deeds of the county prior to July 17, 1998, or a lot described by metes and bounds, the description of which has been so recorded prior to July 17, 1998.

Lot width means the horizontal distance between side lot lines at the front building setback line.

Manager means the duly employed village manager or such individual as shall be designated by the village manager to conduct such duties and responsibilities as are designated in this chapter to the village manager.

Official maps or plans means any maps or plans officially adopted by the village council as a guide for the development of the village consisting of maps, charts, and texts.

Parcel means a tract or plot of land.

Planning board means the duly appointed planning board of the village, referred to in this chapter as the planning board.

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

Private driveway means a roadway serving two or fewer lots, building sites or other division of land and not intended to be public ingress or egress.

Private street means any street failing to meet the minimum design and construction standards set forth in section 26-124(f) of this chapter and which may not thereof be accepted for dedication by the village.

Public street means any street meeting the minimum design and construction standards set forth in section 26-124(f) of this chapter.

Public utility and maintenance vehicle means any vehicle operated by the village or any public utility used for purposes of installation, maintenance, repair or improvement of any electrical or telephone transmission line, any water or sewer main or other related equipment, any gas pipe main or other similar public utility.

Right-of-way means any parcel of land designated as a public or private street or dedicated as an easement for electric or utility transmission lines, oil or gas pipelines, water main, sanitary or storm sewer main, shade tree, or any other special use described on any proposed subdivision plat.

Setback means the required distance in feet from the building setback line to the property line or street rights-of-way.

Street means a dedicated and accepted public right-of-way for vehicular traffic:

(1) Primary thoroughfare means streets as defined in section 26-124(e)(1) of this chapter.

(2) Secondary street means streets as defined in section 26-124(e)(1) of this chapter.

(3) Cul-de-sac means a short street having but one end open to traffic, the other end of which is permanently terminated by a vehicular turnaround.

Structure means anything constructed or erected, the use of which requires location on the ground or attachment to something having location on the ground.

Subdivider means any person who subdivides or develops any land deemed to be a subdivision as described in this chapter.

(Ord. No. 8A, art. II, § III, 7-17-1998)

Cross References: generally, § 1-2.

Sec. 26-9. Word interpretations.

For the purpose of this chapter, certain words shall be interpreted as follows:

(1) The term "lot" includes the term "plot", "parcel" or "tract."

(2) The term "structure" shall include the term "building."

(3) The term "used for" shall include the meaning "designed for."

(Ord. No. 8A, art. III, § I, 7-17-1998)

Sec. 26-10. General procedure for plat approval.

(a) After July 17, 1998, no subdivision plat of land within the jurisdiction of the village shall be filed for recordation until it has been submitted to and approved by the appropriate village agency or has been determined to be exempt from the approval process and until this approval or exemption is entered in writing on the face of the plat by the official designee of the approving authority. The register of deeds shall not file or record a plat or subdivision of land located within the territorial jurisdiction of the village that has not been executed in accordance with these provisions, nor shall the clerk of superior court order or direct the recording of a plat or heir division if the recording would be in conflict with this section.

(b) No parcel identifier number as referred to in G.S. 161-30 shall be assigned to any map, deed, deed of trust or other instrument affecting real property if the instrument subdivides land and creates a subdivision of land in violation of this chapter.

(c) No subdivider shall initiate the construction of any subdivision improvements, including but not limited to streets, drainage works, utilities or other improvement, nor shall any subdivider sell or contract to sell or otherwise transfer title to any property, the sale of which would constitute a subdivision under this chapter prior to approval of the preliminary plat pursuant to this chapter.

(Ord. No. 8A, art. III, § II, 7-17-1998)

Sec. 26-11. Penalties for violation of chapter.

(a) After July 17, 1998, any person who, being the owner or agent of land located within the territorial jurisdiction of this chapter thereafter subdivides his land in violation of this chapter or transfers or sells land by reference to, exhibition of, or by any other use of a plat showing a subdivision of the land before the plat has been properly approved under this chapter and recorded in the office of the county register of deeds, shall be guilty of a class I misdemeanor punishable by a fine not to exceed \$500.00. The description by metes and bounds, in the instrument of transfer, or other document used in the process of selling or transferring land shall not exempt the transaction from this penalty. The village, by and through the village council, may bring an action for injunction of any illegal subdivision, transfer, conveyance or sale of land, and for an order requiring the offering party to comply with this chapter.

(b) Building permits required pursuant to G.S. 160A-471 may be denied for lots that have been illegally subdivided. In addition to other remedies, the village may institute an appropriate action or proceedings to prevent the unlawful subdivision of land, to restrain, correct, or abate the violation, or to prevent any illegal act or conduct.

(Ord. No. 8A, art. III, § III, 7-17-1998; Ord. No. 2006-1002, 10-26-2006)

Sec. 26-12. Effect of plat approval on dedications.

The approval of a plat pursuant to this chapter shall not be deemed to constitute or effect the acceptance by the village of the dedication of any street or other land areas, public utility line, or other public facility or right-of-way as shown on the plat nor shall approval obligate the village to maintenance thereof. However, the village council may by resolution accept any dedication made to the public of lands or facilities that are located within its subdivision regulation jurisdiction. Acceptance of dedication of lands or facilities located within the subdivision regulation jurisdiction but outside the corporate limits of the village shall not place on the village any duty to open, operate, repair, or maintain any street, utility line, or other land or facility and the city shall in no event be held to answer in civil action or proceeding for failure to open, repair, or maintain any street located outside its corporate limits. Acceptance of the dedication or maintenance of any such facility shall require a resolution of acceptance and/or maintenance by the village council.

(Ord. No. 8A, art. III, § IV, 7-17-1998)

State Law References: approval, G.S. 160A-374.

Sec. 26-13. Amendments to chapter.

The village council may from time to time amend the terms of this chapter, but no amendment shall become effective unless it shall have been proposed by or shall have been submitted to the planning board for review and recommendation. The planning board shall have 60 days within which to make a recommendation. If the planning board fails to make a recommendation within the specified time, it shall be deemed to have recommended approval for the amendment.

(Ord. No. 8A, art. III, § VI, 7-17-1998)

Sec. 26-14. Exceptions to terms of chapter.

(a) *Generally.* Where, because of severe topographical or other conditions peculiar to the site, strict adherence to the provisions of this chapter would cause an unnecessary hardship, the village council may, on recommendation of the planning board, authorize an exception to the terms of this chapter only to the extent that is in the best interest of the village and not to an extent which would violate the intent of this chapter. The village council shall not approve exceptions unless it shall make findings based upon the evidence presented to it in each specific case that:

(1) The granting of the exception will not be detrimental to the public safety, or health, or be injurious to other property;

(2) The conditions upon which the request for exception is sought are unique to the parcel and are not applicable generally to other property;

(3) Because of particular physical surroundings, shape or topographical conditions of the specific property involved, a particular hardship to the owner would result, as distinguished from a mere inconvenience, if the strict adherence to these regulations is enforced.

(b) *Conditions.* In approving exceptions, the village council may require such conditions as shall, in its judgement, secure substantially the objectives of the standards or requirements of this chapter.

(c) *Procedures.* A petition for any such exception shall be submitted in writing by the subdivider to village manager for review. The petition shall state fully the grounds for the application and all the facts relied upon by the petitioner. The petition shall then be presented to the planning board for review. Upon review, the planning board shall provide a recommendation as to whether the exception is or is not justified, and for what reason, and if justified, under what terms and conditions. The petition will then be presented to the village council, along with planning board recommendations for a final

decision. No preliminary or final plat shall be approved until all questions of exception of this chapter have been resolved.

(d) *Time applicability of modifications.* Any exception granted under the terms of this chapter shall expire 24 months from the date on which the exception was granted, in the event the plat has not been recorded.

(Ord. No. 8A, art. III, § VII, 7-17-1998)

Secs. 26-15--26-50. Reserved.

ARTICLE II. PLAT APPROVAL GENERALLY*

* **State Law References:** for plat approval, G.S. 160A-373.

Sec. 26-51. Generally.

(a) The following sections are an outline of the procedure for obtaining approval of the subdivision of land within the territorial jurisdiction of this chapter. The procedure for review and approval of a subdivision plat consists of two separate steps. However, informal consultation with the village manager for advice and assistance and preparation of a sketch plan is recommended prior to the submission of the preliminary plat. The first step is the preparation and submission to the planning board, and then to the village council a preliminary plat of the proposed subdivision. The second step is the preparation and submission to the village manager of a final plat together with required certificates and assurances. The final plat is the instrument recorded in the office of the register of deeds when duly approved pursuant to the terms of this chapter.

(b) Any subdivider wishing to subdivide any tract shall submit a preliminary plat of such proposed subdivision for approval. The following procedures shall dictate the process of approval of a subdivision in the jurisdiction of the village.

(Ord. No. 8A, art. IV, § I, 7-17-1998)

Sec. 26-52. Filing fees.

Filing fees for subdivisions shall be as set forth by the village council in their approved fee schedule and shall be modified from time to time, the modification of which shall not constitute an amendment to this chapter requiring review by the planning board. Filing fees shall be payable to the village upon initial submission of the preliminary plat to the manager by the subdivider.

(Ord. No. 8A, art. IV, § II, 7-17-1998)

Sec. 26-53. Procedures for securing approval of subdivisions.

(a) *Sketch plan.*

(1) *Submission.* Prior to the filing of a preliminary plat, a sketch plan may be submitted to the village manager. The purpose of the sketch plan is to enable the staff to assist the subdivider prior to extensive site planning and engineering work necessary for the preparation of a preliminary plat and final plat as required in this chapter.

(2) *Conference.* For the purpose of informal and confidential review and discussion, a conference may be held between the subdivider or his agent, and appropriate village staff. At the request of the staff, a field trip to the subject property may be planned with representatives of the subdivider present.

(3) *Review.* Following the conference, based on the information on the submitted sketch plan, the conferring officials may, as promptly as possible, advise the subdivider of the extent to which the proposed subdivision conforms to the applicable requirements of this chapter and may further suggest any modifications of the plan which are deemed advisable or necessary to secure compliance.

(b) *Preliminary plat submission.*

(1) *Submission.* The subdivider shall prepare a preliminary plat and submit it to the manager with the application fee and all required supplementary material. Ten copies of the preliminary plat and required supplemental material shall be submitted to the manager not less than 21 days prior to the next meeting of the planning board. The preliminary plat shall contain all information as set forth in section 26-124 of this chapter.

(2) *Review procedure.*

a. *Generally.* One copy of the preliminary plat may be submitted to the following people/agencies as determined by the village manager: village manager, village engineer, fire chief, building inspector, water and sewer utilities, affected electric and telephone utility, and other applicable review agencies. These agencies are to report facts, conclusions, and recommendations to the village manager as soon as possible, but not later than 14 days after submittal of the preliminary plat. The village manager will also review the preliminary plat for compliance with the terms of this chapter.

By letter filed with the village manager, an applicant shall identify an official agent or agents in order to file a proposal prior to such proposal being accepted to begin the timing and review process pursuant to this chapter. This official agent so identified shall have full authority over representation of the proposal including authority to agree to and make any changes determined during the course of review.

b. *Technical review.* Fourteen days prior to the planning board meeting, the village manager may call and conduct a technical review committee meeting. Attendance of the subdivider/agent is mandatory. Notice of the meeting by first class mail shall be given to the subdivider or the designated agent. Representatives of the above referenced review agencies will also be invited to attend to offer comments on the subdivision proposal. Presence and participation of the official agent is mandatory. If the subdivider or the official agent does not attend the review session, no discussion of the proposal will be allowed, and it is automatically rescheduled for the next monthly review session. At this meeting, the village manager will review the subdivision proposal to check for compliance with all applicable plat requirements and regulations set out in this chapter.

c. *Planning board approval.* The manager shall submit the preliminary plat proposal to the next regularly scheduled meeting of the planning board occurring more than 28 days after the submission of the preliminary plat to the manager. The subdivider shall submit ten copies of the proposal to the planning board, including any necessary revisions, not less than seven days prior to the regularly scheduled meeting. The manager may report to the planning board as to the compliance of the preliminary plat to the requirements of this chapter and shall make any recommendations with regard thereto that the manager deems relevant to the preliminary plat. The planning board shall consider the preliminary plat in open session and shall require the attendance of the subdivider or his agent. Notice of the meeting by first class mail shall be given to the subdivider or designated agent. Failure of the subdivider or agent to attend the planning board meeting at which such preliminary plat is considered shall result in the deferral of any discussion or consideration thereof and the automatic rescheduling of consideration of such plat to the next regularly scheduled meeting of the planning board. If the subdivider or his agent fails to attend two consecutive regularly scheduled meetings of the planning board at which such preliminary plat is scheduled for consideration, the proposal shall be deemed withdrawn by the subdivider. At its meeting the planning board shall review the preliminary plat proposal and all other pertinent material, shall hear from the official agent, and shall determine whether the proposal meets the policy, purposes and standards established by this chapter. The planning board then shall recommend to the village council approval, conditional approval, deferral, or denial of the subdivision proposal.

d. *Village council approval.* The planning board shall submit its findings and recommendations to the village council at their next regularly scheduled meeting. Upon recommendation from the planning board, the plat shall be submitted to the village council. The subdivider shall submit ten copies of the proposal to village staff for distribution to the council no less than ten days prior to the village council meeting. The village council may approve, reject, defer or grant conditional approval of the proposal.

(c) *Subdivision final approval.*

(1) *Compliance with improvement requirements.* Upon approval of the preliminary plat by the village council, the subdivider may proceed with the preparation of the final plat, and installation of or arrangement for required improvements in accordance with the

approved preliminary plat and the requirements of this chapter. Prior to approval of a final plat, the subdivider shall have installed the improvements specified in this chapter or guarantee their installation as provided in this chapter. No final plat will be accepted for approval unless the village manager acknowledges compliance with the improvement or guaranteed standards of this chapter. No final plat will be approved by the village manager until and unless the subdivider shall have completed construction of the subdivision improvements or posted the cash or equivalent security or surety in accord with the requirements set forth in sections 26-201 and 26-202.

(2) *Partial development.* If the preliminary plat is approved with designated phases, the final plat may constitute that portion of the preliminary plat which the subdivider proposes to record and develop at that time. Such portion shall conform to all requirements of this chapter including installation of required improvements. The face of the plat shall also contain certifications, all to be executed as required in section 26-91 et seq.

(3) *Signature for recordation.* Once the final plat has been approved by the village manager, he shall sign it in the name of the village council, as its agent, for recordation. The village manager has the authority to require a final plat to come before the village council in a regular meeting, for approval for recordation.

(4) *Minor corrections.* In the event of changes between the approved preliminary plat and the final plat submitted to the manager for approval, the manager shall have the authority to approve such final plat only in those instances where the discrepancy between the approved preliminary plat and the submitted final plat shall be in order to correct typographical errors or other revisions to the preliminary plat not affecting compliance with any of the substantive features of the subdivision. In any circumstance, the manager shall have the authority to submit any revised final plat to the village council for approval of revisions.

(d) *Preliminary plat approval standing in time.*

(1) Approval of any preliminary plat shall be valid for a period of 24 months from and after the date of approval thereof. Within 24 months of the date of approval of any preliminary plat, the subdivider shall install all required subdivision improvements or make any provisions for guarantee of the installation thereof pursuant to section 26-91 et seq. and thereafter may submit a final plat for approval by the manager. Failure of the subdivider to install subdivision improvements or provide and post the necessary guarantees in lieu thereof and to provide to the manager a final plat for approval or to record such approved final plat within such 24-month period shall void the approval of the preliminary plat. Any subsequently proposed subdivision of such property shall be approved only upon conformity with the terms and conditions of this chapter.

(2) For any subdivision which has received approval of the preliminary plat and which discloses on its face that the subdivision is to be approved and recorded in sections or phases, and where the plat for one such section or phase shall receive final approval

and be recorded within 24 months of the date of preliminary approval thereof, the subdivider shall automatically have an additional 18 months from and after the expiration of 24 months from the date of approval of the preliminary plat in which to complete subdivision improvements for all sections or phases thereof or post the appropriate bond in lieu thereof and to submit to the manager a final plat of all other sections or phases thereof and to record the same. Any portion of the subdivision which had received approval of the preliminary plat but the final plat to which is not approved and recorded within such succeeding 18-month period shall have such approval as to that portion of the subdivision voided and any future subdivision thereof shall be approved only upon conformity with the terms and conditions of this chapter.

(3) No plat which has received preliminary approval shall be submitted to the manager for final approval in phases or sections other than preliminary plats which show plainly on the face thereof that the plat is to be submitted for final approval in phases or sections.

(Ord. No. 8A, art. IV, § III, 7-17-1998; Ord. No. 2001-016, 8-25-2001)

Secs. 26-54--26-90. Reserved.

ARTICLE III. PLAT REQUIREMENTS

Sec. 26-91. Generally.

(a) The preliminary and final plat of a proposed subdivision shall be clearly and legibly drawn to an engineering scale not smaller than one inch equals to 100 feet. If the preliminary plat requires more than one sheet, a key diagram showing relative location of the several sections shall be drawn on each sheet.

(b) The preliminary and final plats and any attachments shall depict or contain the information indicated in the following table. An "X" indicates that the information is required.

| <i>Information</i> | <i>Preliminary</i> | <i>Final</i> |
|--|--------------------|--------------|
| TITLE BLOCK CONTAINING: | | |
| Property designation | X | X |
| Name of owner/subdivider | X | X |
| Location including township, county and state | X | X |

| | | |
|---|---|---|
| Date survey was conducted and plat prepared; Date of any revisions | X | X |
| Scale of drawing in feet per inch listed in words or figures | X | X |
| Bar graph | X | X |
| Name, address, registration no., and seal of registered land surveyor/professional engineer | X | X |
| Vicinity map showing the relationship between the proposed subdivision and surrounding area | X | X |
| Names, address, and phone numbers of all owners, registered land surveyors, land planners, landscape architects, and professional engineers | X | X |
| North arrow and orientation | X | X |
| Boundaries of the tract or portion thereof to be subdivided, distinctly and accurately represented with all bearings and distances shown | X | X |
| Names of owners of the adjoining properties | X | X |
| Names of any adjoining subdivisions of record or proposed and under review | X | |
| Minimum building setback lines | X | X |
| Zoning classifications of the tract to be subdivided and adjoining properties | X | |

| | | |
|--|---|---|
| Existing property lines on the tract to be subdivided and on adjoining properties | X | X |
| Existing buildings or other structures, water courses, bridges, culverts, storm drains, both on the land to be subdivided and land immediately adjoining | X | |
| Proposed lot lines, lot and block numbers and approximate dimensions | X | X |
| The lots numbered consecutively throughout the subdivision | X | X |
| Wooded areas, marshes, swamps, ponds or lakes, streams or stream bed and any other natural features affecting the site | X | |
| Exact location of the flood hazard and floodway and floodway fringe areas from the community's FIRM or other FEMA maps | X | X |
| STREET INFORMATION: | | |
| Proposed streets | X | X |
| Existing and platted streets on adjoining properties and in the proposed subdivision | X | X |
| Rights-of-way, location and dimension | X | X |
| Pavement widths | X | X |
| Approximate grades | X | X |
| Design engineering data for all corners and curves | X | X |

| | | |
|-------------------------------|---|---|
| Typical street cross sections | X | X |
| Street names | X | X |
| Street maintenance agreement | X | X |

LOCATIONS AND DIMENSIONS OF ALL:

| | | |
|---|---|---|
| Utility and other easements | X | X |
| Buffers | X | X |
| Pedestrian or bicycle paths | X | X |
| Recreation areas and open space with specific type indicated | X | X |
| Areas to be dedicated to or reserved for public use | X | X |
| Commercial areas (if applicable) | X | |
| Future ownership (dedication or reservation for public use to governmental body, for owners to duly constituted homeowners' association, or for tenants remaining in subdivider's ownership) of recreation and open space lands | X | |

(c) The following supplemental information shall be submitted to the village manager:

| <i>Information</i> | <i>Preliminary</i> | <i>Final</i> |
|--------------------|--------------------|--------------|
|--------------------|--------------------|--------------|

PLANS FOR UTILITY LAYOUTS INCLUDING: (PRELIMINARY PLANS SHALL INCLUDE SCHEMATIC DRAWINGS)

| | | |
|-----------------------------------|---|--|
| Sanitary sewers | | |
| Storm sewers | X | |
| Other drainage facilities, if any | X | |

| | | |
|---|---|---|
| Water distribution lines | X | |
| Telephone lines | X | |
| Electric lines | X | |
| Water systems illustrating connections to existing systems, showing lines sizes, the location of fire hydrants, blowoffs, manholes, force mains and gate valves | X | |
| Plans for individual water supply and sewage disposal systems, if any | X | |
| Profiles based upon mean sea level datum for sanitary sewers and storm sewers | X | |
| SITE CALCULATIONS INCLUDING: | | |
| Acreage in total tract to be subdivided | X | |
| Acreage in parks and recreation areas and other nonresidential uses | X | |
| Total number of lots created | X | |
| Acreage in the smallest lot in the subdivision | X | |
| Linear feet in streets | X | X |
| Sufficient engineering data to determine readily and reproduce on the ground every straight or curved line, street line, lot line, right-of-way line, easement line, and setback line, including dimensions, bearings, or deflection angles, radii, central | | X |

angles, and tangent distance for the center line of the curved property lines that are not the boundary line of curved streets. All dimensions shall be measured to the nearest one-tenth of a foot and all angles to the nearest minute

Accurate locations and descriptions of all monuments, markers, and control points X

Copy of any proposed deed restrictions or similar covenants. Such restrictions are mandatory when private streets and recreation areas are established X

Copy of the erosion control plan submitted to the appropriate authority, if such a plan is required X

Site topo one-foot intervals X

Evidence that all required state/federal permit applications shall have been submitted to appropriate authorities X

404 Wetland delineation survey X

(Ord. No. 8A, art. V, § I, 7-17-1998)

Sec. 26-92. Other requirements.

(a) *Generally.*

(1) The final plat shall meet the requirements of G.S. 47-30 or successor thereto. The seal and signature of a surveyor shall certify this statute is satisfied. The plat shall be clearly and legibly drawn to an appropriate scale and shall be no larger than 24 inches by 18 inches.

(2) If the final plat requires more than one sheet, a key diagram showing relative location of the several sections shall be drawn on each sheet and the individual sheets shall provide appropriate match lines.

(b) *Certification to be notarized.* The final plat shall contain the following certification, which shall be completed by the registered land surveyor or engineer on whose authority the subdivision was prepared, filling in all appropriate information, and whose signature shall be acknowledged by a notary public or other official authorized to administer oaths:

(1) On the final plat:

"I, _____, certify that this map was (drawn by me) (drawn under my supervision) from (an actual survey made by me) (an actual survey made under my supervision) (deed description recorded in book _____, page _____, book _____, page _____, etc.) (other); that the error of closure as calculated by latitudes and departures is 1: _____; that the boundaries not surveyed are shown as broken lines plotted from information found in book _____, page _____; that this map was prepared in accordance with G.S. 47-30 as amended. Witness my hand and seal this _____ day of _____ A.D., 20_____.

_____, surveyor (or engineer).

(2) Any final plat which shall include the presence of private streets thereon shall further contain the notice with regard to the existence of private streets as set forth in section 26-124(j).

(Ord. No. 8A, art. V, § II, 7-17-1998)

Secs. 26-93--26-120. Reserved.

ARTICLE IV. MINIMUM DESIGN STANDARDS

Sec. 26-121. Generally.

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

(Ord. No. 8A, art. VI, § I, 7-17-1998)

Sec. 26-122. Name duplication.

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

(Ord. No. 8A, art. VI, § II, 7-17-1998)

Sec. 26-123. Lots.

The orientation, size, width, depth, and other standards of design for lots in a proposed subdivision must comply in all respects with the requirements of chapter 32, pertaining to zoning for the district in which the subdivision is located and any other specifically adopted plans.

(Ord. No. 8A, art. VI, § III, 7-17-1998)

Sec. 26-124. Streets.

(a) *Generally.* The arrangement, character, width, grade, and location of all streets shall provide for the most advantageous development of the entire neighboring area, and shall be considered in relation to existing and planned streets, to topographical conditions, to public convenience and safety, and in appropriate relation to the proposed uses of the land to be served by such streets. Standards that apply to streets are as follows in subsection (b) through (l).

(b) *Relationship of proposed streets to adjoining streets.* The proposed street system shall be extended in alignment with existing streets unless otherwise approved by the village council.

(c) *Street names.* Proposed streets, which are proposed to be in alignment with others already existing and named, shall bear the name of the existing streets. Other street names shall be assigned by the subdivider subject to the approval of the village manager. Names of streets which duplicate or are phonetically similar with the names of existing streets shall not be approved.

(d) *Access to public streets.* Every lot shall have either direct or indirect access to a public street. A lot has direct access to a public street if the lot abuts such a street for at least 30 feet. A lot has indirect access if it is abutting a public street for less than 30 feet or has access to a public street only by means of a private street. All private streets shall be designed so as to afford, for emergency vehicles as well as public utility and maintenance vehicles, ingress and egress over such street to each lot with indirect access.

(e) *Intended use of streets.* Street widths shall be as following:

(1) *Secondary streets.* Streets leading into and within subdivisions, whether public or private, shall be provided with a right-of-way. Every secondary street which connects a subdivision to a public street serves as a means of ingress and egress and shall have a

minimum right-of-way width of 30 feet. However, the village council may require wider rights-of-way in circumstances, where, due to design, topography or other factors peculiar to the land to be subdivided, the minimum width set forth herein is deemed to be inadequate to permit such street to function safely as a secondary street.

(2) *Primary thorough fares.* When a street within a subdivision serves as a collector for 100 lots or more, or is capable of extension onto abutting lands with that capability, it shall be classified as a primary thoroughfare and there shall be a minimum right-of-way of 40 feet for single lane primary thoroughfares and bifurcated primary thoroughfares. If a street connects two primary thoroughfares, it shall be classified as primary thoroughfare, regardless of the number of lots it serves. Other internal secondary streets in a subdivision may be provided with a right-of-way width of 30 feet. If a subdivision connects to an existing primary thoroughfare, and contiguous alignment would warrant the extension of such thoroughfare, the village council may allow easements on both sides of the right-of-way to compose the required width.

(f) *Minimum design and construction standards.* It is the intent of this chapter that all streets, within a subdivision or not, be designed and constructed to minimum standards including drainage, grading, subbase, base and paving. Any new subdivision road shall be paved and constructed according to the minimum standards of design and construction according to this chapter. For every public street, all of the following minimum design and construction standards and criteria for subdivisions shall apply:

(1) *Design criteria by road classification.*

a. The following list classifies road types into three categories and dictates the minimum design standards for each classification:

| | <i>Classification</i> | <i>Type</i> | | |
|--------------------|-----------------------|-----------------------------------|--------------|--|
| | A | Secondary streets and culs-de-sac | | |
| | B | Primary single lane thoroughfares | | |
| | C | Primary bifurcated thoroughfares | | |
| <i>Description</i> | <i>A</i> | <i>B</i> | <i>C</i> | |
| Right-of-way width | 30 feet | 40 feet | 40 feet | |
| Clearing width | 16 feet | 18 feet | 16 feet/lane | |

| | | | |
|--|-----------|-----------|--------------|
| Clearing height at pavement | 12 feet | 12 feet | 12 feet |
| Base course width | 14 feet | 16 feet | 12 feet/lane |
| Pavement width | 12 feet | 14 feet | 10 feet/lane |
| Minimum Crown | 1/4"/foot | 1/4"/foot | 1/4"/foot |
| Super elevation rate | N/A | 1/4"/foot | 1/4"/foot |
| Minimum elevation | 6' MSL | 6' MSL | 6' MSL |
| Minimum sight distance on curves and intersections | 50 feet | 75 feet | 50 feet |
| Minimum turn-around radius from C/L pavement | 24 feet | N/A | N/A |

b. Streets shall be laid out so as to intersect as nearly as possible at right angles (90 degrees).

c. New street intersections shall, whenever practical, coincide in centerline alignment with any existing or approved preliminary plat or final plat intersections on the opposite side of the street. Innovations in design are encouraged through such means as curvilinear streets, culs-de-sac, courts, and circles.

d. At all intersections, there shall be either an unobstructed 25-foot radius or a 25-foot diagonal cutoff. Minimum sight distance along intersecting roads shall be 50 feet. Crossovers will be 1 1/2 times as wide as its connecting roads, with a minimum turning radius of 22 feet.

e. Add two feet to pavement width if stand up roll-out curbing is used. If curbing is flush with pavement surface, then curbing shall at least be one foot wide on each side to allow two additional feet of barrier-free driving surface area.

(2) *Pavement design.* All streets shall meet the following minimum requirements for base and pavement surface:

Base Course

Pavement Surface

| | |
|-------------------------|---|
| 6" ABC stone, compacted | 1.5" SA or I-2 asphalt or BST |
| 4" asphalt Base | 1.5" SA or I-2 asphalt or BST |
| ABC | Aggregated base course, no. 7 stone |
| SA | Bituminous concrete surface course, type F-1 (sand asphalt) |
| I-2 | Bituminous concrete surface course, type I-2 |
| BST | Bituminous surface treatment (3 courses) |

*Geosynthetic material, when used under four inches of compacted ABC stone base, shall be considered the equivalent of six inches compacted ABC stone alone.

Any design or materials that may vary from any street design or materials listed in subsection (f)(2) of this section shall have performance characteristics equal to or greater than design and materials required in subsection (f)(2) of this section and the use of the such design and/or materials shall be approved by the manager only prior to actual installation of the street and then only upon a showing by the subdivider, by clear, cogent and convincing evidence, to the manager that such proposed substitute design or materials meets or exceed performance characteristics of the design or materials required by and similarly meet all requirements set forth in the then current edition of North Carolina Standard Specifications for Roads and Structures published by the state department of transportation.

(3) *Drainage criteria.* All subdivisions must meet all state, federal, and village stormwater and drainage requirements.

(4) *Utility easements.*

a. For public streets, the construction and maintenance of all utilities, cable, and telephone lines shall be located in the street rights-of-way between the paved roadway and the street right-of-way line, except gravity collection sewer lines may be located under the pavement within the right-of-way. Where topography or subdivision design considerations make such location impractical and utilities must be located outside the right-of-way, then a perpetual unobstructed easement shall be provided with access to the street right-of-way. The approving board shall determine where these exceptions are necessary.

b. In addition, manholes should be designed and located in such a manner that will cause the least interference with roadway users, other utilities and future highway expansion. Every effort should be made to avoid their location in wheel paths or at street intersections. All plans, specifications, design computations, and installations of manholes shall meet the state department of transportation standards.

c. Easements shall be provided for each drainage path, and shall be a width adequate to accommodate any such installation and maintenance.

d. An easement for utilities which cannot be accommodated within the street easement shall be provided to ensure that there can be service to each lot by electric, telephone, water and sewer utilities. When such easements are required they shall provide ten feet on each side of the lot line, for a total of 20 feet.

(g) *Water and sewer systems.*

(1) Each lot shall be capable of service with a water system and a sewage disposal system meeting standards and requirements of the state.

(2) When a subdivision is within 1,000 feet of a water or sewer system, and the system has the capacity to provide the necessary water and sewer, the subdivider shall connect to such system and shall design a water distribution system for the subdivision meeting any requirements of state and village ordinances.

(h) *Platting to ownership boundaries; reserve strips.* All subdivisions must extend to outer property lines of the parcel of property to be subdivided. Survey descriptions must conform to existing survey descriptions of record to ensure there is no land area remaining between the lots and streets and the property boundary.

(i) *Observance of federal and state requirements.* The subdivider shall exercise care in determining that all federal and state regulatory statutes and administrative code requirements relating to lands and waters are satisfied.

(j) *Private streets.*

(1) The road classification utilized (A, B, C) for public streets shall be the same as private. The following requirements should apply to all private streets:

| <i>Description</i> | <i>A (feet)</i> | <i>B (feet)</i> | <i>C (feet)</i> |
|--------------------|-----------------|-----------------|-----------------|
| Right-of-way width | 20 | 30 | 40 |
| Clearing width | 16 | 16 | 16 |
| Base course width | 12 | 14 | 12 |

Clearing height 12

12

12

(2) The village council may allow clearing widths in some cases to be less, due to specimen tree preservation. Due to the site specific concerns of the island, every effort should be made to blend roadways with the natural contours of the island.

(3) Streets shall be laid out so as to intersect as nearly as possible at right angles (90 degrees).

(4) New street intersections shall, whenever practical, coincide in centerline alignment with any existing or approved preliminary plat or final plat intersections on the opposite side of the street. Innovations in design are encouraged through such means as curvilinear streets, culs-de-sac, courts, and circles.

(5) The village council in some cases may require wider roads or clearing area to promote public safety and the interest of the public. Private streets must be indicated on plats as private, and maintenance and upkeep shall be the responsibility of the property owner's association. For private streets, the following statement shall be printed in bold on the plat of record:

NOTE: THE STREETS DESIGNATED HEREON AS "PRIVATE" ARE NOT OR WILL NOT BE CONSTRUCTED TO MINIMUM STANDARDS FOR DEDICATION TO AND ACCEPTANCE BY THE VILLAGE OF BALD HEAD ISLAND AND THE VILLAGE SHALL NOT BE RESPONSIBLE, NOW OR AT ANY TIME IN THE FUTURE, FOR MAINTENANCE OF ANY STREET, PAVEMENT, UTILITY OR OTHER IMPROVEMENTS LOCATED WITHIN THE RIGHTS-OF-WAY OF ANY PRIVATE STREET.

(k) *Street acceptance standards.* In order for a street to be accepted into the village street system, the following criteria shall be met:

(1) The street must be public as defined in this chapter and therefore must meet the minimum design and construction standards set forth in subsection (f) of this section ("construction standards").

(2) The individual(s) or entity dedicating the street ("dedicator") must dedicate the entire street right-of-way to the village free of charge.

(3) The dedicator shall provide a sealed North Carolina engineer's written certificate stating that the street meets the construction standards and has no condition or deterioration which suggests any existing or imminent failure to comply with the construction standards. In addition, the engineer will evaluate the street being proposed, assess for drainage issues, and submit a sealed certificate that the street has adequate drainage for use as a public street. The cost of the engineer's certification and drainage assessment shall be the responsibility of the dedicator.

(4) Dedicator shall submit a letter stating that there has been no flooding or drainage issues within the past 12 months on the street being proposed for dedication.

The village has the right to go onto and inspect the street and to obtain core samples for independent testing and analysis prior to acceptance of the street. The village has the right to refuse acceptance of any street offered for dedication.

(l) *Timber bridge construction standards.*

(1) The village shall review and approve all plans and specifications for timber bridges proposed to be constructed as a part of any public or private street. Timber bridges, whether constructed as a part of public or private streets, shall adhere to public and private street standards for right-of-way widths, unobstructed driveable area as determined by required base width, clearing height, minimum turnaround radius, and minimum sight distances in accordance with article IV of this chapter.

(2) The proposed construction shall comply with all village ordinances, state building codes, village transportation plans, and all applicable CAMA requirements. Further, timber bridges must be designed and constructed to the American Association of State Highway and Transportation Officials (AASHTO) standard specifications for bridges and structures.

(3) The village transportation engineer shall review and approve design and construction plans for compliance with this section, and to address other safety concerns as needed, prior to construction. Such improvements shall be completed, or guarantees furnished in accordance in lieu thereof with this chapter.

(Ord. No. 8A, art. VI, § I, 7-17-1998; Ord. of 4-15-2000, § I; Ord. No. 2007-0601, 6-15-2007)

Cross References: sidewalks and other public places, ch. 24.

Secs. 26-125--26-160. Reserved.

ARTICLE V. REQUIRED IMPROVEMENTS

Sec. 26-161. Permanent monuments.

(a) Permanent monuments shall be placed at the point of intersection of the tangents or curves when such point lies completely within the right-of-way of the proposed street. Otherwise, monuments shall be placed on the centerline at the points of tangency of all curved areas.

(b) All lot corners, other than those marked by permanent monuments, shall be marked by metal or concrete stakes.

(Ord. No. 8A, art. VII, § I, 7-17-1998)

Sec. 26-162. Street name signs.

(a) The subdivider shall be responsible for erecting one street name sign at each intersection in a form acceptable to the village manager. The subdivider is also responsible for erecting stop and yield signs where needed in the subdivision based on approval of the village manager. Stop signs shall be erected at any intersection directing traffic on the inferior road to stop and yield to vehicles traveling on the dominant road.

(b) Street name signs shall be consistent in size, height, appearance, and manner of erection of those already established on the island.

(c) If street name signs are erected after any utility may have been installed in a right-of-way, the subdivider is to coordinate with utility representatives, public and private, to avoid damages to buried cables, lines or pipes, and satisfy any requirement of such companies and/or governmental entities.

(Ord. No. 8A, art. VII, § II, 7-17-1998)

Sec. 26-163. Streets.

(a) For every public and private street, all of the minimum design and construction standards as defined in article IV of this chapter shall be met. On the preliminary and final plats, there shall be clear language as to whether specifically named streets shall be public or private.

(b) Where there are to be private streets, the subdivider must file recorded information relating to the formation of an entity for ownership, operation and maintenance, including all storm drainage related to and necessary for the street. Full disclosure of such information shall be disclosed in regard to any sales or leases of lands covered by the plat. In the case of private streets, a street disclosure statement as defined in section 26-124(j) of this chapter shall be displayed in bold on the face of the final recording plat.

(Ord. No. 8A, art. VII, § III, 7-17-1998)

Cross References: sidewalks and other public places, ch. 24.

Sec. 26-164. Construction procedures.

(a) No construction or installation of improvements shall commence in a proposed subdivision until the preliminary plat has been approved, and the appropriate authorities

have approved all plans and specifications. In addition, no lot or tract may be cleared, excavated, graded or filled until the building inspector has issued a landscape permit whether or not such activity is in connection with proposed construction.

(b) No building, zoning or other permits shall be issued for erection of a structure in a new subdivision until all the requirements of this chapter have been met. The subdivider, prior to commencing any work within the subdivision, shall make arrangements with the manager to provide for adequate inspection. The manager shall inspect and approve all completed work prior to release of the sureties or return of cash or equivalent security in lieu of a surety.

(Ord. No. 8A, art. VII, § IV, 7-17-1998)

Secs. 26-165--26-200. Reserved.

ARTICLE VI. FINAL PLAT APPROVAL

Sec. 26-201. Preparation of final plat and installation of improvements.

Upon approval of the preliminary subdivision plat by the village council, the subdivider may proceed with the preparation of the final plat, and the installation of or arrangement for required improvements in accordance with the approved preliminary plat and the requirements of this chapter. Prior to approval of a final plat, the subdivider shall have installed the improvements specified in this chapter or guaranteed their installation as provided in this chapter. No final plat shall be approved by the manager until all subdivision improvements have been completed or guarantees furnished in lieu thereof in accord with this article. For any preliminary plats which indicate on their face that the subdivision will be accomplished in sections or phases, all subdivision improvements for that phase shall be completed prior to submission of the final plat for that phase to the manager for approval.

(Ord. No. 8A, art. VIII, § I, 7-17-1998)

Sec. 26-202. Improvements guarantees.

(a) *Agreement and security required.* In lieu of completion of subdivision improvements prior to final plat approval, the subdivider may execute an agreement with adequate surety or security whereby the subdivider shall commit to completion of all improvements subsequent to final plat approval. Upon execution of an agreement by the subdivider, together with posting of adequate security or sureties as required in this chapter, the final plat shall be approved by the manager if otherwise in conformity to the requirements of this chapter. In conjunction with the agreement to complete subdivision improvements, the subdivider shall either provide a surety for the completion of the improvements or post a cash or equivalent security to secure completion of the

subdivision improvements. The security or surety performance bond shall be in an amount of 1.25 times the cost of completion of all subdivision improvements as estimated by the village manager.

(1) *Surety performance bond.* The subdivider may obtain a performance bond from a surety bonding company authorized to do business in the state. The bonds shall be payable to the village and shall be in an amount equal to a minimum of 1.25 times the entire cost, as estimated by the village manager, of installing all required improvements. The duration of the bond shall be until such time as the improvements are accepted by the village.

(2) *Cash or equivalent security.* The subdivider shall deposit cash, an irrevocable letter of credit, or other instrument readily convertible into cash at face value or with the financial institution designated as an official depository of the village. The use of any instrument other than cash shall be subject to the approval of the village. The amount of deposit shall be equal to a minimum of 1.25 times the cost, as estimated by the village manager, of installing all required improvements. If cash or other instrument is deposited in escrow with a financial institution as provided above, then the subdivider shall file with the village an agreement between the financial institution, the subdivider, and the village in accordance with the following:

a. The cash or equivalent security shall be held by the financial institution in trust until release of the cash or equivalent security by the village. Such cash or equivalent security shall not be used or pledged by the subdivider in any manner, revoked, withdrawn or diverted until release of the sum by the village. Failure by the subdivider to complete all subdivision improvements pursuant to plans and specifications within the time limitations specified therefor and in conformity with this chapter shall be a default by the subdivider under its agreement. Upon notification by the manager of the subdivider's default and submission to the financial institution of an engineer's estimate of the amount needed to complete the improvements, the financial institution shall immediately pay to the village funds estimated to complete the improvements plus administrative fees up to the full balance of the cash or equivalent security. If the cash or equivalent security is in excess of the amount estimated by the engineer to complete the subdivision improvements plus administrative fees associated therewith, the financial institution shall continue to hold remaining portions of cash or equivalent security until notified by the manager that the improvements have in fact been completed. Once improvements have been completed by the village, the village may make additional demands of the financial institution for the total actual cost of completion of the improvements, together with administrative costs incurred by the village associated with default and completion of the subdivision improvements by the village. The financial institution shall thereupon pay from the cash or equivalent security all costs incurred by the village in completion thereof plus all administrative costs up to the full balance of the cash or equivalent security. Thereafter the financial institution may release to the subdivider any remaining cash or equivalent security.

(3) *Default.* If failure by the subdivider to complete all subdivision improvements pursuant to the plans therefor and pursuant to this chapter within the time frames set forth in the agreement, the manager shall notify the subdivider, the surety, the financial institution holding any security, and any other interested parties of the fact of default and the village's intent to complete all subdivision improvements. Upon such default the village shall undertake an engineer's estimate of the cost of completion of such improvements. The village may demand that the surety complete the improvements or may undertake the completion of the improvements itself. If the village shall elect to complete the improvements itself, the village may demand of the surety or the financial institution holding the cash or equivalent security an amount equal to the estimated cost of completion, together with all administrative costs, professional fees and any and all other costs anticipated to be incurred by the village in the completion of the improvements. Upon such demand the surety or the financial institution shall deliver funds in the amount of such estimated cost of completion to the village which shall then use such funds to complete the improvements; however, tender by the surety or the financial institution of estimated cost of completion to the village in an amount less than the surety's obligation or the cash or equivalent security shall not release the surety or financial institution from its obligations hereunder. If there remains any cash or equivalent security or any unused portion of the surety's bond after demand for the estimated cost of completion, the surety or financial institution shall retain such excess until completion of the improvements by the village. Upon completion of the improvements and ascertainment of the actual cost thereof, including all administrative or other costs incurred by the village in the completion of the improvements, the surety or financial institution shall tender to the village the actual costs incurred in completion of the improvements including administrative and other fees up to the maximum amount of the bond or cash or equivalent security. Upon completion of the project by the village and payment of the actual costs thereof by the surety or financial institution, the obligations of the surety or financial institution shall terminate and any cash or equivalent security held by any financial institution may be returned to the subdivider.

(4) *Release of guarantee security.* Upon successful completion of subdivision improvements by the subdivider, the village shall notify the surety or financial institution of the fact of successful completion of the improvements and the release of the subdivider from any further obligations under his agreement as well as the release of the surety or financial institution from the obligation of its bond or security agreement.

(Ord. No. 8A, art. VIII, § I(A), 7-17-1998)

Chapter 27 RESERVED

Chapter 28

TRAFFIC AND VEHICLES*

***Charter References**— Motor vehicle regulation, § 10.1 et seq.

Cross References— Junk vehicles, § 10-51 et seq.; offenses and miscellaneous provisions, ch. 16; streets, sidewalks and other public places, ch. 24.

State Law References— Motor vehicles, G. S. ch. 20; powers of local authorities, G.S. 20-169.

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ARTICLE I. IN GENERAL

Secs. 28-1. 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 or the term is specifically defined otherwise regarding a particular division or section.

Arrival and departure transportation vehicle, means and refers to any vehicle powered by internal combustion used by the owner thereof to deliver persons or property from island terminals to their destination within the village and to return the persons or property to island terminals, but only during such time that the vehicle shall be engaged in the transportation of persons or property to and from the terminal and their

destination within the village, subsequent to arrival at or immediately preceding departure from the village.

Assessment notice, means and refers to that notice advising the owner that such vehicle has caused specific damage and advising the owner of the following:

- (1) The identity of the vehicle causing specific damage;
- (2) The date of the damage;
- (3) The street damaged;
- (4) The repair costs; and
- (5) The fact that the owner is being assessed the repair costs of such specific damage.

Auxiliary power unit means a mechanical or electrical device affixed to a vehicle that is designed to be used to generate an alternative source of power for any of the vehicle's systems other than the primary propulsion engine.

Beaches means and refers to foreshore, beach strand and barrier dune system.

Bicycle means and refers to a vehicle with two wheels in tandem designed to transport, by the action of pedaling, one or more persons seated on one or more saddle seats on its frame. The term also includes a vehicle, designed to transport by the action of pedaling, which has more than two wheels where the vehicle is used on a public street, public bicycle path or other public right-of-way, but does not include a tricycle. This term refers to both electric and human-powered bicycles unless specifically stated.

Bicycle operator means and refers to a person who travels on a bicycle seated on a saddle seat from which that person is intended to and can pedal the bicycle.

Bicycle passenger means and refers to a person who travels on a bicycle in any manner except as an operator.

Chief means and refers to the chief of the department or the individual within such department designated to act on behalf of the chief.

Congestion means a situation which occurs when the volume of traffic exceeds the capacity of a street.

Construction delivery vehicle means and refers to any vehicle powered by internal combustion engine and used to transport persons or unusually heavy or bulky material or property within the village for purposes of delivering such persons, material or property to or from any site in order to facilitate in any manner the construction of new or unfurnished structures or the construction or creation of additions to previously

existing structures or to facilitate in any manner the construction of other improvements to real property, but only during such time as the vehicle shall be engaged in such purposes.

Construction equipment vehicle means and refers to any vehicle powered by internal combustion engine used in construction to lift or transport material, to grade, excavate or move earth or other material, but only so long as such vehicle is operating on the streets of the village.

Delivery, repair or maintenance vehicle means and refers to any vehicle powered by internal combustion engine and used to transport persons or unusually heavy or bulky materials or property within the village for purposes of:

(1) Delivery of such persons, property or material to or from any site in order to facilitate, in any manner, the repair or maintenance of improvements to real property or personal property located at such site; or

(2) Delivery of appliances or other personal property to or from such site.

Delivery, repair or maintenance vehicle shall also include any wrecker or other vehicle used to tow or service any disabled vehicle in order to repair such vehicle or to deliver the disabled vehicle to a site for repair.

Department means and refers to the village department of public safety or successor entity.

Electric indicates that the vehicle derives its power solely or partially from electricity.

Electric cart means and refers to any electrically-powered vehicle having three or more wheels including without limitation those vehicles commonly referred to as golf carts or electric cars. Electric skateboards are specifically excluded from this definition.

Electrically-powered vehicle means and refers to any motor vehicle used in the transportation of person or property on the streets of the village, the propulsion of which is solely derived from the use of electricity.

Emergency means a situation that poses an immediate risk to health, life, property, or environment.

Emergency vehicle means any vehicle that responds to or supports an emergency. These vehicles are operated by parts of the government, charities, non-governmental organizations, and commercial companies.

Final assessment means and refers to the amount assessed against an owner of any vehicle causing specific damage, once such assessment becomes uncontestable, which shall be either the cost of repairs contained in the assessment notice if not

contested by the owner or the cost of repairs as contained in the assessment established by the village manager after hearing.

Government vehicle means and refers to any vehicle powered by internal combustion engine which is being operated for official government business by an agent or employee of a government or agency of the United States, North Carolina, or any municipality of North Carolina.

Gross vehicle weight ("GVW") means and refers to the maximum load capacity of the vehicle suggested by the manufacturer, plus the unloaded weight of the vehicle.

Gross vehicle weight rating means the weight specified by the manufacturer as the loaded weight of a single vehicle.

Heavy-duty vehicle means a motor vehicle (excluding trailers) with a gross vehicle weight rating of 10,001 pounds or greater.

Human-powered indicates that the vehicle is solely powered by the human body.

Idling means the operation of a motor vehicle's propulsion engine while the vehicle is stationary, excluding electrically-powered vehicles.

Lawful possessor means and refers to any person lawfully entitled to possess any motor vehicle towed or impounded pursuant to this chapter, including the owner thereof or any lessee, guest, or other person entitled to operate any such motor vehicle pursuant to the express consent of the owner thereof.

Licensed driver means and refers to any individual licensed to operate a motor vehicle on the streets or highways of the state pursuant to G.S. 20-7 and shall also include those persons privileged to operate a motor vehicle on the streets or highways of the state pursuant to G.S. 20-8(1), 20-8(3), and 20-11(f) - (g), or who possesses a valid driver's license issued by another state or jurisdiction.

Low-speed vehicle means and refers to any vehicle powered by internal combustion engine, the speed of which is mechanically governed by implement or device installed thereon which prevents the speed of such vehicle from exceeding 25 miles per hour.

Military vehicle means a motor vehicle owned by the U.S. Department of Defense or United States Coast Guard.

Motor vehicle means and refers to any self-propelled power-driven vehicle, upon or by which any person or property may be transported on the streets of the village, the propulsion of which is derived from any means other than human-power. When used in Article III of this chapter, *motor vehicle* shall also refer to any vehicle designated to run upon the streets of the village and which is pulled by a self-propelled vehicle.

Officer means and refers to any duly sworn public safety officer employed or contracted by the department.

On-road vehicle means a motor vehicle that is designed for use on a street.

Other public rights-of-way means and refers to any right-of-way other than a public street or public bicycle path that is under the jurisdiction and control of the village and is designed for use and used by vehicular and/or pedestrian traffic.

Owner, when relating to a vehicle powered by internal combustion engine, means and refers to the owner of any vehicle powered by internal combustion engine as shown on the application for a permit to operate such vehicle on the streets of the village or, if none, on the registration records for such vehicle as maintained by the State Division of Motor Vehicles.

Owner, when relating to an electrically-powered vehicle, means and refers to that person holding title to or, if applicable, the person named as owner in the most recent registration with the department or the named registered lessee of any electrically-powered vehicle.

Owner's address means and refers to that mailing address of the owner of any vehicle powered by internal combustion engine causing specific damage as shown on the application for the permit to operate such vehicle on the streets of the village or, if no such application exists, the address of the owner as indicated by the registration records for such vehicle as maintained by the State Division of Motor Vehicles.

Passenger bus means any bus, including vans, which is designed to carry ten or more passengers.

Personal use means and refers to being used solely for the purpose of transportation. Vehicles used for commercial/business purposes will not be considered personal use vehicles.

Petitioner means and refers to the owner or lawful possessor of any motor vehicle towed or impounded pursuant to this chapter.

Power take off means a device used to transfer mechanical energy from a heavy-duty vehicle's propulsion to equipment that supplies mechanical, pneumatic, hydraulic, or electric power to non-vehicular mechanical, pneumatic, hydraulic, or electrically operated devices.

Protective helmet means and refers to a piece of headgear that meets or exceeds the impact standards for protective helmets set by the American National Standards Institute (ANSI), the Snell Memorial Foundation, Consumer Product Safety Commission Standards, or ASTM bicycle helmet standards, as they may be amended from time to time. A protective helmet shall be appropriately fitted and shall include use of any straps

designated to affix the helmet to the head, including chin or other straps that are snug to an appropriate fit.

Public bicycle path means and refers to a right-of-way under the jurisdiction and control of the village for use primarily by bicycles and pedestrians.

Public service vehicle means and refers to any vehicle powered by internal combustion engine which is operated by agents or employees of the village including any vehicle operated by a village public safety officer or agents thereof, so long as the vehicle is being used in its intended capacity, and any vehicle engaged in the collection or disposition of garbage, refuse or other debris or in any other activity on behalf of the village but only at such time as the vehicle is in fact engaged in such activity on behalf of the village.

Queue area means any area used by heavy-duty vehicles waiting to provide or receive services.

Repair costs means and refers to the total cost to the village to repair and return any damaged street to its condition immediately prior to the act giving rise to the specific damage, including, without limitation, all costs of labor, materials and equipment used to effect such repairs.

Restraining seat means and refers to a seat separate from the saddle seat of the operator of the bicycle that is fastened securely to the frame of the bicycle according to manufacturer's instructions and is adequately equipped to restrain the passenger in such seat as to protect such passenger from the moving parts of the bicycle. A restraining seat shall meet or exceed the standards set by the Consumer Product Safety Commission, as well as the standards set by 16 CFR 1501, 16 CFR 1500.48, 16 CFR 1500.49, and 16 CFR 1303, as they may be amended from time to time.

Scooter means and refers to a vehicle consisting of a narrow footboard mounted between two wheels tandem with an upright steering handle attached to the front wheel. This term refers to both electric and human-powered scooters unless specifically stated.

Segway means and refers to a self-balancing, non-tandem, two-wheeled device designed to transport one person with a propulsion system that limits the maximum speed of the device to 15 miles per hour or less.

Service vehicle means and refers to a sanitation truck, public safety unit and conservancy unit.

Skateboard means and refers to a flat, short, narrow board mounted on four roller-skate wheels, ridden in a standing position. This term refers to both electric and human-powered skateboards unless specifically stated.

Specific damage means and refers to any damage to the public streets and rights-of-way of the village caused by any vehicle powered by internal combustion engine and is also specifically attributable to the operation of such vehicle, but such damage shall exclude ordinary wear and tear on the streets of the village by the operation of such vehicles on such streets.

Street means and refers to any public or private right-of-way for vehicular traffic inclusive of the shoulders, rights-of-way line, unimproved portion and any improvements of any kind thereto, including any vegetation thereon.

Terminal means and refers to any point of embarkation or disembarkation to or from the village for delivery by water of vehicles, materials, or persons to the island.

Tricycle means and refers to a human-powered three-wheeled vehicle, excluding a three-wheeled electric cart. This term refers to both electric and human-powered tricycles, unless specifically stated.

Unattended motor vehicle means any motor vehicle located upon any street of the village and as to which no lawful possessor who is also a licensed driver thereof shall be immediately identifiable to any officer investigating such motor vehicle.

Unlicensed driver means and refers to an operator of an electrically-powered vehicle who is not authorized to operate a motor vehicle on the streets or highways of the state pursuant to G.S. 20-7 or privileged to operate a motor vehicle on the streets or highways of the state pursuant to G.S. 20-8(1), 20-8(3), and 20-11 (f) - (g), or who does not possess a valid driver's license issued by another state or jurisdiction.

Utility vehicle means any vehicle powered by internal combustion engine and owned or operated by any company or entity regulated by or subject to regulation by the State Public Utilities Commission or owned or operated by any cable television company holding a franchise within the village but only so long as the vehicle is being used in its intended capacity for such utility company or cable television company.

Vehicle means and refers to any device upon or by which any person or property may be transported on the streets of the village.

Vehicle powered by internal combustion engine means and refers to any motor vehicle, the propulsion of which is derived solely or partially from the combustion of fossil fuels, including but not limited to gasoline, diesel or natural gas fuels.

Vehicle width ("width") means and refers to the maximum dimension of the vehicle parallel to the vehicle axles.

Work day means and refers to sunrise to sunset, Monday through Friday, excepting the following observed holidays: New Years' Day, Memorial Day, Independence Day, Thanksgiving Day and Christmas Day.

(Ord. No. 47, § 1, 6-29-1996; Ord. No. 19A, 3-20-1998; Ord. No. 61, §§ 1, 2, 3-20-1999; Ord. of 2-22-2000, § 2; Ord. No. 2000-26, § 1, 10-21-2000; Ord. No. 2000-28, §§ 1—4 11-18-2000; Ord. No. 2001-030, § 1, 10-26-2001; Ord. No. 2001-039, §§ 1—4, 10-26-2001; Ord. No. 2001-046, §§ 1—4, 10-27-2001; Ord. No. 2002-017, § 1, 8-16-2002; Ord. No. 2002-018, § 1, 9-20-2002; Ord. No. 2007-12.14.1, 12-14-2007; Ord. No. 2008-0702, §§ 1, 2, 7-18-2008; Ord. No. 2009-0902, 9-18-2009; Ord. No. 2010-0301, 3-19-2010; Ord. No. 2010-0902, 9-24-2010)

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

Sec. 28-2. Exemptions.

The operation of electrically-powered vehicles and low-speed vehicles within the village is exempt from the following provisions of the North Carolina General Statutes: G.S. 20-50, G.S. 20-52, G.S. 20-57, G.S. 20-63, G.S. 20-115, G.S. 20-122.1, G.S. 20-123.2, G.S. 20-125, G.S. 20-125.1, G.S. 20-126, G.S. 20-127(b), G.S. 20-127(c), G.S. 20-128, G.S. 20-129, G.S. 20-131, G.S. 20-135.1, G.S. 20-135.2, G.S. 20-135.2(a), G.S. 20-135.3, G.S. 20-137.1, G.S. 20-183.2, G.S. 20-183.3, and G.S. 20-309.

(Ord. No. 61, §§ 1, 2, 3-20-1999; Ord. No. 2002-017, § 1, 8-16-2002; Ord. No. 2008-0702, § 1, 7-18-2008; Ord. 2010-0902, 9-24-2010)

Sec. 28-3. Penalties.

Unless otherwise stated herein, village enforcement of any penalty for violation of any provision in this chapter shall be nonexclusive and shall not restrict further enforcement pursuant to G.S. 14-4. Computation of time within which to satisfy any civil penalty assessed pursuant to this chapter shall not include Saturdays, Sundays, or holidays during which the village office is closed. Further, failure to satisfy any civil penalty assessed pursuant to this chapter within the prescribed time may be recovered by the city in a civil action in the nature of debt pursuant to G.S. 160A-175.

(Ord. No. 2002-018, § 3, 9-20-2002; Ord. No. 2010-0902, 9-24-2010)

Secs. 28-4—28-30. Reserved.

ARTICLE II. OPERATION OF VEHICLES*

* **State Law References:** Operation of vehicles and rules of the road, G.S. 20-138 et seq.

DIVISION 1. GENERALLY

Sec. 28-31. Stop signs.

(a) *Intersections.* When a stop sign has been erected or installed at an intersection within the municipal limits of the village, it shall be unlawful for the driver of any vehicle to fail to stop in obedience thereto and yield the right-of-way to vehicles operating on the designated main traveled or through highway or street.

(b) *Other sites.* When a stop sign has been erected or installed at a place other than an intersection, it shall be unlawful for the driver of any vehicle to fail to stop in obedience thereto and yield the right-of-way to pedestrians or other vehicles.

(c) *Penalties.* Any person who shall violate this section shall be required to pay a penalty in the amount of \$ 50.00 pursuant to G.S. 160A-175. Any individual cited for violation of this section shall pay the civil penalty at the office of the village clerk within 48 hours following receipt of the citation.

(Ord. No. 10A, §§ 1, 2, 2-20-1998; Ord. No. 2010-0902, 9-24-2010)

Sec. 28-32. Speed limit.

(a) *Established.* It shall be unlawful to operate a vehicle in excess of 18 miles per hour inside the village corporate limits.

(b) *Signs.* There shall be erected upon all major streets within the village appropriate signs giving notice of the speed limit established in this section.

(c) *Penalties.*

(1) Violation of this section shall subject the offender to a civil penalty in the amount of \$50.00 for a first offense. A civil citation shall be issued by authorized officers of the village, on a form approved by the village manager. The citation form shall state that if the civil penalty is not paid in full within 48 hours of issuance of the citation, it may be recovered in a civil action in the nature of debt.

(2) The second violation of this section within a 12-month period, by any person, shall be subject to a civil penalty in the amount of \$75.00. Third and subsequent violations of this section within a 12-month period, by any person, shall be subject to a civil penalty in the amount of \$ 100.00.

(Ord. No. 10B, §§ 1—3, 12-19-1986; Ord. No. 2001-023, § 1, 10-26-2001; Ord. No. 2010-0902, 9-24-2010)

Sec. 28-33. Driving motor vehicles on beaches.

(a) *Prohibited.* It shall be unlawful for any person to drive a motor vehicle on the beaches within the village, except in the mission of the Bald Head Island Conservancy or an emergency or service vehicle operating for benefit of the village.

(b) *Violation.* Any person who shall violate this section shall be required to pay a penalty in the amount of \$50.00 pursuant to G.S. 160A-175. Any individual cited for violation of this section shall pay the civil penalty at the office of the village clerk within 48 hours following receipt of the citation. Violation of this article shall be exempt from prosecution pursuant to G.S. 14-4.

(c) *Warning.* The public safety officer shall make every reasonable effort to warn a motor vehicle operator that appears to be destined for the beach before he or she reaches the dunes area and violates this section.

(Ord. No. 14A, §§ 1—4, 2-20-1998; Ord. No. 2010-0902, 9-24-2010)

Sec. 28-34. Transporting an open container of alcoholic beverage.

(a) *Prohibited.* No person shall possess an alcoholic beverage other than in the unopened manufacturer's original container, or consume an alcoholic beverage, in a motor vehicle while the motor vehicle is on a village street. Only the person who possesses or consumes an alcoholic beverage in violation of this section shall be charged with this offense.

(b) *Violation.* Any person who shall violate this section shall be required to pay a penalty in the amount of \$50.00 pursuant to G.S. 160A-175. Any individual cited for violation of this section shall pay the civil penalty at the office of the village clerk within 48 hours following receipt of the citation.

(Ord. No. 2010-0902, 9-24-2010)

Sec. 28-35. Reckless driving.

(a) *Prohibited.* It shall be unlawful for any person to operate a motor vehicle on a village street carelessly and heedlessly in willful or wanton disregard of the rights or safety of others.

(b) *Prohibited.* It shall be unlawful for any person to operate a motor vehicle on a village street without due caution and circumspection and at a speed or in a manner so as to endanger or be likely to endanger any person or property.

(c) *Violation.* Any person who shall violate this section shall be required to pay a penalty in the amount of \$50.00 pursuant to G.S. 160A-175. Any individual cited for violation of this section shall pay the civil penalty at the office of the village clerk within 48 hours following receipt of the citation.

(Ord. No. 2010-0902, 9-24-2010)

Sec. 28-36. Driving while license revoked.

(a) *Prohibited.* It shall be unlawful to operate a motor vehicle on a village street while the operator's driver's license is revoked.

(b) *Violation.* Any person who shall violate this section shall be required to pay a penalty in the amount of \$50.00 pursuant to G.S. 160A-175. Any individual cited for violation of this section shall pay the civil penalty at the office of the village clerk within 48 hours following receipt of the citation.

(Ord. No. 2010-0902, 9-24-2010)

Secs. 28-37—28-50. Reserved.

DIVISION 2. VEHICLES POWERED BY INTERNAL COMBUSTION ENGINES

Sec. 28-51. Purpose.

The purpose and intent of this division is to subject every vehicle powered by internal combustion engine on the streets of the village to the regulations, permit requirements and permit fees set forth in this division. The permit fees collected shall be placed in a capital reserve account to be used to protect the environment, maintain, repair and rebuild the village streets, maintain, repair, and rebuild rights-of-way, enhance personal safety and pay the costs of necessary registration, fee collection and enforcement of this division.

(Ord. No. 50, §§ 1—4, 4-19-1997; Ord. No. 2001-034, § 1, 10-26-2001; Ord. No. 2010-0902, 9-24-2010)

Sec. 28-52. Prohibited; exceptions.

No person shall operate any vehicle powered by internal combustion engine on the streets of the village except for properly permitted public service vehicles, government vehicles, utility vehicles, arrival and departure transportation vehicles, construction delivery vehicles, delivery, repair or maintenance vehicles or construction equipment vehicles and such vehicles as shall be specifically permitted pursuant to section 28-54 of this division.

(Ord. No. 50, §§ 1—4, 4-19-1997; Ord. No. 2001-034, § 1, 10-26-2001; Ord. No. 2010-0902, 9-24-2010)

Sec. 28-53. Permit required.

(a) *Filing of application.* The owner of any public service vehicle, utility vehicle, government vehicle, arrival and departure transportation vehicle, construction delivery vehicle, delivery, repair or maintenance vehicle or construction equipment vehicle may

apply to the village, its appointees or designees (hereinafter in this section the "village") for a permit to operate the same on the streets of the village.

(b) *Permit requirements.* Permits shall be made available by the village at such locations as the village may from time to time determine upon receipt of such information, documentation and permit fees as the village may from time to time determine. A permittee, upon application and at all times a permit is in effect, shall be required to maintain and may be required to provide proof of the following information:

- (1) Registration, title or other indicia of ownership of the vehicle;
- (2) The make, model and year that the vehicle was constructed;
- (3) Proof that the vehicle is insured in amounts not less than those statutorily required for liability insurance;
- (4) The classification of permit (annual or daily);
- (5) Proposed use of the vehicle, and
- (6) Any other information as may be required and determined by the village from time to time.

(c) *Insurance and inspection.* Such permittee shall at all times have proof satisfactory to the village that the vehicle is insured in amounts not less than those statutorily required for liability insurance under G.S. 20-279.1 et seq., and that the vehicle has passed inspection pursuant to G.S. 20-183.2 within 12 months of the date that such application is submitted.

(d) *Classification.* Upon receipt of such application for permit, the village shall review the application and determine the classification of permit sought. If all requested information and documentations are properly submitted and if the village determines that:

- (1) The proposed use of the vehicle meets the definition of the vehicle for which such permit is sought; and
- (2) The proposed use may only be met reasonably by use of a vehicle powered by internal combustion engine; and
- (3) The application complies in all other respects with the aforesaid provisions;

Then the village shall issue a permit for the classification requested.

(e) *Fees.* The permits issued pursuant to this section shall be issued by the village upon payment of a permit fee based the criteria as determined by the village from time to time and the classification of the permit requested, as set forth in the internal combustion

engine (“ICE”) permit fee schedule, as adopted by the village council and amended from time to time.

(f) *Requests from persons applying for credit to charge for permits.* Any person may apply to the village for credit to charge for permits issued pursuant to this section. Upon receiving a properly completed application for charge credit, the village shall notify the applicant whether they may charge for permits issued pursuant to this section. The village may grant or deny any application in the village’s sole discretion. Applicant shall execute such documents as may be required for the village to process any permit fee and/or penalty payments through any credit card or electronic banking account applicant may provide to the village and without further authorization of applicant.

(g) *Internal combustion engine permits paid via charge account.* Any person that charges any internal combustion engine permit via a charge account approved by the village shall, upon proper notification and request, pay the entire amount due as charged. This payment shall be made in full to the village within a period of 30 days from the date of issuance of such permit. Following this 30-day period, to any unpaid sums shall be added a late penalty of \$50.00 per any unpaid permit issued.

(h) *Revocation of charging privilege.* If any charge or credit becomes delinquent past 60 days, the village may, at that time, suspend and/or revoke charging privileges for the person, firm or corporation.

(i) *Revocation of permit.* If full payment is not timely received or made, the village may revoke and/or remove from the vehicle any permit issued. If a permittee is unable or unwilling to comply with any of the provisions set forth in this section, the village in its sole discretion may revoke and/or remove from the vehicle any permit issued.

(Ord. No. 50, §§ 1—4, 4-19-1997; Ord. No. 2001-034, § 1, 10-26-2001; Ord. No. 2010-0902, 9-24-2010)

Sec. 28-54. Special use permit.

(a) Notwithstanding any provision to the contrary contained in this division, it shall be lawful for persons to operate a vehicle powered by internal combustion engine within the village upon application for and receipt of a special use permit pursuant to this section. The party seeking such a permit shall apply to the department therefor. The application shall contain all information required under section 28-53 of this division and, in addition thereto, shall include the following:

- (1) The type and make of vehicle proposed to be used;
- (2) The date of the proposed use of such vehicle;
- (3) The proposed route of travel of the vehicle;

(4) The period during which such vehicle shall be used and for which the permit is sought;

(5) A certificate that provisions for overnight parking or temporary storage of the vehicle have been made;

(6) The purposes to be accomplished by the use of such vehicle; and

(7) Certification that the purposes set forth in subsection (a)(6) may be accomplished only by use of a vehicle powered by internal combustion engine and the reasons therefor.

(b) Upon receipt of such application, the chief shall review the application. If all the information, attachments and certificates required are contained therein, the chief may issue a special use permit, upon the payment of the special use permit fee based on the width and weight of such vehicle in amounts equal to those referenced in section 28-53. Such special use permit shall be limited with regard to the route of travel of such vehicle, the date and times during which such vehicular travel shall be allowed, and may further be subject to such restrictions and conditions as the chief shall deem reasonably necessary to safeguard the public safety and property. Such special use permit shall be valid for the number of days and overnight stays which the chief shall deem reasonably necessary to accomplish the purpose set forth in the application therefor upon payment of the daily permit fee for each overnight stay.

(Ord. of 2-22-2000, § 5; Ord. No. 2010-0902, 9-24-2010)

Sec. 28-55. Time of operation.

(a) It shall be unlawful for any person to operate any construction delivery vehicle or construction equipment vehicle upon the street of the village at any time other than during work days.

(b) Notwithstanding anything to the contrary contained in this division, any person or company under contract to pave rights-of-way shall, upon approval of the village manager, be permitted to operate construction delivery vehicles or construction equipment vehicles from sunrise to sunset on non-work days, so long as such vehicle is being used within the scope of and in the course of work to be accomplished under the contract and within the constraints and/or conditions defined by the village manager.

(Ord. of 2-22-2000, § 6; Ord of 5-12-2000, § 1; Ord No. 2002-010, § 1, 5-24-2002; Ord. No. 2010-0902, 9-24-2010)

Sec. 28-56. Parking or temporary storage of vehicle.

No permit for the operation of a vehicle powered by internal combustion engine shall be issued by the village without certification by the owner thereof, supported by proof

satisfactory to the chief, that the owner thereof has made satisfactory arrangements for the parking or temporary storage of the vehicle on lands other than:

(1) Village streets or rights-of-way;

(2) Individual lots or multifamily sites zoned for residential purposes pursuant to Chapter 32 of this Code.

The chief shall have the authority, in what the chief determines are unusual circumstances, to authorize parking arrangements contrary to the provisions of this section. Any permit issued pursuant to this division shall be effective only for so long as such parking or storage rights shall remain, and such permit shall be deemed revoked at such time as the rights of parking or storage shall be revoked by the person granting such right, until parking privileges shall be reacquired.

(Ord. of 2-22-2000, § 7; Ord. No. 2010-0902, 9-24-2010)

Sec. 28-57. Unlawful operation of vehicles.

It shall be unlawful for any person to operate any motor vehicle upon the streets of the village in violation of the terms and conditions of any permit issued for the operation thereof or in violation of any provision of this division. Golf course maintenance, repair and construction equipment owned by or under lease to the Bald Head Island Club shall be exempt and not subject to the provisions of this division or the fees imposed thereby if the operator thereof only uses village streets to cross from one portion of golf course property to another.

(Ord. of 2-22-2000, § 8; Ord. No. 2010-0902, 9-24-2010)

Sec. 28-58. Liability of owner.

(a) Any applicant for any permit to operate a vehicle powered by internal combustion engine on the streets of the village shall be deemed to be the agent of the owner of such vehicle for the purposes of this division.

(b) Any individual applying for a permit to operate a vehicle powered by internal combustion engine upon the streets of the village shall be deemed to have agreed on behalf of the owner thereof to, and the owner of any vehicle powered by internal combustion engine which causes specific damage shall, indemnify the village from any specific damage done to the streets of the village by such vehicle so permitted or owned. Further, every application for any permit to operate a vehicle powered by internal combustion engine within the village shall include a written agreement by the applicant as agent of the owner thereof to indemnify and fully hold harmless the village from any specific damage to the streets thereof occasioned by the operation of the vehicles so permitted.

(c) Upon identification of any specific damage occasioned to the streets of the village by the operation of any vehicle powered by internal combustion engine, the village manager or his or her designee shall undertake the repair and restoration of such street to its condition immediately before such damage and shall identify the repair costs thereof, which shall then be assessed against the owner of the vehicle causing such damage. Upon identification of such repair costs, the village manager shall cause to be issued to the owner of such vehicle at the owner's address by first class mail, postage prepaid and affixed thereto, an assessment notice. Such notice shall include notification that the village intends to seek collection of the repair costs from the owner thereof and that the owner shall have a period of ten working days from the date of issuance of such notice in which to notify the village manager in writing if such liability is contested in any manner. If not contested by the owner, the assessment notice shall become the final assessment. If the owner of such vehicle shall contest any aspect of the assessment notice, the owner shall do so in writing delivered to the village manager within ten days of the date of the assessment notice and the village manager shall then schedule a hearing to be conducted not less than ten working days after receipt of the notice of objection. At such hearing, the owner shall be heard as to his or her objection and shall have full opportunity to present any objections to such assessment, together with any evidence in support thereof. The manager shall then decide all issues contested by the owner. The village manager's decision with regard to all issues contested by the owner, including but not limited to the liability of such owner for repair costs and amount thereof, shall be final. The village manager shall notify the owner of the decision by the manager and shall deliver written notice of the decision to the owner at the owner's address by placing such notice in the United States mail with first-class postage, prepaid and affixed thereto within four working days of the hearing. Such notice shall then become the final assessment. The owner shall have 15 working days from the date of mailing of the final assessment in which to pay the assessment.

(d) If the owner shall not pay the final assessment within 15 working days of the date when the assessment becomes final as set forth in subsection (c) of this section, any permit for operation of the vehicle upon the streets of the village shall be revoked and no permit shall be issued thereafter to operate such vehicle on the streets of the village until such time as the assessment herein shall have been paid in full. Additionally, the village may seek collection of the assessment through any civil process allowed by law.

(Ord. of 2000-26, § 2, 10-21-2000; Ord. No. 2010-0209, 9-24-2010)

Sec. 28-59. Violation and penalty.

Any person who shall violate this division shall be required to pay a penalty in the amount of \$50.00 pursuant to G.S. 160A-175. Any individual cited for violation of this division shall pay the civil penalty at the office of the village clerk within 48 hours following receipt of the citation. Violation of this division shall be exempt from prosecution pursuant to G.S. 14-4.

(Ord. of 2-22-2000, § 9; Ord. No. 2010-0209, 9-24-2010)

Sec. 28-60. Heavy-duty vehicle idling restrictions.

(a) *Applicability.* The requirements of this section apply to on-road heavy-duty vehicles powered by an internal combustion engine.

(b) *Exemptions.* The following exemptions to idling restrictions apply to this section:

(1) Heavy-duty vehicles may idle if they remain motionless due to traffic conditions, traffic control devices or signals, congestion, or at the direction of law enforcement officials;

(2) Emergency vehicles may idle when performing an emergency or training function. This exemption does not apply when idling only for driver comfort;

(3) Military vehicles;

(4) Heavy-duty vehicles may idle main propulsion engines to operate power take offs to perform the heavy-duty vehicle's designed functions (e.g., refrigeration of cargo, processing of cargo, dumping, lifting, hoisting, drilling, mixing, loading, unloading, other operations requiring the use of power take offs). The exemption does not apply when idling only for driver comfort;

(5) Heavy-duty vehicles may idle if following manufacturer's recommendations for cold engine startup and engine cool-down, maintenance, inspection, servicing, repairing, or diagnostic purposes, if idling is required for such activity;

(6) Auxiliary power units;

(7) A passenger bus when no-driver passengers are on board the vehicle and up to 20 minutes prior to passengers boarding;

(8) Heavy-duty vehicles may idle when operating defrosters, heaters, air conditions, or other equipment solely to prevent a safety or health emergency.

(c) *Requirements.*

(1) No person who owns or operates a heavy-duty vehicle shall cause, let, permit, suffer or allow idling for a period of time in excess of five consecutive minutes in any 60-minute period.

(2) Heavy-duty vehicles located in a queue area are not exempted from this section.

(Ord. No. 2009-0902, 9-18-2009; Ord. No. 2010-0902, 9-24-2010)

Secs. 28-61.--28-90. Reserved.

DIVISION 3. ELECTRICALLY-POWERED VEHICLES

Sec. 28-91. Operation of electrically-powered vehicles by unlicensed drivers.

(a) *Prohibited.* It shall be unlawful for any unlicensed driver to operate an electrically-powered vehicle on the streets of the village. It shall further be unlawful for any person, entity or corporation who is the owner of an electrically-powered vehicle to permit an unlicensed driver to operate an electrically-powered vehicle on the streets of the village. It shall be lawful for an individual privileged to operate a motor vehicle on the streets or highways of the state pursuant to G.S. 20-11(b) - (e) to operate an electric cart on the streets of the village, so long as they comply with the requirements and restrictions set forth in G.S. 20-11. It shall be unlawful for such an individual to operate any other electrically-powered vehicle on the streets of the village.

(b) *Penalties.* Any person who shall violate this section shall be required to pay a penalty in the amount of \$50.00 pursuant to G.S. 160A-175. Any individual cited for violation of this section shall pay the civil penalty at the office of the village clerk within 48 hours following receipt of the citation.

(Ord. No. 19A, 3-20-1998; Ord. No. 2001-030, § 1, 10-26-2001; Ord. No. 2010-0902, 9-24-2010)

Sec. 28-92. Mandatory registration of electric carts.

(a) *Registration, stickers display required.* It shall be unlawful for any person to operate or any person who owns any electric cart to allow such vehicle to be operated on the streets of the village, without the electric cart having been registered with the department and without displaying thereon two then-current registration stickers affixed to a conspicuous place on the electric cart at areas designated in subsection (b) below. Any person who shall violate this section shall be required to pay a penalty in the amount of \$50.00 pursuant to G.S. 160A-175. Any individual cited for violation of this section shall pay the civil penalty at the office of the village clerk within 48 hours following receipt of the citation. Violation of this subsection shall be exempt from prosecution pursuant to G.S. 14-4.

(b) *Information required; issuance of stickers.* Persons registering electric carts shall provide the following information to the department:

- (1) Name;
- (2) Addresses/phone numbers;
- (3) Cart identification to include make, model, serial number, color, manufacturer date;
- (4) Written proof of insurance; and

(5) Other information as deemed necessary by the department.

Upon registration, the department shall affix a sticker to the lowest, most clearly visible point on the front left-side of the electric cart and one sticker on the rear of the electric cart. The stickers shall be valid for a period of 12 months. The fee for issuance of the electric cart registration permit shall be established and may from time to time be revised by the village council. The fee schedule for electric cart registrations shall be filed at the office of the village clerk.

(c) *Insurance.* No electric cart will be registered by the village or be permitted to operate on the streets of the village without having proper liability/property damage insurance coverage in full force and effect. The limits of liability/property damage insurance coverage shall at no time be less than the minimum coverage required for motor vehicles allowed to use the public streets of the state.

(d) Effective June 1, 2008, all electric carts which are registered for the first time with the village shall be equipped with the following electric cart manufacturer or electric cart dealer installed devices:

- (1) Front head lights;
- (2) Rear tail lights;
- (3) Rear brake lights;
- (4) Rear view mirror;
- (5) Parking brake;
- (6) Seatbelts for all seating positions on the electric cart.

Proper functioning of the aforesaid equipment shall be the responsibility of the electric cart owner and the village assumes no responsibility with respect to function, operation or inspection of the equipment.

(e) *Dimension and weight limits.* No personal use electric cart shall be registered or approved for use on the village's streets if the overall dimensions and/or weight of the vehicle exceed any of the following dimensions:

- (1) Length: 160.00 inches;
- (2) Height: 84.00 inches;
- (3) Width: 60.00 inches;
- (4) Weight: 1,600.00 pounds.

Provided, however, this subsection (e) shall not apply to electric carts used for the regular transportation of persons by Bald Head Island Limited, Bald Head Island Conservancy, Bald Head Island Club, The Old Baldy Foundation, or a business entity lawfully operating a taxi service on Bald Head Island, or the village.

(Ord. No. 2000-28, §§ 1—4, 11-18-2000; Ord. No. 2001-039, §§ 1—4, 10-26-2001; Ord. No. 2001-046, §§ 1—4, 10-27-2001; Ord. No. 2008-0702, § 2, 7-18-2008; Ord. No. 2007-12.14.1, 12-14-2007; Ord. No. 2010-0301, 3-19-2010; Ord. No. 2010-0902, 9-24-2010)

Secs. 28-93--28-120. Reserved.

ARTICLE III. PARKING, STOPPING AND STANDING*

***State Law Reference**—Stopping, standing and parking, G.S. 20-161 et seq.

Sec. 28-121. No parking permitted; exceptions.

No motor vehicle shall be parked upon or left unattended upon the streets of the village unless the vehicle is mechanically disabled to such an extent that it is impossible to avoid stopping and temporarily leaving the vehicle at such location. Any motor vehicle parked or left unattended on any street of the village shall be subject to towing and impoundment pursuant hereto. Any motor vehicle operated by any unlicensed driver upon the streets of the village and which vehicle shall not contain therein any licensed driver available for the operation of the vehicle shall be subject to towing and impoundment pursuant hereto.

(Ord. No. 47, § 2, 6-29-1996; Ord. No. 2010-0902, 9-24-2010)

Sec. 28-122. Towing and impoundment.

If any motor vehicle shall be found by any officer to be subject to towing and impoundment pursuant to section 28-121, such officer is hereby granted authority to detain the vehicle and to order the towing and removal thereof by the department from the streets of the village to and only to an impound area maintained by the department for the safe storage thereof. The officer authorizing towing and impoundment thereof shall secure custody of the vehicle so impounded and shall be responsible for the delivery of the vehicle into the custody of any person designated by the chief to tow and/or store such vehicle, and the department shall retain secure physical possession of the vehicle until the vehicle shall be reclaimed by the owner or lawful possessor thereof as provided in this article.

(Ord. No. 47, § 3, 6-29-1996; Ord. No. 2010-0902, 9-24-2010)

Sec. 28-123. Notice.

(a) Upon impoundment of any motor vehicle the chief shall cause examination of the vehicle to be made in an attempt to determine the owner or lawful possessor thereof and shall make his best efforts to determine the identity of the owner or lawful possessor. Upon determination by the chief of the name and address of any owner or lawful possessor thereof, the chief shall cause to be made to the lawful possessor, if the owner or lawful possessor shall be located within the village, or to the owner, if a lawful possessor shall not be identified and located within the village, notice of the fact that the vehicle has been towed and impounded, the place where the vehicle can be found, the reason for the towing and impoundment thereof, procedure that the owner or lawful possessor must follow to have the vehicle returned to him or her and the procedures that the owner or lawful possessor must follow to request a probable cause hearing on the towing pursuant to G.S. 20-219.9 et seq. The owner or lawful possessor entitled to possession of the vehicle may request in writing a hearing to determine probable cause for the towing pursuant to G.S. 20-219.9 et seq., provisions of which are hereby incorporated by reference. Any motor vehicle towed pursuant hereto and which shall be determined to have been towed or impounded without probable cause pursuant to a hearing under G.S. 20-219.9 et seq., shall be immediately released to the owner or lawful possessor thereof without payment of any towing or impoundment fees.

(b) The department is authorized to retain possession of any motor vehicle towed pursuant to this article until such time as the owner or lawful possessor thereof shall appear to claim possession of the motor vehicle. In order to reclaim possession of any motor vehicle towed and impounded pursuant to this article, the petitioner shall:

(1) Present evidence that such person is an owner or lawful possessor of such motor vehicle;

(2) Present evidence that such person is, or is accompanied by, a licensed driver authorized to operate a motor vehicle upon the streets of the village;

(3) Pay the costs of towing the vehicle in the amount of \$25.00, plus all storage fees accumulated against the vehicle during the period when the vehicle shall be impounded; and

(4) Sign a receipt for possession of the vehicle.

(c) The department is authorized to receive funds in satisfaction of towing fees and storage fees as provided in this article and to deliver receipts for payment of such funds.

(Ord. No. 47, § 4, 6-29-1996; Ord. No. 2010-0902, 9-24-2010)

Secs. 28-124—28-160. Reserved.

ARTICLE IV. HELMET REQUIREMENTS

Sec. 28-161. Requirements for helmet and restraining seat use.

(a) It shall be unlawful for any person under the age of 16 years to operate a human-powered bicycle, human-powered tricycle, roller blades, in-line skates or roller skates, human-powered skateboard, or human-powered scooter upon village property or any public street or public bicycle path within the village unless properly wearing a protective helmet as defined in section 28-1.

(b) It shall be unlawful for any person to operate a Segway, electric bicycle, electric scooter, or electric skateboard upon village property or any street or public bicycle path within the village unless properly wearing a protective helmet as defined in section 28-1.

(c) No bicycle operator shall allow anyone under the age of four years, or weighing less than 40 pounds to ride as a bicycle passenger other than in a restraining seat, which shall protect the passenger

from moving bicycle parts, unless the passenger is seated astride a permanently affixed seat of a tandem bicycle.

(d) No bicycle operator shall allow anyone, under the age of 16 years, to ride as a bicycle passenger unless the passenger is wearing a protective helmet.

(e) No parent or guardian of any human-powered bicycle operator, under the age of 16 years, or bicycle passenger as described in subsections (c) and (d) of this section, shall knowingly allow a violation of this section.

(f) It shall be unlawful to rent or lease any bicycle, tricycle, roller blades, in-line skates, roller skates, scooter, or skateboard to or for the use of any person under the age of 16 years unless:

(1) The person is in possession of a protective helmet of good fit at the time of such rental or lease; or

(2) The rental or lease includes a protective helmet of good fit.

ELECTRIC VEHICLE ORDINANCE

| | <u>License or Full Provisional License Required</u> | Operation Allowed with Limited Learner's Permit or Limited Provisional License (required compliance with G.S. 20-11) | Helmet Required | Registration Required | Insurance Required |
|-----------------------------------|---|--|-----------------|-----------------------|--------------------|
| Electric Cars (including 3- wheel | X | X | | X | X |

| | | | | | |
|--|---|--|------------|--|--|
| "Trike" type golf carts and electric cars) | | | | | |
| Segways | X | | X All ages | | |
| Bicycles (Electric) | X | | X All ages | | |
| Bicycles (Non-electric) | | | X Under 16 | | |
| Tricycles (Electric) | X | | X All ages | | |
| Tricycles (Non-electric) | | | X Under 16 | | |
| Scooters (Electric) | X | | X All ages | | |
| Scooters (Non-electric) | | | X Under 16 | | |
| Skateboards (Electric) | X | | X All ages | | |
| Skateboards (Non-electric) | | | X Under 16 | | |
| Skates | | | X Under 16 | | |
| X = Required by Ordinance | | | | | |

(g) A person who is in the business of renting bicycles, roller blades, in-line skates, scooters, or skateboards shall post or make available to a person renting a bicycle, roller blades, in-line skates, scooter, or skateboard a written notice explaining the provisions of this article.

(Ord. No. 2002-018, § 2, 9-20-2002; Ord. No. 2010-0902, 9-24-2010)

Sec. 28-162. Civil penalties.

Any person violating this article shall be subject to a civil penalty of \$10.00 pursuant to G.S. 160A-175. Any individual cited for violation of this article shall pay the civil penalty

at the office of the village clerk within 48 hours following receipt of the citation. Violation of this article shall be exempt from prosecution pursuant to G.S. 14-4.

(Ord. No. 2002-018, § 3, 9-20-2002; Ord. No. 2010-0902, 9-24-2010)

Secs. 28-163—28-200. Reserved.

Chapter 29 RESERVED

Chapter 30 UTILITIES*

***Cross Reference**—Administration, ch. 2; buildings and building regulations, ch. 6; electrical code adopted, § 6-35; environment, ch. 10; floods, ch. 14; solid waste management, ch. 20; stormwater management, ch. 22; streets, sidewalks and other public places, ch. 24; subdivisions, ch. 26.

State Law Reference—Municipal authority to construct, operate, etc., water supply and distribution systems, sewage systems, etc., G.S. 160A-312.

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ARTICLE I. IN GENERAL

Sec. 30-1. Violations; penalties.

(a) Upon the violation of any provision of this chapter, the village may enforce this chapter by criminal or civil proceedings, or by any other remedy provided for under G.S. 160A-175 and G.S. 14-4 or successor provisions or as otherwise specifically set forth in this chapter.

(b) Written notice of a violation may be provided to the violator by personal service or first class mail. When first class mail is sent via the United States Postal Service, receipt shall be deemed to occur on the third day after the date of the postmark.

(c) Upon notification of a violation as provided for in subsection (b) of this section, each day's continuing violation shall be deemed a separate and distinct offense.

(d) Upon the violation of any provision of this chapter, the violator shall be subject to a civil penalty in the sum of \$500.00, to be recovered by the village in a civil action in the nature of debt if the offender does not pay the penalty within five business days after the violator has been cited for violation of this chapter.

(e) In addition to the foregoing remedies, the provisions of this chapter may be enforced by the village by injunctive relief or other appropriate equitable remedy issuing from a court of competent jurisdiction.

(f) The provisions of this chapter may also be enforced by an order of abatement.

(g) The criminal fine imposed for the violation of any provision of this chapter shall be \$50.00 for the first violation and \$100 for each subsequent violation.

(Ord. of 10-26-2007)

Secs. 30-2--30-30. Reserved.

ARTICLE II. EMERGENCY SERVICE

Sec. 30-31. Definitions.

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

Emergency service means temporary electrical communication or similar or associated utility service required to be supplied to a specific site while ordinary service of such utility to the site is interrupted as a result of unforeseen or unexpected occurrences.

Poles, overhead wires and associated overhead structures means poles, towers, supports, wires, conductors, guys, stubs, platforms, cross-arms, braces, transformers, insulators, cut-outs, switches, communication circuits, appliances, attachments and appurtenances located above ground used or useful in supplying electric communications or similar or associated utility services.

(Ord. No. 3, § 1, 11-15-1985)

Cross Reference—Definitions generally, § 1-2.

Sec. 30-32. Overhead wires and structures—Prohibited; exception.

It shall be unlawful for any person or utility to erect, construct, maintain, continue, employ or operate poles, overhead wires and associated overhead structures within the village except as shall otherwise be provided in this article.

(Ord. No. 3, § 2, 11-15-1985)

Sec. 30-33. Same—Installation and maintenance.

Notwithstanding the provisions of this article, poles, overhead wires and associated overhead structures may be installed and maintained for a period not to exceed ten days in order to provide emergency service without authority of the village building inspector. The town building inspector may grant special permission for emergency service on such terms as he may deem appropriate, without discrimination as to any person or utility, to erect, construct, install, maintain, use or operate poles, overhead wires and associated overhead structures for a period not to exceed 30 additional days. In any event any such poles, overhead wires and associated overhead structures installed for emergency service shall be removed at the expiration of ten days or the expiration date of the special permission granted by the village building inspector, whichever shall be later. Upon such expiration the poles, overhead wires and associated overhead structures installed for emergency services shall be removed by the party installing, erecting, constructing, maintaining or using the service.

(Ord. No. 3, § 3, 11-15-1985)

Sec. 30-34. Exceptions.

This article does not apply to the following types of facilities:

- (1) Poles or similar supporting structures used exclusively for street lighting;
- (2) Antennae, associated equipment and supporting structures for furnishing communication services;
- (3) Equipment appurtenant to underground facilities, such as surface mounted transformers, pedestal mounted terminal boxes and meter cabinets, and concealed ducts;
- (4) Temporary poles, overhead wires and associated overhead structures used or to be used in conjunction with construction projects except that such temporary poles, overhead wires and associated overhead structures shall not be installed for periods in excess of 180 days without the special permission of the village building inspector who shall grant such special permission on such terms as he may deem appropriate, having due regard for the size of the construction project, the electrical requirements thereof, the period of time reasonably necessary to complete the proposed construction, and any other factors which the village building inspector shall deem relevant.

(Ord. No. 3, § 4, 11-15-1985)

Sec. 30-35. Franchise agreements.

No franchise agreement entered into between the village and any utility company shall permit the installation of utility services otherwise than as provided in this article; and in the event of any conflict between the provisions of this article and any franchise agreement between the village and a supplying utility, the provisions of this article shall prevail.

(Ord. No. 3, § 5, 11-15-1985)

Sec. 30-36. Violation and penalty.

Any violation of this article shall constitute a misdemeanor punishable by imprisonment and/or fine not to exceed \$500.00. In addition to any criminal sanctions imposed in this article, the offender shall be subject to a civil penalty in an amount of \$50.00 for each offense, and a separate offense shall be deemed committed for each day during or on which the violation shall continue to occur. Any civil penalty imposed by the village for a violation of this article shall be issued in the form of a citation payable to the village clerk's office within 48 hours of issuance. In addition to the penalties in this section, the building inspector shall post written notice of the violation on any real estate which is

noncompliant with this article and ten days thereafter shall have the authority to order the disconnection and removal of any and all poles, overhead wires and associated overhead structures supplying utility service to the property, and the cost of so doing shall be recoverable by the village by civil action against the person owning, operating, leasing, occupying or renting property serviced by noncomplying utility service.

(Ord. No. 3, § 6, 11-15-1985; Ord. No. 2001-024, § 1, 10-26-2001)

Secs. 30-37—30-40. Reserved.

ARTICLE III. WATER AND WASTEWATER

DIVISION 1. GENERAL

Sec. 30-41. Village council to control and regulate water and sewer systems.

The sewer system and water system of the village shall be under the control of, and the duty of prescribing and enforcing full compliance with the rules and regulations governing the public sewer and water systems shall be vested in, the village council or its authorized agent.

(Ord. of 10-26-2007)

Sec. 30-42. Sewage facilities for structures.

No person shall build or remodel any structure used for human habitation or occupancy within the village which is not provided with water-carried sewage facilities connected to a public sewer system (or septic system for an existing structure which is compliant with the "sunset provisions" of section 30-35 herein) constructed in accordance with the requirements of the state commission for health services, this chapter, the village building code, and any other applicable regulations.

(Ord. of 10-26-2007)

Sec. 30-43. Director of public utilities.

(a) The director of public utilities, as agent of the village council and subject to policy guidance as established from time to time by the village council, shall be in charge of the water and sewer systems of the village; and he shall supervise the maintenance and operation thereof and administer and enforce the provisions of this chapter and other ordinances relating to the village water and sewer systems.

(b) The director of public utilities is responsible for compliance with all local and state regulations as pertains to the village water and sewer systems.

(c) The director of public utilities or his designee shall, at all reasonable hours, be granted access to all premises, public and private within the village's jurisdiction, for the purpose of inspecting connections with and fixtures to the sewer system and reading or testing of water meters or examining hydrants, fixtures or connections on which village water pressure is maintained.

(Ord. of 10-26-2007)

Sec. 30-44. Service.

(a) All new consumers must complete a written and signed application for water and/or sewer service on such form as the village may from time to time prescribe. This application may be faxed, mailed or delivered in person to the village development services department.

(b) The village may reject any application for water or sewer service not available under a standard rate, or which involves excessive service cost, or which may affect the supply of service to other customers or for other good and sufficient reasons.

(c) The village may reject any application for water or sewer service when the applicant is delinquent in payment of any bill incurred for water or sewer service previously supplied to the same location or any other location.

(d) As of July 1, 2009, all newly installed in-ground irrigation systems are required to have a separate dedicated water service meter.

(Ord. of 10-26-2007; Ord. No. 2009-0602, 6-19-2009)

Sec. 30-45. Septic systems.

(a) The person owning or controlling the on-site system (Type I - VI), commonly known as a septic system, shall be responsible for assuring compliance with the laws, rules, and permit conditions regarding system location, installation, operation, maintenance, monitoring, reporting and repair.

(b) An on-site system shall be considered malfunctioning when it fails ("Failure") to meet one or more of the following requirements, either continuously or intermittently, or if it is necessary to remove the contents of the tank(s) at a frequency greater than once per month in order to satisfy the conditions.

(1) Discharge of sewage to the surface of the ground, surface waters, or directly into groundwater at any time.

(2) Back-up of sewage into the facility, drains, collection system, or freeboard volume of the tank.

(3) Free liquid surface within three inches of finished grade over the nitrification trench for two or more observations made not less than 24 hours apart.

(c) The director of public utilities may request the local health department to make periodic general inspections and report its findings to the village manager.

(d) Notice of violations may be issued for compliance and permit violations by the local health department. Legal remedies, as set forth in Sec. 30-4 and other applicable law, can be pursued after observation and documentation of one or more malfunctions.

(e) The village no longer permits the installation of any type of private on-site sewer systems.

(f) This subsection (f) shall apply only to properties located on Bald Head Island which, prior to the enactment of this article, used a septic system as the sole means of sewage collection and treatment ("prior septic property"). Any prior septic property shall be allowed to continue to use its septic system for a period not greater than 20 years from January 1, 2007, after which period septic system use is prohibited. Further provided, each prior septic property must connect (i.e., "tap on") to the sewer system of the Village of Bald Head Island and discontinue septic system use immediately upon the failure of its septic system. This section in no way prevents an owner of property which utilizes a septic system from earlier connecting to the village sewer system. Other than prior septic properties, no property on Bald Head Island shall use or install a septic system. All costs associated with any connection or tap fees, the discontinuance of use or removal of any septic system and any clean-up or other expenses resulting from a septic system failure shall be the sole responsibility of the property owner of record at the time those expenses are incurred.

(Ord. of 10-26-2007)

Sec. 30-46. Construction of water or sewer main; permit required; application; issuance.

(a) An application for construction of a water or sewer main ("main") shall be submitted to the village manager, signed by the village manager, approved by the North Carolina Department of Environment and Natural Resources, and all necessary government authorizations or permits issued, before any property is connected to the main or before the main shall have been laid or constructed.

(b) Each application for a main permit shall be accompanied by a plan or drawing showing in detail the location of the main and all proposed connections to the existing mains.

(c) Upon completion of the main, the project engineer of record must submit certification of the main to the director of public utilities with as-built drawings.

(Ord. of 10-26-2007)

Sec. 30-47. Connection to public water and sewer and abandonment of private system.

(a) At such time as public water or sewer becomes available to a property, a direct connection can be made at the owner's discretion. The property owner must complete a request for service and pay the appropriate connection charges in full to receive water or sewer service. Sewer connections must be made if the on-site system does not meet local health department guidelines, and as otherwise herein required. Sewer connection charges will not apply if the property owner is currently paying monthly sewer fees and if the connection is deemed necessary by the director of public utilities.

(b) If an existing well is to remain in service for non-potable use only, any cross connections from such private well to the public system shall be eliminated at the time of connection.

(c) Any existing septic system or similar private disposal facility (at the owner's expense) shall be abandoned as provided herein, pumped out and filled with suitable material in such a manner as to leave the abandoned facility in a safe and sanitary condition.

(d) All usage fees, in accordance with the village fee schedule, shall be charged to those being served by the water or sewer system and billing will commence immediately following connection.

(e) New sewer connections shall be properly designed and constructed in accordance with such guidelines as published by the environmental protection agency or other regulatory agency, and approved by the village. Under no conditions shall sanitary wastewater be discharged into any storm sewer system.

(Ord. of 10-26-2007)

Sec. 30-48. Village's responsibility and liability.

(a) Where village water and/or sewer service is available, the village shall run a service line from its distribution line or collection line to the property to be served.

(b) The village may install its water meter or sewer tap at the property line or, at the village's option, on the consumer's property, or in a location mutually agreed upon.

(c) The village does not assume the responsibility of inspecting piping or apparatus on the customer's property.

(d) The village reserves the right to refuse or discontinue service unless the consumer's lines or piping are installed in such a manner as to prevent cross connections, backflow, or other such problems.

(e) The village shall not be liable for damage of any kind whatsoever resulting from water or sewer service located on the consumer's premises, unless such damage results directly from negligence on the part of the village. The village shall not be responsible for any damage done by or resulting from any defect in the piping, fixtures or appliances on the consumer's premises. The village shall not be responsible for acts or negligence of third persons or forces beyond the control of the village. The village shall not be responsible for damages of any nature resulting from any interruption, cancellation, or refusal of sewer or water service.

(f) The village shall not be responsible for any leaks which may develop or occur on the premises of consumers. Although in water leak instances, the village manager or director of public utilities may consider, in their sole discretion, an adjustment up to 50% of billed water deliveries for such water loss if the consumer requests an adjustment and submits a suitable repair invoice from a licensed plumber. Residential sewer adjustments shall not apply, due to flat rate charges for service (because the sewer charge is not based on water consumption). Non-residential sewer service cost is based on water consumption and reductions (as above) may be considered where it can be demonstrated that water lost did not enter the sanitary sewer system. Only one adjustment can be considered within a 24 month period.

(g) Under normal conditions, the consumer will be notified of any anticipated interruption of service, but the village is not responsible for any failure to give or the content of any service notices.

(Ord. of 10-26-2007)

Sec. 30-49. Consumer's responsibility.

(a) Piping on the consumer's premises must be so arranged that the connections are conveniently located with respect to the village system.

(b) If the consumer's water or sewer piping on the consumer's premises is so arranged that the village is called upon to provide additional taps, each tap will be considered as a separate and individual account.

(c) Where water service and/or sewer tap is to be placed on the premises of a consumer, a suitable place shall be provided by the consumer and agreed upon by the village. This site must be unobstructed and accessible at all times.

(d) The consumer's piping and apparatus shall be installed and maintained by the consumer at the consumer's expense in a safe and efficient manner and in accordance with the village rules and regulations and those of other regulatory agencies.

(e) The consumer shall guarantee proper protection for the village's property that is placed on the consumer's premises and shall permit access to it only by authorized representatives of the village.

(f) If any loss or damage to the property of the village or any accident or injury to persons or property is caused by or results from the negligence or wrongful act of the consumer, his agents or employees, then the cost of the necessary repairs or replacements shall be paid by the consumer to the village, and any such costs or liability otherwise resulting shall be assumed by the consumer, and the village indemnified therefrom.

(g) The amount of such loss or damage or the cost of repairs shall be added to the consumer's bills, and if not paid, the village may discontinue service or take other enforcement or lawful actions.

(h) The consumer shall pay a service fee for after-hours call-out of utility personnel if the problem is determined to arise from consumer's fault or responsibility or to exist on consumer's side of the service. The after-hours service fee will be added to the monthly utility bill. Failure by the consumer to pay timely may result in disconnection of service or other village action.

(i) The consumer's side of the service shall be from the connection to the meter yoke for water service and to the point of the pump tank invert connection or the cleanout/connection at the roadside, for gravity sewer service.

(j) The water and sewer service fee shall be added to the utility bill, and failure by the consumer to pay shall result in disconnection of service or other village action.

(k) All potential sewer customers must stop sewer discharge piping installation approximately three feet short of pump systems. The final three foot connection to the village owned sewer system will be the responsibility of village utilities staff.

(l) Water service consumers are not permitted to connect to any plumbing that may have the potential to produce wastewater, unless the plumbing is attached to an approved and operational sewer system.

(m) Any costs, fees or expenses incurred by village from breach by consumer of its responsibilities or other fault of consumer shall be billed to and be the responsibility of the consumer.

(Ord. of 10-26-2007; Ord. No. 2009-0602, 6-19-2009)

Sec. 30-50. Access to premises.

(a) Duly authorized agents of the village shall have access at all reasonable hours to the premises of the consumer for the purpose of testing, repairing, installing or removing

village property, inspecting piping, reading or testing meters or for any other purpose in connection with the village's water and sewer service.

(b) Each consumer shall grant, convey or shall cause to be granted or conveyed to the village a perpetual easement and right-of-way across any property owned or controlled by the consumer whenever the perpetual easement and right-of-way is necessary for the village water and sewer facilities and lines to enable service to the consumer.

(c) Consumer shall cooperate with village to prepare and record any easements or rights-of-way in favor of village and the costs of same shall be the responsibility of the consumer.

(Ord. of 10-26-2007)

Sec. 30-51. Change of occupancy.

(a) Not less than three days' notice must be given in writing to the village utilities department to discontinue service or if there is a change in occupancy.

(b) A nonrefundable new customer account fee in accordance with an established schedule of fees and charges shall be paid at the time that an account is established for service. Such fee shall also be paid for any transfer of accounts from one customer to another.

(c) Subject to paragraphs (a) and (b) above, the outgoing party shall be responsible for the cost of service provided up to the time of departure or the time specified for departure, whichever is the longest. The balance, or delinquent balance, of the account for which the outgoing party is responsible will be transferred to the outgoing party's new location, if within the jurisdiction of the village.

(Ord. of 10-26-2007)

Sec. 30-52. Suspension of service.

(a) Any tenant may request termination of service upon vacating the premises by notifying the village utilities department of such and requesting termination. Upon termination by a tenant, the service to the premises shall be connected in the name of the owner and no fee shall be charged to the owner.

(b) Service discontinued for nonpayment of bills will be restored only after the bills are paid in full and a reconnect fee in accordance with an established schedule of fees is paid for each meter reconnected.

(c) The village reserves the right to discontinue its service without notice for the following additional reasons:

- (1) To prevent fraud or abuse;
- (2) Consumer's willful disregard of the village's rules;
- (3) Emergency repairs;
- (4) Insufficiency of supply due to circumstances beyond the village's control;
- (5) Legal processes;
- (6) At the direction of public authorities;
- (7) Strike, riot, fire, flood, storm, accident or any unavoidable cause; or
- (8) For other just cause.

(d) The village may, in addition to prosecution by law, permanently refuse service to any consumer who deliberately tampers with a water meter or cross-connects piping to the sewer system or facilitates other sources of contamination.

(e) If a tenant is disconnected for nonpayment, the service shall be connected in the name of the owner thereafter, with no connect fees charged to the owner.

(f) If a tenant is disconnected for improper conduct, such as illegal cross connections, etc., as outlined in this section, service shall not be reconnected until the cause for the disconnection action by the village has been corrected by the property owner.

(Ord. of 10-26-2007)

Sec. 30-53. Abridgement or modification of rules.

(a) No promise, agreement or representation of any employee of the village shall be binding upon the village except as it shall have been agreed upon in writing, duly signed and accepted by the acknowledged officers of the village.

(b) No modification of rates or any of the rules and regulations shall be made by any agent of the village, but shall only be by lawful action of the village council.

(Ord. of 10-26-2007)

Sec. 30-54. Construction.

(a) *Compliance with law.* This chapter shall be construed and shall be deemed amended so as to comply with the laws and regulations of North Carolina, as the same may be amended from time to time, applicable to the subject matter hereof.

(b) *Headings*. The paragraph headings and numbers in this chapter are for convenience of reference only and are not to be considered in interpretation of this chapter.

(c) *Number and gender*. Words used herein, regardless of the number and gender specifically used, shall be deemed and construed to include any other number, singular or plural, and any other gender, masculine, feminine or neuter, as the context requires. Any reference to a person herein shall include an individual, firm, corporation, partnership, trust, governmental authority or body, association, unincorporated organization or any other entity.

(d) *Severability*. If any term or provision of this chapter is found void or unenforceable by a court or tribunal of competent jurisdiction, the remaining terms and provisions shall continue in full force and effect.

(Ord. of 10-26-2007)

Secs. 30-55 — 30-80. Reserved.

DIVISION 2. CHARGES AND FEES

Sec. 30-81. Classification of users.

(a) All users are to be classified by the village for rate and fee purposes by assigning each to a user classification category.

(b) The following shall constitute the village's user classifications for the purpose of assigning charges and fees:

(1) *Residential*. The following structures, as defined in the village zoning ordinance, single-family, duplex, triplex, quadraplex, condominium, zero lot line structure, townhouse or apartments with dedicated water and /or sewer accounts for each unit.

(2) *Non-residential*. Any user, other than a residential user, including, but not limited to, laundromat, restaurant, bar/lounge, public pool or pool house, ice cream shop, hardware store, gift shop, real estate office, florist, general service office, repair shop, motels/hotels, pharmacy, clothing store, beauty or barbershop, and other commercial or public use structures, and all mixed use structures (as defined in the village zoning ordinance) that include residential and non-residential water and/or sewer accounts that are not separated.

(3) Rates are based on design (REU's) Residential equivalent units.

(Ord. of 10-26-2007)

Sec. 30-82. Types of charges and fees.

The charges and fees as established in the village's schedules of charges and fees may include, but not be limited to, the following:

- (1) Residential water and sewer connection charges.
- (2) Residential irrigation connection charge.
- (3) Non-residential water and sewer connection charges.
- (4) New customer account fee for new water and/or sewer customer.
- (5) Fire protection service fee.
- (6) Plant modification charge.
- (7) Residential water and sewer service.
- (8) Non-residential water and sewer service.
- (9) Water line surcharge.
- (10) Capital recovery surcharge.
- (11) Service reconnection charge.
- (12) Portable toilet rental charge.
- (13) Non-sufficient funds (NSF) check/transaction charge.
- (14) Finance charge for late payment.
- (15) Late fee.
- (16) Collection agency fee.
- (17) Labor, regular business-hours services, after-hours services, and miscellaneous services.
- (18) Equipment charges.
- (19) Materials costs.

(Ord. of 10-26-2007; Ord. No. 2009-0602, 6-19-2009)

Sec. 30-83. Method of determining user charges, fees.

(a) The village council will, not less than annually, review the actual cost of operation and maintenance of the village's water and wastewater treatment facilities to include the distribution and collection systems, the administrative costs, and the volume REU (per 1,000 gallons) to reflect the true cost of constituent treatment. The adjustments, if any, will become effective at such time that a new published rate schedule is approved by council. The council may review these rates and/or minimum charges and adjust them accordingly at any time it deems adjustments are in the best interest of the village. All current water and sewer related rates, charges, fees, etc. that would be applicable per section 30-82 shall be provided in an established rate schedule, as approved and amended by the village council from time to time.

(Ord. of 10-26-2007)

Sec. 30-84. Tap fees and utility tap relocation.

(a) Water tap fees are calculated on the basis of meter size for residential structures and per residential equivalent units (REU's) for non-residential structures, provided in an established schedule, as approved and amended by the village council from time to time.

(b) Sewer tap fees are calculated on the basis of grinder pump or no grinder pump required, plus a plant modification charge that is based on residential structure or nonresidential structure per REU.

(c) Requests for utility taps to be relocated on the same lot due to construction interference shall be administered at an established per hour rate for labor, equipment and the cost of materials.

(d) All residential and non-residential water and sewer connection charges must be paid (in-full) prior to sheathing inspection.

(Ord. of 10-26-2007; Ord. No. 2009-0602, 6-19-2009)

Sec. 30-85. New customer account fee.

(a) New customer account fee, as provided in the rate schedule, shall be made for each water or sewer account. If both the water and the sewer accounts are established at the same time only a single charge will apply.

(b) Water and/or sewer furnished for a given lot shall be used on that lot only. Each consumer's water service must be separately metered at a single delivery and metering point. Each commercial unit and each storeroom or stall used for business purposes may have a separate meter.

(Ord. of 10-26-2007)

Sec. 30-86. Meter reading; billing; collecting.

(a) Meters will be read and bills rendered monthly, but the village reserves the right to vary the dates or length of period covered, temporarily or permanently. Billing for sewer service shall be on the monthly flat rate basis for residential. Non-residential is based on the amount of metered water consumed within the billing period or a minimum rate.

(b) Bills for water and sewer will be calculated in accordance with the village's published rate schedule then in effect.

(c) Charges for water service shall commence at the time of availability of water and with the installation of the water meter.

(d) Charges for sewer service shall commence at the time of the inspection and startup of the sewer system or the connection to gravity main.

(e) Bills are due on the billing date and may become delinquent in accordance with such policies as may be adopted and revised by the village council from time to time. If bills are not paid within the timeframe specified by such policies, the village shall charge a finance charge for late payment as provided in an established rate schedule, as approved and amended by the village council from time to time. In addition to the finance charges, the village may charge a late fee as provided in an established rate schedule, as approved and amended by the village from time to time. The village may also discontinue service on any account which remains delinquent for more than 60 days and the village may take other lawful action on the account.

(f) Subject to policies which may be adopted from time to time by the village council, payments made to any account shall be applied in the following order of priority:

(1) Accrued interest;

(2) Accrued late fees or similar charges;

(3) Collection agency, attorney's or other collection costs or expenses;

(4) To the principal balance owed.

(g) Partial payments made on any bill which combines water and sewer services shall be applied first to sewer billing, then to other charges (including, but not limited to, water line surcharge, purchase of Brunswick County water, service charges or other charges) and then to water billing.

(h) Should any property owner desire the water cut off at the meter for convenience, the water department shall make such cut off. A fee in accordance with an established fee

schedule shall be charged for the restoration of service, which fee shall be added to the regular utility bill. Should a request for service restoration be performed during after-hours, an adjusted fee in accordance with an established fee schedule shall be charged and added to the utility bill. The village reserves the right to vary these fees from time to time to cover the cost of providing such service.

(i) Failure to receive bills or notices shall not prevent such bills from becoming delinquent or relieve the consumer from responsibility for payment.

(j) A collection fee as provided in an established rate schedule, as approved and amended by the village council from time to time, shall be charged to any delinquent account turned over to a collection agency.

(k) The village shall impose a non-sufficient funds charge as provided in an established rate schedule, as approved and amended by the village council from time to time, in the event payment is refused for insufficient funds or otherwise dishonored by the financial institution on which the payment is drawn/made.

(l) To the extent permitted by law, all attorneys, experts or other professional fees incurred by village to enforce any provision of this chapter or collect any account shall be borne by consumer.

(Ord. of 10-26-2007)

Sec. 30-87. Complaints and adjustments.

(a) If the consumer believes his bill to be in error, he shall present his claim to the village utilities department before the bill becomes delinquent. Such claim, if made after the bill has become delinquent, shall not be effective in preventing late charges and/or discontinuance of service as provided in this article. The consumer may pay such bill under protest and the payment shall not prejudice the claim.

(b) If the meter is out of order, fails to register accurately, or its seal is broken, the property owner, occupant or tenant served by such a meter shall be charged at the average rate of consumption for similar billing periods as shown by the meter, when in order.

(c) If any owner, occupant or tenant served by a water meter is not satisfied with the meter reading and shall desire that the meter be tested, the meter shall be tested upon request. The cost of the meter test shall be borne by the customer if the test shows the meter to be within the current American Water Works Association (AWWA) standard. If the meter test shows readings outside the standard, there shall be no charge to the customer for the test. The charge for meter testing shall be determined and established from time to time by the Director of Public Utilities. The charge shall be based upon the average cost of testing meters of different sizes.

(Ord. of 10-26-2007)

Secs. 30-88 - 30-110. Reserved.

DIVISION 3. EXTENSIONS AND CONNECTIONS

Sec. 30-111. Extensions defined.

For the purposes of this article, an extension of the village's water and/or sewer system shall be defined to include any and all improvements deemed necessary by the village to serve a particular property in consideration of system-wide needs. Necessary improvements may include not only the construction of new lines, but shall also include the replacement of existing lines, the installation of pump stations, construction of oversized lines, and the installation of necessary hydrants, valves and metering devices.

(Ord. of 10-26-2007)

Sec. 30-112. Extensions of water and sewer systems.

(a) The extension of water and sewer lines to serve new development shall be accomplished as follows:

(1) The developer will submit an application and plans for review and approval by the village, its engineer (if any) and the applicable state agencies.

(2) The developer will install the lines in accordance with the approved plans and the installation must receive final approval by a North Carolina professional engineer.

(3) Prior to or upon completion of the new extension, the developer will furnish as-built drawings of the improvements, and shall deed to village the complete facility in documents in recordable form and suitable to village, to include all rights-of-way, easements, permits, franchises and authorizations or other instruments needed for the operation and maintenance of the facility, to the village. The developer shall not be eligible for reimbursement for costs related to the extension or any related plans, permits, authorizations, instruments or filings.

(b) Extension of water and sewer lines shall be accomplished as follows:

(1) An application and plans for the extension will be submitted for review and approval by the village, its engineer (if any) and the applicable state agencies.

(2) The lines will be installed in accordance with the approved plans.

(3) Prior to or upon completion of the new extension, all rights-of-way, easements, permits, franchises and authorizations or other instruments needed for the installation, operation and maintenance of the facility will be deeded to the village in documents in recordable form and suitable to village.

(4) The total costs involved in a new extension, whether initiated by a developer or the village, will be paid by the developer or by the parties benefitting from the extension.

(5) The developer shall be responsible for all costs, fees and expenses associated with an extension to serve new development.

(6) For extensions undertaken by the village to serve existing developed property, assessments pursuant to G.S. 160A-216 et seq. shall be utilized and may be based on any of the alternatives specified by G.S. 160A-218 or, in its discretion, the village may use such other fees or funding mechanisms as provided by law. Benefitted properties shall be responsible for all costs associated with the improvement.

(Ord. of 10-26-2007)

Sec. 30-113. Additional extensions authorized.

The village may make or authorize extensions or connections to or from any improvements constructed at the expense of a developer without the permission of the developer. Construction of improvements at the expense of a developer shall not relieve such developer of the obligation to pay applicable fees, costs and expenses under this chapter and applicable laws and regulations.

(Ord. of 10-26-2007)

Sec. 30-114. Reasons for extension refusal.

The village may refuse to extend or allow extension of service to property where the village determines that extension of service is unreasonable or impracticable because:

(1) The cost of service extension is determined to be excessive in terms of the number of customers to be served or because of topographical, engineering, technical or other problems.

(2) The provision of service will adversely affect the supply of water to other customers or will adversely affect the village wastewater treatment facility.

(3) The service extension would cause the village to be in violation of any provision of the asset purchase agreement dated September 5, 2005 by which the village acquired certain assets of Bald Head Island Utilities, Inc. on or about December 30, 2005.

(4) Other good and sufficient reasons.

(Ord. of 10-26-2007)

Sec. 30-115. Inspection by Village.

(a) All contracts and work related to connection or extension of the water and sewer systems of the village not performed by village forces, whether inside or outside of village, shall be subject to inspection by the village utilities department. Upon making application for extensions or connections to the village's water and sewer systems, the applicant agrees that the village possesses the right to inspect all necessary improvements or appurtenances thereto before such shall be connected to the systems of the village. The village shall be given notice to inspect before pipes are covered and connections made. The village may require any testing it deems appropriate to determine that work performed complies with approved specifications and plans with the expense of such testing being borne by the applicant or contractor. If, in the judgment of the director of public utilities, there is a demonstrated lack of competent supervision or work quality by a contractor, the director of public utilities may at his option:

(1) Halt work until approved supervision is obtained and the work is performed in accordance with village requirements and/or approved plans; or

(2) Provide constant inspection by village personnel at the expense of the applicant or contractor.

(b) Inspection of a project performed by the village does not consist of or imply supervision. The applicant or the contractor undertaking the improvement is solely responsible for ensuring that the project is completed properly and in compliance with approved specifications, plans and regulations. The responsible party may be required, at its cost, to rearrange or redo any work to bring it into conformity with such approved plans and specifications.

(Ord. of 10-26-2007)

Sec. 30-116. Extensions required within rights-of-way.

Water mains shall be extended only within the rights-of-way of publicly dedicated and opened streets. Sewer lines being constructed for direct service to adjoining properties shall also be located within such rights-of-way, except where topography or other reasons make this impracticable. In no case shall lines be extended across private property unless adequate permanent easements for such lines have been obtained.

(Ord. of 10-26-2007)

Secs. 30-117—30-130. Reserved.

**DIVISION 4.
WATER WELLS**

Sec. 30-131. Installment regulated.

(a) No new wells shall be permitted on Bald Head Island without the express written authorization of the village council.

(b) This section shall not affect wells currently in existence.

(c) Violation of this section shall be a misdemeanor making the offender liable for punishment in accordance with above section 30-1.

(Ord. No. 2007-1002, 10-26-2007; Ord. of 10-26-2007)

Secs. 30-132—30-150. Reserved.

**DIVISION 5.
IS CHARGES TO WASTE WATER SYSTEM AND EFFLUENT DISPOSAL**

Sec. 30-151. Sanitary sewer use policy; adoption and administration.

The village council shall by resolution, within six months of adoption of this chapter, adopt a sanitary sewer use policy which shall contain such regulations and policies as may be necessary to comply with federal, state and local law, and shall, from time to time, review such regulations and policies and modify or amend them as necessary to ensure compliance.

(Ord. of 10-26-2007)

Sec. 30-152. Restrictions on disposal of wastewater effluent.

Disposal of wastewater effluent is prohibited within the boundaries of the village by any person, firm, or other governmental entity other than the village utilities department without the express written authorization of the village council.

(Ord. of 10-26-2007)

Sec. 30-153. Fats, oils, and greases control.

(a) *Scope and purpose.* To aid in the prevention of sanitary sewer blockages and obstructions from contribution and accumulation of fats, oils, and greases into said sewers system from industrial or commercial establishments, particularly food preparation and serving facilities.

(b) *Definitions.*

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

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

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

(4) *Non-cooking establishments.* Those commercial establishments primarily engaged in the preparation of precooked foodstuffs that do not include any form of cooking. These include cold dairy and frozen foodstuffs preparation and serving establishments.

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

(6) *User.* Any person who contributes, causes or permits the contribution or discharge of wastewater into the village system, including persons who contribute such wastewater from mobile sources such as those who discharge hauled wastewater.

(c) *Grease interceptor maintenance, record keeping, and grease removal.*

(1) Grease interceptors shall be installed by users as required by the director of public utilities or his designee. Grease interceptors shall be installed at the user's expense, when such user operates a cooking establishment. Grease interceptors may also be required in non-cooking or cold dairy and frozen foodstuffs establishments when they are deemed necessary by the director of public utilities for the proper handling of liquid wastes containing grease. No user shall allow wastewater discharge concentration from subject grease interceptors to exceed 325 milligrams per liter, as identified by EPA method 1664, or its successor method, or 275 milligrams per liter, as identified by EPA method 413, or its successor method. All grease interceptors shall be of the type

designed and capacity approved by the director of public utilities or his designee and shall be easily accessible for user cleaning and village inspections. All such grease interceptors shall be inspected, serviced and emptied of accumulated waste content as required in order to maintain minimum design capability or effective volume of the grease interceptor, but not less often than every 30 days. Users who are required to pass water through a grease interceptor shall:

- a. Provide for a minimum hydraulic retention time of 24 minutes at actual peak flow or 12 minutes at the calculated theoretical peak flow rate as predicted by the uniform plumbing code fixture criteria, between the influent and effluent baffles with 20 percent of the total volume of the grease interceptor being allowed for sludge to settle and accumulate, identified hereafter as a "sludge pocket".
- b. Remove any accumulated grease cap and sludge pocket as required, but at intervals of not longer than 30 days at the user's expense. Grease interceptors shall be kept free of inorganic solid materials such as grit, rocks, gravel, sand, eating utensils, cigarettes, shells, towels, rags, etc., which could settle into this pocket and thereby reduce the effective volume of the grease interceptor.
- c. Accept the following conditions: If any skimmed or pumped wastes or other materials removed from grease interceptor are treated in any fashion onsite and reintroduced back into the grease interceptor as an activity of and after said onsite treatment, the user shall be responsible for the attainment (Ord. of established grease numerical limit consistent with and contained in (c)(1) on all discharges of wastewater from said grease interceptor in the village sanitary sewer collection and treatment system.
- d. Operate the grease interceptor in a manner so as to maintain said device such that attainment of the grease limit is consistently achieved. "Consistent" shall mean any wastewater sample taken from said grease interceptor shall be subject to terms of numerical limit attainment described in (c)(1). If an establishment desires, because of documented space constraints, an alternate to an out-of-building grease interceptor, the request for an alternative location shall contain the following information:
 1. Location of village sewer main and easement in relation to available exterior space outside building.
 2. Existing plumbing at or in a site that uses common plumbing for all services at that site.
- e. Understand and agree that: the use of biological additives as a grease degradation agent is conditionally permissible, upon prior written approval by the director of public utilities. Any establishment using this method of grease abatement shall maintain the trap or interceptor in such a manner that attainment of the grease wastewater discharge limit, as measured from the traps outlet, is consistently achieved.

f. Understand and agree that: the use of automatic grease removal systems is conditionally permissible upon prior written approval by the director of public utilities and Brunswick County department of health. Any establishment using this equipment shall operate the system in such a

manner that attainment of the grease wastewater discharge limit, as measured from the unit's outlet, is consistently achieved.

g. Understand and agree that: The director of public utilities reserves the right to make determinations of grease interceptor adequacy and need, based on review of all relevant information regarding grease interceptor performance, facility site and building plan review and to require repairs to, or modification or replacement of such traps.

(2) The user shall maintain written record of trap maintenance for three years. All such records will be available for inspection by the village at all times.

(3) No non-grease laden sources can be connected to sewer lines intended for grease interceptor service.

(4) Except as provided herein for a period of one year following adoption of this article, although installation of grease interceptors will be required to be installed, no enforcement actions will be taken under this section for failure to achieve limits on grease discharges from grease interceptors. If, during this one-year period an obstruction of a village sewer main(s) occurs that causes a sewer overflow to the extent that an impact on the environment is realized and that said overflow or failure of the sanitary sewer collection system to convey sewage can be attributed in part or in whole to an accumulation of grease in the village's sewer main(s), the village will take appropriate enforcement actions, as stipulated in the village's sewer use ordinance or resolution, against the generator or contributor of such grease.

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

(Ord. of 10-26-2007)

Secs. 30-154 — 30-170. Reserved.

DIVISION 6. WATER CONSERVATION STANDARDS

Sec. 30-171. Purpose.

These water conservation standards are enacted by the village for the purposes of:

(1) Reducing the rate of increase in overall water use through year-round water conservation practices that will help maximize the community's existing and planned water supply sources and help reduce seasonal peak day demands that result in higher cost to purchase Brunswick County water which in-turn means increased cost to the consumer.

(2) Such year-round practices shall include:

a. Reducing indoor use by encouraging the installation and maintenance of ultra-low flow toilets, faucet aerators, low-flow showerheads and similar devices, as well as other creative and commonsense indoor conservation practices.

b. Reducing irrigation and irrigation-related water waste without sacrificing landscape quality through the cultivation of lower water use plants; improved landscape design and planting practices; more efficient watering practices; and improved irrigation system design and maintenance.

c. Repair all leaks. Malfunctioning toilets and irrigation system are the most common cause of high water use. Toilets can be checked by adding a food coloring to the toilet tank and visually checking to see if the color appears in the bowl, if it does the toilet is leaking. Irrigation systems should be checked regularly for proper operation. Insure sprinkler heads are intact and automatic controller and valves are operating correctly.

(Ord. of 10-26-2007)

Sec. 30-172. Definitions.

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

Automatic controller. A mechanical or electronic device capable of operating an irrigation system and its component valve stations according to a pre-determined schedule of irrigation frequency and duration.

Irrigation system. Any permanently installed system of pipes, hoses, or other conveyance devices and appurtenances that provides water to living plant material through spray heads or other emission devices located at, above, or below the ground surface. For the purposes of these standards, a sprinkler, soaker hose, or other device connected to its water source via a moveable above-ground garden hose is not considered to be an irrigation system.

Non-residential. Any user, other than a residential user, including, but not limited to, laundromat, restaurant, bar/lounge, public pool or pool house, ice cream shop, hardware store, gift shop, real estate office, florist, general service office, repair shop, motels/hotels, pharmacy, clothing store, beauty or barbershop, and other commercial or public use structures, and all mixed use structures (as defined in the village zoning

ordinance) that include residential and non-residential water and/or sewer accounts that are not separated.

Potable water. Treated water provided by the village utilities department that is suitable for drinking, cooking, and other domestic use. Water that is collected indoors in containers from indoor faucets or spigots.

Public right-of-way. The area of land owned or maintained by municipal, county, or state government primarily for the use of the public for the movement of people, goods, vehicles, or storm water. For the purposes of these standards, the public right-of-way shall include curbs, streets, sidewalks, and storm water drainage inlets, but shall not include adjacent landscaped areas that may also be located within the legally delineated public right-of-way.

Raw water. Water drawn from wells, reservoir or other water source before treatment.

Residential. The following structures, as defined in the village zoning ordinance, single-family, duplex, triplex, quadraplex, condominium, zero lot line structure, townhouse or apartments with dedicated water and /or sewer accounts for each unit.

Runoff. Water which is not absorbed by the soil or landscape to which it is applied. Runoff occurs when water is applied too quickly (application rate exceeds infiltration rate), particularly if there is a severe slope. These standards do not apply to stormwater runoff which is created by natural precipitation rather than human-caused or applied water use.

Service area. The geographic area in which the village provides or is authorized to provide water and/or sewer service.

Shut-off nozzle. A device attached to the end of a hose that completely shuts off the flow, even if left unattended.

Spray irrigation. The application of water to landscaping by means of a device that projects water through the air in the form of small particles or droplets.

Sprinkler head. A device that projects water through the air in the form of small particles or droplets.

Water waste. The non-beneficial use of village potable water. Non-beneficial uses include but are not restricted to:

(1) Landscape water applied in such a manner, rate and/or quantity that it overflows the landscaped area being watered and runs onto adjacent property or public right-of-way; or landscape water applied during periods of rainfall or when soil moisture is already adequate.

(2) The use of water for washing vehicles, equipment, or hard surfaces, such as parking lots, aprons, pads, driveways, or other surfaced areas, in such quantities to flow onto adjacent property or the public right-of-way.

(3) Water applied in sufficient quantity to cause ponding on impervious surfaces. Water lost through plumbing leaks that can be readily identified and corrected.

(Ord. of 10-26-2007)

Sec. 30-173. Water waste prohibited, penalties for violating standard.

(a) *Water waste prohibited.* No person, party, or entity shall use, cause, waste, or permit to be wasted any village supplied potable water, in violation of the standards set out herein.

(b) *Penalties.* The village may discontinue water service to any customer where, after notice of a prohibited use is delivered to the service address, the village supplied potable water continues to be used or wasted in violation of the water conservation standards set out herein.

(Ord. of 10-26-2007)

Sec. 30-174. Determination of a water supply shortage or emergency.

(a) *Drought condition shortage.* The village shall base its determination of existing or potential water shortage conditions on its analysis of existing and anticipated demand, availability of supplemental supplies, as well as other elements of reasonable professional judgment and management.

(b) *Natural and man-made disasters and catastrophic equipment and plant failure shortage.* Any other circumstances, including service losses caused by equipment or facility failure, human error, deliberate act, weather, or other natural disaster, which constrain the village's water supply, treatment, or distribution capacity to less than that reasonably needed by its customers, shall constitute a water supply shortage up to and including a water supply emergency, requiring immediate action by the village.

(Ord. of 10-26-2007)

Sec. 30-175. Required actions under water supply shortage or emergency conditions.

In the event of a water supply shortage, the following shall apply:

(1) Village supplied potable water may not be used for any outdoor purposes, except for emergency fire suppression or other activities necessary to maintain public health, safety, or welfare.

(2) The use of village supplied potable water for heating and/or cooling purposes shall be reduced in all but the most essential facilities to the extent allowable in consideration of indoor air quality standards, weather conditions, and health and safety requirements.

(3) Water service may be discontinued or reduced to designated users or in designated portions of the village service area in order to preserve the availability of water for essential public health and safety requirements such as fire protection, clinics and other critical community needs.

(4) The village shall make use of media releases and other reasonable means of publicizing the water supply advisory and the need for immediate voluntary conservation.

(Ord. of 10-26-2007)

Secs. 30-176 — 30-180. Reserved.

DIVISION 7. CROSS CONNECTION CONTROL

Sec. 30-181. Purpose.

The purpose of this cross connection article is:

(1) To protect the public potable water supply of the Village of Bald Head Island (herein "village") from the possibility of contamination or pollution which could backflow into the public water system, due to back-siphonage or backpressure, by isolating such pollution or contaminants within the customer's private water system.

(2) To define the authority of the Village of Bald Head Island, utilities department (herein "utilities department") as the water purveyor entitled to eliminate all cross connections, new or existing, within its public water system.

(3) To provide for a continuing program of inspections and testing of existing cross connections, and those which may be installed in the future.

(Ord. of 10-26-2007)

Sec. 30-182. Definitions.

Air gap. An unobstructed vertical distance through the atmosphere between the lowest opening from any pipe or faucet supplying water from any source to a tank, plumbing fixture, or other device and the flood level rim of the device. An approved air gap separation shall be at least double the diameter of the supply pipe. In no case shall the

air gap separation be less than two inches. An approved air gap may be considered as a backflow prevention assembly.

Backflow. Any reverse flow of water, gas or any other liquid substance into the public water system of the Village of Bald Head Island from any source due to an unprotected cross connection.

Backflow administrator. An employee of the utilities department, trained and certified by the State of North Carolina, designated by the utilities director to administer and enforce this article.

Backflow prevention assembly (approved). An assembly that has been investigated and approved by the backflow administrator and has been approved to meet the design and performance standards of the American Society of Sanitary Engineers (ASSE), the American Water Works Association (A W W A), or the Foundation for Cross Connection Control and Hydraulic Research of the University Of Southern California.

Back pressure. Any elevation of pressure in the downstream piping system caused by pumps, elevation of piping, or steam and/or air pressure above the supply pressure at the point of consideration, which would cause a reversal of the normal direction of flow of water.

Backsiphonage. A reversal of the normal direction of flow of water in the pipes due to a negative pressure (vacuum) being created in the supply line with the backflow source subject to atmospheric pressure.

Certified tester. Any individual person who holds a certificate of completion from a certified training program in the testing and repair of backflow prevention assemblies and cross connection control.

Containment. The prevention of backflow from a private water system by an approved, properly functioning backflow prevention assembly which is installed, operated, and maintained in accordance with the provisions of this article.

Contamination. An impairment of the quality of the water to a degree which creates an actual hazard to the public health through poisoning or through the spread of disease.

Cross connection. Any actual or potential connection or piping arrangement between the public or a customer's potable water supply and any other source or system through which it is possible to introduce into any part of the potable system any used water, industrial fluids, gas, or any substance which could be harmful or hazardous to the potable water supply or system.

Customer. Any person, firm, or corporation using or receiving water from the utilities department.

Double check valve assembly. An assembly composed of two single, independently acting, approved check valves, including tightly closing shut-off valves located at each end of the device and suitable connections for testing the water tightness of each check valve.

Hazard.

(1) *Hazard (imminent).* An actual threat of contamination to the public water system that could cause serious illness or death.

(2) *Hazard (low).* No observed threat of damage to the physical components comprising the public water system or to a customer's potable water system, or of pollution to the public water system or to a customer's potable water system.

(3) *Hazard (moderate).* An actual or potential threat of damage to the physical components comprising the public water system or to a customer's potable water system, or of pollution to the public water system or to a customer's potable water system.

(4) *Hazard (severe).* A potential threat of contamination to the public water system or to a customer's potable water system that could cause serious illness or death.

Potable water. Water from any source which has been approved for human consumption by the State of North Carolina, Department of Environment and Natural Resources, Division of Environmental Health, Public Water Supply Section.

Private water system. Any water system located on the customer's premise, whether supplied by public potable water or an auxiliary water supply. The system or systems may be either a potable water system or an industrial piping system.

Public water system. The potable water system owned and operated by the Village of Bald Head Island. This includes all storage tanks, distribution mains, lines, pipes, connections, meters and other facilities conveying potable water from the water treatment plant to the service connections of each customer.

Reduced pressure zone assembly. An approved, properly functioning assembly containing two, independently acting, approved check valves with a hydraulically operating, mechanically independent pressure differential relief valve located between the check valves and at the same time below the first check valve. The assembly must include properly located test cocks and tightly closing shut-off valves located at each end of the assembly.

Service connection. The terminal end of a service connection from the public potable water system, immediately after the water meter, i.e., where the water purveyor loses jurisdiction and sanitary control over the water at its point of delivery to the customer's private water system.

Used water. Any water supplied by a water purveyor from a public potable water system to a customer's private water system after it has passed through the point of delivery and is no longer under the control of the water purveyor.

Water purveyor. Owner or operator of a public potable water system providing approved potable water supply to the public.

Water supply (unapproved). Any water supply, which has not been approved for human consumption by the State of North Carolina, Department of Environment and Natural Resources, Division of Environmental Health, Public Water Supply Section.

(Ord. of 10-26-2007)

Sec. 30-183. Responsibility.

(a) *Responsibility: utilities department.*

(1) The utilities department will be primarily responsible for preventing any contamination or pollution of the public water system. This responsibility begins at the point of origin of the public water system supply and includes all of the public water distribution system, and ends at the service connection, under the Federal or State Safe Drinking Water Act. The backflow administrator shall exercise vigilance to ensure that the consumer/customer has taken the proper steps to protect the public potable water system.

(2) When it has been determined by an inspection of the customer's private water system that a backflow protection system is required for the protection of the public water system, the backflow administrator shall notify, in writing, the owner of any such building or premises, to correct within a time set by this article, any plumbing installed or existing that is in violation of this article.

(3) The backflow administrator will select an approved backflow prevention assembly to be installed at the service connection. The owner shall be notified that the installation of a backflow prevention assembly may create a closed system, and as a result thermal expansion may occur. In these circumstances the owner must understand and assume all liability and responsibilities for that phenomenon.

(b) *Responsibility: customer.*

(1) The customer has the responsibility of preventing contaminants and pollutants from entering the customer's private water system or the public water system operated by the Village of Bald Head Island. The customer, at its own expense, shall install, operate, and maintain all backflow prevention assemblies specified within this article.

(2) If a tenant customer does not maintain the private water system, and has no authority to bring the system into compliance with the provisions of this article, the

Village of Bald Head Island may assert any available action against any proper party to assure the private water system is brought into compliance with this article.

(Ord. of 10-26-2007)

Sec. 30-184. Right of entry; authorization.

(a) Any authorized representative from the utilities department shall have the right to enter any building, structure or premises during normal business hours to perform any duty imposed upon him/her by this article and in accordance with the North Carolina State Plumbing Code, and the North Carolina Administrative Code. Those duties may include sampling and testing of water, or inspection and observation of all piping systems connected to the public water supply. Refusal to allow these representatives to enter for these purposes will result in disconnection of water service or other remedy provided by ordinance or applicable law.

(b) On request, the consumer shall furnish to the water purveyor any pertinent information regarding the water supply system on such property where cross connection and backflow are deemed possible.

(Ord. of 10-26-2007)

Sec. 30-185. Law; unprotected cross connection prohibited.

(a) No water service connection to any private water system shall be installed or maintained by the utilities department unless the water supply is protected as required by this article and in accordance with the North Carolina State Plumbing Code, and the North Carolina Administrative Code. Service of water to any premises may be discontinued by the utilities department if a backflow prevention assembly required by this article is not installed, tested and maintained, or if a backflow prevention assembly has been removed or bypassed or if an unprotected cross connection exists on the premises. Service will be restored after all such conditions or defects are corrected.

(b) No customer shall allow an unprotected cross connection to be made or to remain involving the customer's private water system.

(c) No connection shall be made to an unapproved auxiliary water supply unless the public water supply is protected against backflow by an approved backflow prevention assembly, appropriate to the degree of hazard.

(d) No customer shall fail to maintain in good operating condition any backflow prevention assembly, which is part of the customer's private water system and is required by this article.

(e) No customer shall fail to submit to the utilities department any records, which are required by this article.

(Ord. of 10-26-2007)

Sec. 30-186. Installation.

(a) Installation and testing requirements.

(1) The purpose of this section is to require that, when a cross connection or health hazard has been identified, all water flowing from the public water system into that private water system must flow through an approved backflow prevention assembly. Further, each backflow prevention assembly must be properly located, installed, maintained, and tested so that the backflow prevention assembly is effective in protecting the public water system from any possible contamination or pollution.

(2) The installation or replacement of a backflow prevention assembly for domestic water use shall only be performed by a licensed plumber or the utilities department. The installation, replacement or repair of a backflow prevention assembly on a dedicated fire sprinkler service shall only be performed by a licensed fire sprinkler contractor. All backflow prevention assemblies shall be tested by a certified backflow technician.

(3) All construction plans and specifications for premises which will receive service from the Village of Bald Head Island public water system shall be made available to the backflow administrator for review and approval; to determine the degree of hazard; and to determine any backflow prevention assembly required to be installed.

(4) All facilities zoned commercial that have existing water services with the Village of Bald Head Island and which request certificate of occupancy, whether for new construction or change of use, shall be inspected for compliance of backflow prevention and cross connection prevention. Any facility not having backflow protection or changing the degree of hazard shall be brought into compliance before the backflow administrator may approve issuance of the certificate of occupancy.

(5) The backflow administrator will determine whether a customer must install a backflow prevention assembly. Any unapproved backflow prevention assembly must be replaced with an approved backflow prevention assembly, within the following time period after notification by the backflow administrator.

Severe health hazard 7 days

Moderate health hazard 30 days

Low health hazard 60 days

If a severe health hazard or any threat of contamination or pollution to the Village of Bald Head Island public water system is detected, the backflow administrator may require the installation of the required backflow prevention assembly immediately, or within a shorter time period than specified above. If installation is not completed within

the specified time period, water service may be discontinued or other action taken as authorized by ordinance or law.

(6) All backflow prevention assemblies must be installed and maintained on the customer's premises as part of the customer's private water system at or near the service connection and before the service line is connected to any other pipes, except as authorized by the backflow administrator.

(7) Any branch of plumbing installed on the private water system that may be of a greater hazard than the supply line, (examples: irrigation systems or fire pump systems, etc.) shall be protected with the appropriate backflow prevention device, as determined by the backflow administrator.

(8) Any customer installing a reduced pressure zone (RPZ) or double check valve assembly (DCVA) must provide the following information to the backflow administrator within ten days after installation:

- a. Owner;
- b. Service address where assembly is installed;
- c. Date of installation;
- d. Type of assembly;
- e. Manufacturer;
- f. Model number;
- g. Serial number;
- h. Test results/reports.

(9) Each backflow prevention assembly that is required must function properly at time of installation. Each customer will be required to maintain, and repair each assembly required as part of their private water system. For any assembly, installation, test or repair, the customer, at its expense, will have a certified tester test the assembly and forward the Results to the backflow administrator within ten days of completion of the test or repair.

(10) Each customer must maintain a complete copy of test or repair for no less than five years. All test and repair records must be maintained on forms approved by the backflow administrator.

(b) *Installation location requirements.*

(1) Backflow prevention assemblies must be located in a place where it is readily accessible for regular testing, maintenance, repair, and inspection. Bypass lines parallel to a backflow prevention assembly shall have an approved backflow prevention assembly that is equal to that on the main line.

(2) *Reduced pressure zone assembly (RPZ).*

- a. Above ground or indoor installation is preferred and encouraged.
- b. Below ground installation is strongly discouraged, and shall only be allowed in special cases as approved by the backflow administrator. The vault shall have positive drainage with adequate gravity drainage to atmosphere and must be in a location where no portion of assembly can become submerged at any time or under any circumstances or conditions.
- c. Fifteen inches minimum clearance from vault floor and walls.
- d. Horizontal installation unless manufacturer states otherwise.
- e. Installation in accordance with manufacturer's recommendations.
- f. Located where it is readily accessible for regular testing, maintenance, and inspection.

(3) *Double check valve assembly (DCVA).*

- a. Above ground or indoor installation is preferred and encouraged.
- b. Below ground installation is strongly discouraged, and shall only be allowed in special cases as approved by the backflow administrator. The vault shall have positive drainage with adequate gravity drainage to atmosphere and must be in a location where no portion of assembly can become submerged at any time or under any circumstances or conditions.
- c. Fifteen inches minimum clearance from vault floor and walls.
- d. Vertical or horizontal installation acceptable.
- e. Installation in accordance with manufacturer's recommendations.
- f. Located where it is readily accessible for regular testing, maintenance, and inspection.

(4) *Air gap (AG).*

- a. Above ground installation only.

b. Must be in a location where no portion of assembly can become submerged at any time under any circumstances or conditions.

(Ord. of 10-26-2007)

Sec. 30-187. Degree of hazard.

(a) *Determination.*

(1) No water service shall be provided or connection made until the backflow administrator has been provided information or has surveyed the private water system to determine the degree of hazard and make a determination of a backflow prevention assembly to be installed to protect the public water supply.

(2) Any customer making any modification to the private water system's use or configuration which may change the degree of hazard, shall notify in writing the backflow administrator before any modification is made. If the backflow administrator determines that such modification requires a greater degree of backflow prevention assembly, that assembly must be installed prior to any modification of use or configuration.

(3) If the backflow administrator or his designee is unable to survey any portion of a private water system to determine the degree of hazard, a reduced pressure zone assembly will be required.

(b) *Minimum backflow prevention assembly requirements.*

| 1 | Degree of hazard | RPZ | DCVA | AG |
|---|------------------|-----|------|----|
| | Severe | X | | X |
| | Moderate/low | | X | |

AG = Air Gap

DCVA = Double Check Valve Assembly

RPZ = Reduced Pressure Zone Assembly

(2) Facilities that require a backflow prevention assembly:

a. Low hazard: DCVA

1. All residential structures will be considered a low hazard and shall have a minimum of a dual check valve assembly installed at the meter service at the time the meter is installed or replaced. If a higher degree of hazard is found, the appropriate backflow prevention assembly, as determined by the backflow administrator shall be installed. If no other backflow prevention assembly is specified a double check valve assembly must be installed on all private water systems regulated by the State of North Carolina.

2. All commercial connections that serve only domestic water use shall be designated low hazard unless listed below, or otherwise determined by the backflow administrator. All low hazard occupancies shall have a minimum of a double check valve assembly installed at the meter service at the time the meter is installed or replaced.

b. Moderate hazard: DCVA

1. Connection to tanks, lines, and vessels that handle non-toxic substances.
2. Fire sprinkler systems without chemical injection or booster pumps.
3. Most commercial establishments.
4. Automatic service stations.
5. Bakeries, restaurants, etc.
6. Beauty shops without health hazards.
7. Other facilities as determined by the backflow administrator.

c. Severe Hazard: RPZ or Air Gap

1. Wastewater treatment plants.
2. Fire sprinkler systems with chemical injection or booster pumps.
3. Connection to tanks, lines, boilers or vessels that handle sewage, lethal substances, toxic or radioactive substances.
4. Lawn irrigation systems.
5. Connection to an unapproved water system or auxiliary water supply.
6. Buildings with five or more stories above ground.
7. Hospitals and other medical facilities.
8. Exterminators and lawn care companies.

9. Car wash facilities.
10. Laundries.
11. Swimming pools.
12. Waterfront facilities.
13. Schools and colleges.
14. Oil and gas production, storage, or transmission facilities.
15. Other facilities as determined by the backflow administrator.

This is not intended to be an exhaustive list, only a partial one. Any other types of facilities or services not listed above may also be required to install an approved backflow prevention assembly if determined by the backflow administrator. All assemblies and installations shall be subject to inspection and approval by the backflow administrator or designee.

(3) Filling of tanks/tankers or any other container from a village owned fire hydrant is strictly prohibited unless it has been equipped with the proper meter and approved backflow prevention. Any unauthorized connection to a fire hydrant is considered an illegal cross connection to the village public water system and will be subject to legal action or remedy.

(4) *Imminent hazard.* If it has been determined that a customer's private water system has an imminent hazards; that customer must install an approved backflow prevention assembly specified by the backflow administrator. This assembly must be installed within 24 hours of notification from the backflow administrator. If the customer fails to install the specified assembly within the allowed time period, water service to the customer's private water system may be terminated and other action may be taken as authorized by ordinance or law. In the event the backflow administrator is unable to notify the customer within 24 hours of determining that an imminent hazard exists, the backflow administrator may terminate water service until the specified assembly is installed. These actions may be carried out, without limitation, under the Safe Drinking Water Act and the N.C. State Plumbing Code.

(Ord. of 10-26-2007)

Sec. 30-188. Notice of contamination or pollution.

In the event the customer has reason to believe that a backflow incident has occurred between the customer's private water system and the public water system, the customer shall immediately notify the utilities department so that appropriate actions can be taken to isolate and/or remove the contamination or pollution.

(Ord. of 10-26-2007)

Sec. 30-189. Violations and civil penalties.

(a) Notification of violation.

(1) A written notice must be presented to any customer/person who has been found to be in violation of any part of this article.

(2) Such notice must explain the violation and give the time period within which the violation must be corrected. The time period set to correct a violation shall not exceed 30 days after receiving the notice, unless otherwise specified in this article or by applicable law. If the violation is determined to be an imminent hazard by the backflow administrator, the customer shall be required to correct the violation immediately.

(3) In the event a customer found to be in violation of this article fails to correct the violation within the specified time, or fails to pay any civil penalties expense assessed under this article, water service will be terminated.

(b) Civil penalties.

(1) Unprotected cross connection involving a private water system, which is of an imminent hazard: \$1,000.00 per day, not to exceed \$ 10,000.00.

(2) Unprotected cross connection involving a tank/tanker or other container hooked to a fire hydrant: \$1,000.00 per occurrence.

(3) Unprotected cross connection involving a private water system, which is of a moderate hazard or severe hazard: \$500.00 per day, not to exceed \$5,000.00.

(4) Submitting false records which are required by this article: \$1,000.00 per incident.

(5) Failure to submit records which are required by this article: \$500.00 per incident.

(6) Failure to test or maintain backflow prevention assemblies as required by this article: \$100.00 per day.

(7) In addition to the foregoing, this article may be enforced by any and all civil and criminal penalties applicable under the village code of ordinances, remedies, applicable law or by suits in law or equity.

(8) This article shall be construed so as to comply with state and federal regulations issued from time to time on the subject matter hereof and shall be deemed amended to the extent inconsistent therewith.

(Ord. of 10-26-2007)

Chapter 31 RESERVED

Chapter 32 ZONING*

* **Cross References:** Any zoning map amendment saved from repeal, § 1-9(10); buildings and building regulations, ch. 6; environment, ch. 10; floods, ch. 14; streets, sidewalks and other public places, ch. 24; subdivisions, ch. 26.

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ARTICLE I. IN GENERAL

Sec. 32-1. Purpose.

This chapter is hereby adopted in order to:

- (1) Secure safety from fire, panic, and other dangers;
- (2) Promote health and the general welfare;
- (3) Provide adequate light and air;
- (4) Prevent the overcrowding of land;
- (5) Avoid undue concentration of population;
- (6) Facilitate the adequate provisions of public requirements;
- (7) Conserve the value of buildings and encourage the most appropriate use of land throughout the village; and
- (8) Protect the area's ecology through full cooperation with county, state and local authorities.

(Ord. No. 29, § 1.1, 8-17-1991)

Sec. 32-2. Authority.

This chapter is s adopted pursuant to the authority vested in the village by G.S. 160A-360 et seq. and limited by the charter incorporating the village.

(Ord. No. 29, § 1.2, 8-17-1991)

Sec. 32-3. Jurisdiction.

The provisions of this chapter shall, to the extent permitted by law, apply within the corporate limits of the village.

(Ord. No. 29, § 1.3, 8-17-1991)

Sec. 32-4. Interpretation and conflict.

In applying the provisions of this chapter, they shall be held to be the minimum requirements for the promotion of public safety, health, convenience, prosperity and general welfare. It is not intended by this chapter to interfere with, change or annul any easements, covenants, or other agreements between parties; provided, however, that where this chapter imposes a greater restriction upon the use of buildings or premises or upon the height of buildings, or requires larger open spaces than are imposed or required by other ordinances, rules, regulations or by easement, covenants or agreements, the provisions of this chapter shall govern.

(Ord. No. 29, § 1.4, 8-17-1991)

Sec. 32-5. Zoning affects all land and every building and use.

Upon and after adoption of this chapter, no building or land shall be used and no building or part thereof shall be erected, moved, or structurally altered except in conformity with the regulations specified herein for the district in which it is located.

(Ord. No. 29, § 7.1, 8-17-1991)

Sec. 32-6. Required yards not to be used by building.

The minimum yards or other open spaces required by this chapter for each and every lot shall not be encroached upon or considered as meeting the yard and open space requirements of any other lot.

(Ord. No. 29, § 7.2, 8-17-1991)

Sec. 32-7. Relationship of building to lot.

Every building erected, moved, or structurally altered, shall be located on a lot and in no case shall there be more than one principal building and its customary accessory buildings on the lot except in the case of a designed complex of professional, residential, or commercial buildings in an appropriate zoning district. Detached garages and carports must meet the same setback requirements as the principal building, just as if they were attached.

(Ord. No. 29, § 7.3, 8-17-1991)

Sec. 32-8. Street access.

No building shall be erected on a lot which does not abut a street or have access to a street, provided that in a business district or in a planned development in a residential district, a building may be erected adjoining a parking area or dedicated open space which has access to a street used in common with other lots.

(Ord. No. 29, § 7.4, 8-17-1991)

Sec. 32-9. Reduction of lot and yard areas prohibited.

No yard or lot existing at the time of passage of this chapter shall be reduced in size or area below the minimum requirements set forth in this chapter. Yards or lots created after the effective date of this chapter shall meet at least these minimum requirements.

(Ord. No. 29, § 7.5, 8-17-1991)

Sec. 32-10. Business uses of manufactured offices and trailers.

No manufactured office or trailer shall be used in any manner for business, commercial, or residential purposes. A construction trailer may be used during the period of construction of improvements of property upon which the construction trailer is located. A manufactured office or trailer may be used on a temporary basis during an emergency in a commercial zoning district for a specific time period granted by the zoning official and only if the use operated within the structure is a permitted use in that zoning district.

(Ord. No. 29, § 7.6, 8-17-1991; Ord. No. 2002-006, § 1, 4-20-2002; Ord. No. ZO-03-04, 6-18-2004)

Sec. 32-11. Definitions.

Except as specifically defined in this section, all terms contained in this chapter shall have their customary definitions. Terms used in this chapter shall be defined as follows:

Abutting means having property or district lines in common. Lots are also considered to be abutting if they are directly opposite each other and separated by a street or alley.

Access means a way of approaching or entering a property from a public street or right-of-way. Access also includes ingress, the right to enter, and egress, the right to leave.

Accessory building or use means a building or use not including signs, which is:

- (1) Conducted or located on the same lot as the principal building or use served;
- (2) Clearly incidental to, subordinate in area and purpose to, and serves the principal use; and

(3) Either in the same ownership as the principal use or is clearly operated and maintained solely for the comfort, convenience, necessity, or benefit of the occupants, employees, customers, or visitors of or to the principal use.

AEC means area of environmental concern as designated and regulated by the coastal resource commission.

Alley means a public or private right-of-way primarily designed to serve as a secondary access to the side or rear of those properties whose principal frontage is on a street and is not intended for general traffic.

Architectural review board (ARB) means the architectural review board or committee established by and operating under the auspices of Bald Head Association, a state nonprofit corporation, which is referred to in this chapter as the ARB.

Baffled light means any artificial light which is attached to a building and is shielded from horizontal view.

Bald Head Island Design Guidelines means a publication to assist property owners in planning their buildings as well as their site development plan and landscape plan.

Board of adjustment means a quasijudicial administrative body that operates on a level between the enforcement officers and the courts. The board shall hear and decide appeals from and review any order, requirement, decision or determination made by a zoning official charged with the enforcement of any ordinance adopted as part of this chapter. The village council shall appoint all members to the board of adjustment.

Building means any structure built for support, shelter or enclosure of persons, animals or property of any kind which has enclosing walls for 50 percent or more of its perimeter. The term "building" shall be construed as if followed by the words "or parts thereof" including porches, decks, carports, garages, sheds, roof extensions, overhangs, and any other projections.

Building, height of, means the vertical distance from the lowest natural point on the ground beneath a building and attached structures to the highest point of the roof.

Building permit means a permit issued by the village to allow construction according to the approved building plans submitted by the contractor or owner of the described property as required by G.S. 160A-417.

Building plans means the detailed architectural drawings and specifications of a building proposed to be erected on a lot which shall show as a minimum the dimensions, elevations, interior layout, type of construction and exterior appearance, design and finish of the building. The building plans shall be accompanied by a topographic survey of the lot showing the elevation contours not more than every 20 feet as measured from

front to rear and side to side lines of the lot, see section 32-44(c) for a description of other material to accompany building plans in applying for a building permit.

Building site means an area of disturbed land and vegetation required for placement of a structure, its access ways, and utilities, including, but not limited to, areas disturbed for parking lots, power lines, driveways, septic tank nitrification fields and hiking trails.

Certificate of occupancy/compliance means official certification that the structure may be used or occupied following connection with permanent electrical power (G.S. 160A-423).

Clinic, medical services means a facility operated by one or more physicians, or other licensed practitioners of the healing arts, but not exceeding four physicians or other licensed practitioners, for examination and treatment of persons solely on an outpatient basis.

Club or lodge (private nonprofit, civil, fraternal) means a nonprofit organization of persons, who are bona fide members paying dues, which owns, hires, or leases a building, or portion thereof; the use of such premises being restricted to members and their guests.

Commercial filming activity means the process of recording any photographic image, still or moving, by any technology available therefor when the image is recorded for hire or redistribution for monetary gain when such activity shall involve the use of equipment of any type which may not be physically transported by hand without the use of mechanical devices. Commercial filming activity shall further include any activity ancillary thereto or in support thereof, including but not limited to transportation, use or storage of any equipment, vehicles or other property used in connection therewith.

Community boat ramp means a launching ramp owned by the property owners' association for use by property owners and their guests.

Community boating facility means a private, nonprofit boating facility including a dock, pier and/or launching ramp on property having water frontage; the use of which is intended to serve more than one residential lot. The right to use such facility must be conferred by an easement appurtenant to the residential unit or lot it is intended to serve or must be controlled by a property owner's association having jurisdiction over the common elements in a residential project in which the lot or unit is a part. No commercial activities of any kind shall be allowed within the confines of the facility.

Condominium means a parcel of real estate, portions of which are designated for separate ownership and the remainder of which is designated for common ownership solely by the owners of these portions where undivided interest in the common elements are vested in the unit owners.

Construction trailer means a structure, not to exceed 16 feet in length, on the job for purpose of storing materials and tools and which will be removed immediately upon completion of construction.

Dwelling, duplex, means a building on a single lot or parcel containing two dwelling units, and where the building is designed to be or is occupied by two families living independently from each other.

Dwelling, multifamily, means a building containing three or more dwelling units, and where the building is designed to be or is occupied by three or more families living independently from each other.

Dwelling, single-family-attached, means two or more single-family dwelling units, each sharing at least one party wall along a common property line with each other and/or with another single-family dwelling unit, and where the end units meet the applicable minimum side yard setback requirements on their unattached sides.

Dwelling, single-family-detached, means a building containing one dwelling unit only, where the building is designed to be occupied by one family and having no roof, wall or floor in common with another dwelling unit.

Dwelling unit means an enclosure designed for and used or held ready for use as a residence.

Dwelling, zero lot line, means a dwelling located on a lot in such a manner that one side of the structure abuts a pre-designated side lot line, and where the structure does not share a party wall with an adjacent structure along the same lot line.

Emergency repairs means any repairs necessary to protect the structure from damage from the weather elements or which are necessary to protect occupants or other persons from imminent injury. Such repairs include any repairs to allow the existing electrical heating, cooling, or sanitary equipment to operate properly.

Family means one or more persons related by blood, marriage or adoption living together as a single housekeeping unit and having a recognized head of household. For the purposes of this chapter such persons may include gratuitous guests and domestic servants employed on the same premises. Family also may be two to five unrelated persons sharing a common household.

Filmmaker means the person, firm, corporation or other entity conducting any commercial filming activity.

Floor area, gross, means the total square footage on all floors within the building walls.

Forest canopy means the light intercepting layer formed by all of the tree tops and ultimate leaf bearing branches in a forest: the uppermost layer of vegetation in a forest.

In the Bald Head Island and Middle Island forest, the forest canopy may be kept to near constant height by the pruning effect of salt mist nearer the ocean, or it may become irregular in height where salt impact is less.

Forest subcanopy means a light intercepting understory layer formed by shade tolerant saplings, shrubs and small trees beneath the canopy of a forest. The Bald Head Island subcanopy species include dogwood, holly, cherry, laurel, waxmyrtle and beautyberry.

Freestanding baffled lighting means artificial lighting, attached to a flat surface such as a fence, wall or tree, which is directed downward and shielded from horizontal view.

Garage, private, means a building used as an accessory to or a part of the main building permitted in any residential district, and providing for the storage of vehicles.

Groundwater recharge area means a catchment basin or watershed underlain by layers of alternating permeable and impermeable strata such that excess rainfall not lost to evaporation or runoff is retained and stored in subterranean porous layers of soil. Essentially the entire Bald Head Island and Middle Island forests act as groundwater recharge areas since porous sandy soils permit little runoff of excess precipitation. For the purposes of this chapter components of these systems include ponds, wetland swells, bay forest, dunes and marsh.

Handicapped person means a person with a temporary or permanent physical, emotional, or mental disability including but not limited to mental retardation, cerebral palsy, epilepsy, autism, hearing and sight impairments, emotional disturbances and orthopedic impairments but not including mentally ill persons who are dangerous to others as defined in G.S. 122C-3(11)B.

Home occupation means any occupation or profession carried on within a dwelling by one or more occupants thereof, providing that such use is clearly incidental and secondary to the use of the dwelling for dwelling purposes, that no more than 25 percent of the total floor area is used for such purposes, that there is no outside or window display, that no mechanical or electrical equipment is installed or used other than is normally used for domestic, professional, or hobby purposes, or for infrequent consultation or emergency treatment and providing that no person not a resident of the dwelling nor a family member is employed in connection with the home occupation.

Hotel, motel or inn means a building or other structure kept, used, maintained, advertised as or held out to the public to be a place where sleeping accommodations are supplied for pay to transient or permanent guests or tenants, where rooms are furnished for the accommodation of such guests; and may have one or more dining rooms or restaurants, where meals are served, shops, and attendant sports and recreational facility. The term hotel, motel or inn includes bed and breakfast establishments.

Impervious coverage means the area of land on a lot, which is covered by surfaces including roof area in such a manner that water cannot drain through such surfaces.

The term "impervious coverage" does not include open deck, walkways, and driveways of wood in which the boards are spaced one-fourth inch apart.

Inoperative vehicle means any vehicle, designed to be self-propelled, which by virtue of broken or missing component parts, is no longer capable of self-propulsion.

Junk means old or scrap copper, brass, rope, rags, batteries, paper, trash, rubber, debris, waste, or junked dismantled or wrecked vehicle, or parts thereof, iron steel, and other old or scrap ferrous or nonferrous material. (G.S. 136-143).

Land area means the total square footage within a property boundary.

Landscape permit means a permit to allow excavation, grading, filling or removing of vegetative covers according to section 32-44.

Loading space, off-street, means space logically and conveniently located for bulk pickups and deliveries, scaled to delivery vehicles expected to be used, and accessible to such vehicles. Required off-street loading space is not to be included as off-street parking space in computation of required off-street parking space.

Lot means a parcel of land recorded as a lot occupied or intended for occupancy by a main building or group of main buildings and accessory buildings, together with such yards, open spaces, lot width and lot area as required by this chapter, and having not less than the minimum required frontage upon a street, either shown on a plat of record, or considered as a unit of property and described by metes and bounds. For the purpose of this chapter, the word "lot" shall be taken to mean any number of contiguous lots or portions thereof, upon which one or more main structures for a single use are erected or are to be erected.

Lot, corner, means a lot at the intersection of two streets.

Lot coverage means the area of a lot that is covered by impervious or partially impervious covers including buildings, pavement, and recreation facilities but not including decking.

Lot, interior, means a lot other than a corner lot.

Lot line means the line bounding a lot.

Lot, through, means an interior lot having frontage on two streets.

Lot width means the straight-line distance between the points where the building setback line intersects the two side lot lines.

Low profile luminaries means any light fixture set on a base which raises the source of light no higher than 48 inches off the ground and designed in such a way that light is directed downward from a hooded light source.

Manufactured home means a dwelling unit that:

- (1) Is not constructed in accordance with the standards set forth in the state building code; and
- (2) Is composed of one or more components, each of which was substantially assembled in a manufacturing plant and designed to be transported to the home site on its own chassis bearing HUD inspection stickers. (G.S. 143-143.9(6)).

Marina, commercial, means any water area with a structure including but not limited to dock, basin, floating dock, etc. which is utilized for docking or otherwise mooring vessels and constructed to provide temporary or permanent docking space for more than ten boats.

Maritime forest means woodlands that have developed under the influence of salt spray on barrier islands and estuarine shorelines. The woodlands develop as an end result of primary plant succession on coastal barrier islands. Development generally takes place on stabilized dune systems located on the sound side of islands whose width, topography, and orientation provide sufficient protection from storm exposure. These forests contain a unique assemblage of species adapted to survive and reproduce under the harsh conditions associated with a coastal barrier system such as salt spray, wind shear, sandy soils with few nutrients and low water availability. Maritime forests are located on the most protected and usually the most attractive portions of the barrier islands. In general on Bald Head Island these forests are sheltered from the south by the spinal dune ridge and salt spray sheer zones on the east and west. Middle Island's maritime forest is sheltered by salt spray sheer zones on all sides.

Maritime forest protection overlay district means the area within the corporate limits of the village which contains maritime forests.

Modular home means a dwelling unit constructed in accordance with the standards set forth in the state building code and composed of components substantially assembled in a manufacturing plant and transported to the building site for final assembly on a permanent foundation.

Multiple site and multifamily site mean any proposed use of land which shall entail development of a given site such that its use or intended use contemplates one or more dwellings or one or more lots.

Nonconforming lot means a lot existing at the effective date of this chapter or any amendment to it (and not created for the purpose of evading restrictions of this chapter)

that cannot meet the minimum dimensional requirements of the district in which the lot is located.

Nonconforming use means the use of a structure or land which does not conform to the use regulations of this chapter for the district in which is it located, either at the effective date of this chapter or as a result of subsequent amendments which may be incorporated into this chapter.

Open space means the land area which is not part of the building pad or the parking space.

Ordinance means this chapter, text and map including any amendments. Whenever the effective date of the ordinance is referred to, the reference includes the effective date or any amendment to it.

Parking lot means an area or plot of land used for the storage or parking of vehicles.

Parking space means a storage space of not less than 72 square feet for one vehicle(six feet by 12 feet).

Planned unit development means a development of a lot or parcel of land which includes mixed used of residential, commercial, necessary utility facilities and recreational use in a unified plan of development.

Planning board means the public agency empowered to prepare a comprehensive plan and to evaluate proposed changes in land use, either by public or private developers, for conformance with the plan.

Planting plan means a plan showing site plan elements as well as proposed location, size, quantity, and variety of new plants.

Plat means a map showing the location, boundaries, and ownership of individual properties.

Pole light means any light fixture set on a base or pole where the point of light is higher than 48 inches off the ground.

Premanufactured structure means a structure used for other than dwelling purposes, which is constructed or manufactured at a location other than the lot on which it is located.

Previous coverage means the portion of the lot not defined as lot coverage.

Principal building means a building in which is conducted the principal use of the lot on which the building is situated, as related to the requirements of this chapter. In no way shall a camper or trailer be considered a principal building.

Rental unit means a building or portion thereof designed, arranged or used for permanent living quarters offered for rent on an annual or seasonal basis by the owner or a rental agency. This use as a rental unit will not be considered commercial for the purpose of this chapter.

Residential private pier means a dock, pier, launching ramp supporting boating activity extending from one or more residential lots into water adjacent thereto; the use of which shall be limited to members of the families of the lot owners or their tenants and/or their invited guests.

Setback means the required distance between every structure and the lot lines of the lot on which it is located.

Sewage disposal system means an approved sewage disposal system serving a building including private, municipal and sanitary district sewage systems located and constructed according to specifications of the county health department in consultation with the division of health services and/or the division of environmental management of the department of environment, health, and natural resources.

Single-family dwelling means a structure containing one dwelling unit designed for and used or held ready for use to house a single family.

Site development plan means a scaled drawing of a building site containing all of the information required under section 32-128 of this chapter to be submitted and inspected by the zoning official prior to the issuance of a building permit.

Site plan means a detailed plan showing plantings, driveways, parking, lighting, and site grading of proposed development.

Soil erosion and sedimentation control plan means a plan designed to ensure the stabilization and subsequent revegetation of all areas that have been disturbed to the extent that bare land has become exposed.

Start of construction means setting pilings or pouring a foundation for a structure.

Street means a thoroughfare which affords the principal means of access to abutting property.

Street line means the line between the street right-of-way and abutting property.

Street, private, means any road or street which is not publicly owned and maintained and is used for access by the occupants of the development, their guests, and the general public.

Structural alterations means any change in the supporting members of a building, such as bearing walls, columns, beams or girders except for repair or replacement.

Structure means anything constructed or erected, the use of which requires location in or on the land or attachment to something having a permanent location in or on the land.

Townhouse means a single-family dwelling unit constructed in a row of attached units separated by property lines and with open spaces on at least two sides.

Trailer means any vehicle or structure originally designed to transport something or intended for human occupancy for short periods of time. Trailers shall include the following:

Camping trailer means a folding structure manufactured of metal, wood, canvas, plastic, or other materials, or any combination thereof, mounted on wheels and designed for travel, recreation, or vacation use.

Construction trailer means a structure on the job for purpose of storing materials and tools and which will be removed immediately upon completion of construction.

Recreational vehicle means a self-propelled vehicle or portable structure mounted on such a vehicle designed as a temporary dwelling for travel, recreation, and vacation.

Tow trailer means a structure designed to be hauled by another vehicle and to transport vehicles, boats, or freight.

Travel trailer means a structure that is:

- (1) Intended to be transported over the streets and highways either as a motor vehicle or attached to or hauled by a motor vehicle; and
- (2) Designed for temporary use as sleeping quarters, but that does not satisfy one or more of the definitional criteria of a manufactured home.

Tree means any woody plant with at least one trunk with a caliper (diameter) of three inches or more than four feet above the ground.

Tree removal means cutting down a tree or removal of a tree or any act which causes a tree to die within a period of two years, including but not limited to, damage inflicted upon the tree or its root system by machinery, storage of materials and soil compaction; changing the natural grade above the root system or around the trunk; excessive pruning; paving with concrete, asphalt, or other impervious material within such proximity as to be harmful to the area.

Use, conditional, means a use which is permitted under certain conditions proposed by the applicant or required by village council to address site specific health, safety, compatibility or other public concerns in a district only after review by the planning board and final approval by the board of adjustment.

Use, permitted, means a use which is permitted as a right in a district for which a zoning permit may be issued by the zoning enforcement officer.

Utility facilities means equipment needed to store water and treat water and sewage and other facilities to meet the need of Bald Head Island, including television and telephone cables, electrical cables, transformers and other distribution equipment.

Utility services means all lines, lift station, pumping station, piping, etc. necessary to provide water and sewer service; including water wells and septic mound systems and all cable television, electrical and telephone lines.

Variance means a relaxation of the terms of this chapter where such variance will not be contrary to the public interest and where, owing to conditions peculiar to the property and not the result of the action of the applicant, a literal enforcement of this chapter would result in unnecessary and undue hardship. As used in this chapter, a variance is authorized only for height, area, and size of a structure or size of yards and open spaces. Establishment or expansion of a use otherwise prohibited shall not be allowed by variance, nor shall a variance be granted because of the presence of nonconformity in the zoning district or uses in an adjoining zoning district.

Water supply system means an approved water supply system including county, municipal and sanitary district water systems designated to serve particular subdivisions at full development and constructed to specifications of the county health office in consultation with the division of health services and/or the division of environmental management or the department of environment, health, and natural resources.

Wetlands means any area defined by or determined by the U.S. Army Corps of Engineers or other appropriate governmental authority, to be and constitute Section 404, Wetlands, under the applicable federal or state statutes.

Yard means an open space on the same lot with a building, unoccupied and unobstructed from the ground upward, except by trees or shrubbery or as otherwise provided therein.

Yard, front, means a yard across the full width of the lot, extending from the front line of the building to the front line of the lot, including the area of steps, eaves, and covered porches, but not including the areas of uncovered porches.

Yard, rear, means a yard extending across the full width of the lot and measured between the rear line of the lot and the rear line of the main building.

Yard, side, means a yard between the building and the side line of the lot extending through from the front yard to the rear yard or, where no rear yard is required, to the rear line of the lot.

Zero lot line means a lot line which has no requirement that any structure constructed adjacent thereof be located any minimum distance from that line.

Zoning means a police power measure, enacted primarily by units of local government in which the community is divided into districts or zones within which permitted and conditional uses are established as are regulations governing building bulk placement and other development standards. Requirements vary from district to district but they must be uniform within districts. The zoning ordinance consists of two parts: a text and a map.

Zoning map means an official map kept at village hall showing the boundary lines of the various zoning districts.

Zoning official means the building inspector as the person charged with enforcement of this chapter as shall from time to time be designated by the village council.

Zoning permit means the permit issued by the zoning official authorizing any change in the use of the building.

(Ord. No. 29, § 2.1, 8-17-1991; Ord. of 3-18-2000; Ord. No. 2000-21, 9-16-2000; Ord. No. ZO-02-04, 6-18-2004; Ord. No. 2006-1101, 11-17-2006; Ord. No. 2009-0503, 5-15-2009)

Cross Reference—Definitions generally, § 1-2.

Secs. 32-12--32-40. Reserved.

ARTICLE II. ADMINISTRATION*

***Cross Reference**—Administration, ch. 2. permits issued or denied with notations of all special conditions or modifications involved.

DIVISION 1. GENERALLY

Sec. 32-41. Zoning enforcement officer.

(a) The zoning official is hereby authorized and it shall be his duty to enforce the provisions of this chapter. This official shall have the right to enter upon the premises at any reasonable time necessary to carry out his duties. It is the intention of this chapter that all questions arising in connection with enforcement and interpretations shall be presented first to the zoning official. Appeal from his decision may be made to the board of adjustment. The building inspector shall be and hereby is appointed as the zoning official.

(b) In administering the provisions of this chapter, the zoning official shall:

(1) Make and maintain records of all applications for permits listed and requested in this chapter, and records of all

(2) File and safely keep copies of all plans submitted and the same shall form a part of the records of his office and shall be available for inspection at reasonable times by any interested party.

(3) Conduct inspections of premises and upon finding that any of the provisions of this chapter are being violated, notify in writing the person responsible for such violations, indicating the nature of the violation and ordering the action necessary to correct it.

(Ord. No. 29, § 3.1, 8-17-1991)

Cross Reference—Officers and employees, § 2-61 et seq.

Sec. 32-42. Application for permit.

It shall be unlawful for the zoning official to issue a building or landscape permit for any purpose regulated by this chapter until he has inspected such plans in detail and found them in conformity with this chapter. To this end, the zoning official shall require that every application for a building or landscape permit be accompanied by a site development plan as defined in section 32-128 of this chapter.

(Ord. No. 29, § 3.2, 8-17-1991)

Sec. 32-43. Certification of occupancy /compliance.

No new building or part thereof shall be occupied overnight and no addition or enlargement of any existing building shall be occupied and no existing building, after being altered or moved, shall be occupied and no change of use shall be made in any existing building or part thereof, until the zoning official has issued a certificate of occupancy/compliance. The zoning official may issue a temporary certificate of occupancy when he finds that actual occupancy of the building would not be dangerous, unhealthy, or unsanitary for any persons and that the building may be occupied on a specified temporary basis upon conditions which the zoning official finds would bring the building into full compliance with this chapter and other applicable village, county, and state regulations for occupancy thereof within a specified time period. In applying for and obtaining a certificate of occupancy/compliance, the following additional requirements shall be made:

(1) The building site shall be cleaned and building debris removed.

(2) Any damage to roads, utilities, and public facilities shall have been repaired and such repairs approved by the development services department and/or any utility company affected.

(3) The applicant presents to the zoning official a valid septic tank or sewage treatment facility completion certificate.

(4) A foundation survey showing the location of the foundation or a final as-built survey having been signed by a licensed surveyor in the state shall be presented showing the actual location of the foundation or structure with reference to all lot lines.

(Ord. No. 29, § 3.3, 8-17-1991; Ord. No. 2009-0701, 7-17-2009)

Sec. 32-44. Landscape permits and building permits.

(a) Issuance of landscape permit.

(1) No lot or tract within the village may be cleared, excavated, graded or filled until the building inspector has issued a landscape permit, whether or not such activity is in connection with a proposed construction.

(2) Special consideration must be given to preserving as much natural area as possible and to preserving all plants of special concern as designated in subsection (k) of this section.

(3) The site development plan required by subsection (c) of this section prior to the issuance of a permit shall clearly define those areas where existing dunes, berm and vegetative cover shall remain undisturbed and shall include plans for restabilizing any revegetation areas disturbed. Disturbance of the natural vegetation shall only be permitted in those circumstances in which such disturbance is reasonably necessary to allow safe construction of the proposed dwelling and its appurtenant facilities, such as septic tank and driveway. Such special consideration must be given to preserving as much natural area as possible.

(4) Provided, however, that nothing in this chapter shall require issuance of a landscape permit under this article for the maintenance of roads within the village right-of-way and hand clearing of three-inch and smaller caliper trees.

(5) Cutting of any tree or trees larger than three inches in caliper at four feet above grade without first obtaining a proper landscape permit will require the offender to obtain a permit, pay the required fine, and mitigate the loss of such tree or trees. Pruning tree branches and/or limbs larger than five inches in caliper without first obtaining a proper landscaping permit will require the offender to obtain a permit, pay the required fine, and mitigate the loss of such branches and/or limbs.

(6) In the case of competing trees, the building inspector shall make the decision of which tree to remove. The removal of dead trees with a three-inch caliper or greater, shall not require a permit but shall require the approval of the building inspector prior to removal. If a decision by the building inspector is disputed, the property owner must provide sufficient evidence to show the tree is dead, represents a danger to individuals or property, or the tree is diseased and will not live.

(7) Failure to comply with the requirements of the approved site plan shall be considered a violation and shall be subject to the immediate issuance of a stop work order by the building inspector and to the other procedures and remedies of subsection (k) of this section.

(b) *Issuance of building permit.* No building or other structure shall be erected, moved, extended, or structurally altered until the building inspector has issued a permit for such work.

(c) *Application for permit; requirements.* Each application to the building inspector for a permit under subsections (a) and (b) of this section shall be accompanied by a site development plan pursuant to section 32-128 of this chapter and building plans, all county, state and federal permits required by law or regulation and such other relevant information as he may require. Each residential lot shall have the lot lines clearly marked on the ground and certified as correct by a registered professional engineer or land surveyor prior to applying for a building permit. All new construction permitted must be located with a distance of 1,000 feet of a pressurized fire hydrant.

(d) *Survey markers located on relevant points.* Surveyors control markers shall be located on each property line, including street right-of-way, at the point of closest approach of the planned structure to that line. No construction shall begin on site until the markers required by this chapter have been properly established and examined and approved by the building inspector. Failure to construct any structure in accordance with these markers shall be a cause for the building inspector to issue a stop work order and to revoke a building permit previously issued.

(e) *Areas of environmental concern.* Each application for a building permit shall include information as to the location of applicable areas of environmental concern. Prior to issuance of a building permit the building inspector shall ascertain whether the proposed structure or facility conforms to the state regulations for areas of environmental concern issued pursuant to the coastal area management act.

(f) *On-site inspection.* Before a permit is issued under subsections (a) or (b) of this section, an on-site inspection of the property shall be made by the building inspector.

(g) *Posting of permits prior to starting work.* Before work is started on any property, the required permit or permits shall be posted in a prominent place on the property.

(h) *Expiration of permit if work not started in specified time.* Each permit issued pursuant to subsection (b) and (c) of this section shall expire six months after the date of its issuance unless work authorized by the permit has been started.

(i) *Landscape permit; when required.* A permit from the building inspector shall be required to remove, relocate, grade, excavate, fill or disturb sand, soil, dirt or earth or remove any naturally occurring trees, shrubbery, grass or other naturally occurring vegetation if such removal is in accordance with site plans for construction of a structure, for which plans a building permit either has been issued by the building inspector, only upon a determination by the building inspector, that the activity requested by the applicant is necessary to achieve one of the following purposes:

(1) Erection or protection of a structure or improvement on the property;

(2) Promote the growth and health of vegetation without significantly destabilizing the soil thereon or otherwise damaging the ecology of the property.

(j) Designation and protection of plants of special concern.

(1) It shall be the policy of the village to protect to the maximum extent feasible those trees and shrubs native to the maritime forest and dune areas of the village. All improvements shall be designed in such a way so as to minimize the destruction of plants of special concern and to preserve and to protect those remaining as much as practicable. Where relandscaping is required by this chapter, relandscaping shall be accomplished as much as feasible through the use of those plants which naturally occur within this area, including plants of special concern.

(2) The village hereby designates the following plants as plants of special concern:

(k) *Replacement of damaged shrubs; time limit; violation.* Any sand, soil, dirt or earth which has been removed, relocated, graded, excavated, added to, filled or disturbed in violation of this chapter and any naturally occurring vegetation which has been killed, damaged, destroyed or removed in violation of this chapter shall be restored or replaced within 60 days of notice from the building inspector. Each day after the 60-day period that the violator fails to perform such restoration or replacement shall constitute a new and separate violation. Any such replacement shall, where feasible, be accomplished through the use of plants which naturally occur within this area, with emphasis upon use of plants of special concern.

(Ord. No. 29, § 3.4, 8-17-1991; Ord. No. 2001-019, 9-15-2001; Ord. No. 2006-0902, 9-15-2006)

Sec. 32-45. Administrative procedures.

(a) *Public hearing.* Any case involving an appeal or variance requires a formal evidentiary public hearing to be held by the board of adjustment and any involving a

change of zoning district, classification or other zoning ordinance changes requires a legislative public hearing to be held by the village council to consider the recommendation of the planning board. The board or council shall fix a reasonable time for the hearing and give the public notice as required by law as well as due notice to the parties in interest. At the hearing, any person or party may appear in person or by agent or attorney. The board shall take action on a matter within a reasonable time after the termination of the proceedings.

(b) *Appeals.* Appeals may be taken to the board of adjustment by any person aggrieved or by any officer, department or board of the village affected by any decision of the zoning official. Such appeals shall be filed with the board of adjustment by notice specifying the grounds for appeal. Appeal shall be filed within 90 days from the date of the action being appealed. The officer from whom the appeal is taken shall forthwith transmit to the board of adjustment all papers constituting the record upon which the action appealed from was taken together with any additional written reports or documents as he deems pertinent. The board of adjustment may, after a public hearing, so long as such action is in conformity with the terms of this chapter reverse or affirm, wholly or in part, or may modify any order, requirements, decision or determination as ought to be made and to that end shall have the powers of the zoning official from whom the appeal is taken. Action by the board of adjustments requires a minimum four-fifths vote as required by G.S. 160A-388(E).

(Ord. No. 29, § 3.5, 8-17-1991)

Secs. 32-46--32-60. Reserved.

DIVISION 2. ENFORCEMENT AND PENALTIES*

***State Law Reference**—Authority to provide penalties for enforcement of zoning ordinances, G.S. 160A-365.

Sec. 32-61. Enforcement authority.

This chapter shall be enforceable in accordance with provisions available in the G.S. 160A-175.

(Ord. No. 29, § 4.1, 8-17-1991)

Sec. 32-62. Criminal penalties.

Any person violating any section or provision of this chapter shall, upon conviction, be guilty of a class 3 misdemeanor and shall be fined up to \$200.00 or imprisoned not more than 30 days. Each day such violation continues, however, shall be a separate and distinct offense, punishable as provided in this section. (For example, a continued

violation of one week after receiving notice from the zoning official may accumulate penalties of up to \$1400.00 fine, or imprisonment of up to 210 days.

(Ord. No. 29, § 4.2, 8-17-1991)

Sec. 32-63. Civil remedies.

(a) If a building or structure is erected, constructed, reconstructed or altered, repaired, converted or maintained or any building, structure or land is occupied or used in violation of the General Statutes of North Carolina, this chapter or other regulation made under authority conferred thereby, the village may apply to the district court, civil division or any other court of competent jurisdiction for a mandatory or prohibitory injunction and order of abatement commanding the defendant to correct the unlawful condition upon or cease the unlawful use of the property.

(b) In addition to an injunction, the court may enter an order of abatement as part of the judgment in the case. An order of abatement may direct that buildings or other structures on the property be closed and demolished or removed; that noxious grass and weeds be cut; that improvements or repairs be made; or that any other action be taken that is necessary to bring the property into compliance with this chapter. If the defendant fails or refuses to comply with an injunction or with an order of abatement within the time allowed by the court, he may be cited for contempt and the village may execute the order of abatement. The village shall have a lien on the property for the cost of the executing an order of abatement.

(c) In addition to the penalties for violation of this section as set out in section 32-62:

(1) A person who fails or refuses to stop work on any structure immediately upon issuance of a stop order; or

(2) A person who occupies a structure overnight without issuance of a certificate of occupancy;

shall be liable for a civil penalty in the amount of \$2000.00. In addition to this amount, which shall be payable to the village, the violator shall pay all court costs and all reasonable attorney's fees required to produce a civil judgment to enforce this provision, this provision being enacted in accordance with the provisions of G.S. 160A-175(b).

(Ord. No. 29, § 4.3, 8-17-1991)

Sec. 32-64. Equitable relief.

The village may apply to the superior court, civil division or other court of competent jurisdiction for an appropriate equitable remedy. It shall not be a defense to the village application for equitable relief that there is an adequate remedy at law.

(Ord. No. 29, § 4.4, 8-17-1991)

Sec. 32-65. Combination of remedies.

The village may choose to enforce this chapter by any one, all, or combination of the procedures in this article.

(Ord. No. 29, § 4.5, 8-17-1991)

Sec. 32-66. Procedure and remedies.

(a) Upon violation of any provision of this chapter, including but not limited to, both the failure to procure a landscape permit as required under section 32-44(a), and the removal of plants, including plants of special concern, after issuance of a landscape permit, which plants were not shown as designated for removal or alteration upon the plans submitted to the building inspector for issuance of such a landscape permit and in addition to all other remedies allowed by law for violation of this chapter, the specific remedies set out in this section and section 32-44(k) shall be applicable.

(b) Whenever the building inspector has probable cause to believe that a builder, contractor, subcontractor or other person, trade or business that has been issued a permit pursuant to this section has violated the terms of such permit, he shall notify the permit holder in writing of the nature of the violation. The permit holder shall have five days to respond to this notice. Upon expiration of the five days within which response is to be made, the building inspector shall decide whether a violation has occurred and shall notify the permit holder of his decision. If there has been a violation, he shall declare the permit holder and any builder, contractor, subcontractor and any other person, to be in violation of this section.

(c) If a determination is made that a violation has occurred, the applicable permit may be suspended by order of the building inspector and all work, other than that required to remedy the violation, shall cease on the project until the violation has been corrected to the satisfaction of the building inspector, at which time and upon receipt of written notice from the inspector that the error has been remedied, building may resume. It shall be specifically understood that failure to build in accordance with the site development plan pursuant to which the permit was issued or failure to comply in all respects with state and municipal building codes and ordinances shall be a violation of the terms of issuance of any applicable permit. Notice of violation shall specifically state the nature of the violation or violations claimed. Should construction be completed prior to any appropriate and required corrective action, no certificate of occupancy shall be issued by the village until such time as all required corrections have been performed.

(Ord. No. 29, § 4.6, 8-17-1991)

Secs. 32-67--32-80. Reserved.

DIVISION 3. CHANGES AND AMENDMENTS*

* **State Law References:** Authority to change or amend zoning ordinances, G.S. 160A-385.

Sec. 32-81. Changes and amendments.

The village council may, on its own motion, upon recommendation of the planning board, or upon petition by any interested person, amend, supplement, change, modify, or repeal the regulations or district boundaries established by this chapter. A petition by an interested person shall be submitted to the village council through the planning board, which shall consider its merit and make a recommendation to the village council. In no case shall final action by the council be taken on amending, changing, supplementing, modifying or repealing the regulations or district boundaries hereby established until a public hearing has been held by the council at which the parties in interest and citizens shall have an opportunity to be heard. The planning board may also hold one or more hearings prior to making its recommendations.

(Ord. No. 29, § 5.1, 8-17-1991)

Sec. 32-82. Action by the applicant.

(a) Initiation of amendments. Proposed changes or amendments to the zoning map or text of this chapter may be initiated by the village council, planning board or any interested party.

(b) Application. An application for any change or amendment shall contain a description and/or statement of the present and proposed zoning regulations or district boundary, and the names and addresses of the owner or owners of the property involved. Such application shall be considered at the next meeting of the planning board held at least 30 days after the filing but no more than 75 days after the filing.

(c) Fees. There shall be a nonrefundable fee, according to the schedule adopted by the village for each application for an amendment, to cover costs of advertising and other administrative expenses involved.

(d) Public hearing notices. When a change in the zoning classification of a piece of property is requested, the applicant shall provide to the zoning official, a list of names and addresses, as obtained from the tax listings and tax abstract, of all adjacent property owners and all owners of property under consideration for rezoning along with three sets of business (#10) envelopes stamped with a first class stamp and addressed to each person on the list. These addressed envelopes and the list shall be submitted at least 15 working days prior to the public hearing of the planning board. The zoning official shall verify the list, then mail notices of the public hearing to each person on the list and shall certify that fact to the village. Such certification shall be deemed conclusive in the absence of fraud. The second set of envelopes shall be used for notification of the

recommendation of the planning board. The third set submitted will be used for notification of the village hearing.

(Ord. No. 29, § 5.2, 8-17-1991)

Sec. 32-83. Action by the planning board.

(a) Every proposed amendment, supplement, change, modification or repeal of this chapter shall be referred to the planning board for its recommendation and report. The planning board shall hold a hearing making its recommendation.

(b) The following policy guidelines shall be followed by the planning board concerning zoning amendments:

(1) The proposal will place all property similarly situated in the area in the same category, or in appropriate complementary categories;

(2) There is convincing demonstration that all uses permitted under the proposed district classification would be in the general public interest and not merely in the interest of an individual or small group;

(3) There is convincing demonstration that all uses permitted under the proposed district classification would be appropriate in the area included in the proposed change. (When a new district designation is assigned, any use permitted in the district requirements and not merely uses which applicants state they intend to make of the property involved); and

(4) There is convincing demonstration that the character of the neighborhood will not be materially and adversely affected by any use permitted in the proposed change.

(c) A petition to amend the district boundaries or regulations established by this chapter shall be considered by the planning board at its next regular monthly meeting or any called special meeting, provided it has been filed, complete in form and content, at least 30 days prior to such meeting. Otherwise, consideration may be deferred until the following monthly meeting.

(d) The planning board shall render its recommendation on any properly filed petition within 30 days after the public hearing if one is held and shall submit its recommendation including its reasons therefor, to the village council.

(e) Members of appointed boards providing a recommendation to the village council shall not vote on recommendations regarding any zoning map or text amendment where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member.

(f) The planning board shall advise and comment on whether the proposed amendment is consistent with any comprehensive plan that has been adopted and any other officially adopted plan that is applicable. The planning board shall provide a written recommendation to the governing board that addresses plan consistency and other matters as deemed appropriate by the planning board, but a comment by the planning board that a proposed amendment is inconsistent with the comprehensive plan shall not preclude consideration or approval of the proposed amendment by the governing board.

(Ord. No. 29, § 5.3, 8-17-1991; Ord. No. 2006-1003, 10-26-2006; Ord. No. 2006-1004, 10-26-2006)

Sec. 32-84. Action by the village council.

(a) *Hearing; notice.* Before taking such lawful action as it may deem advisable, the council shall consider the planning board's recommendations on each proposed zoning amendment. If no recommendation is received from the planning board within 60 days after the planning board hearing, the proposed amendment shall be deemed to have been formally recommended by the planning board. The village council shall hold a public hearing. Notice of the public hearing shall be published in a newspaper of general circulation in the area of Bald Head Island at least once each week for two successive weeks prior to the hearing according to state regulations and by mailing notices to adjoining property owners in the envelopes provided by the applicant. Notice shall be made by posting the property concerned. The applicant, the planning board and the zoning administrator shall be given written copies of the council's decision and the reasons therefor.

(b) *Procedure.*

(1) A village council member shall not vote on any zoning map or text amendment where the outcome of the matter being considered is reasonably likely to have a direct substantial, and readily identifiable financial impact on the member.

(2) Before taking such lawful action, the village council shall consider the planning board's recommendation on each proposed amendment. Prior to adopting or rejecting any zoning amendment, the village council shall adopt a statement describing whether its action is consistent with the adopted Land Use Plan and explain why the board considers the action taken to be reasonable and in the public interest.

(Ord. No. 29, § 5.4, 8-17-1991; Ord. No. 2006-1005, 10-26-2006)

Sec. 32-85. Protest to an amendment.

(a) In order to protest any amendment to this chapter, a form provided by the zoning official and signed by the owners of 20 percent or more either of the area of the lots included in the proposed change, or of those immediately adjacent thereto, either in the rear thereof or on either side thereof, extending 100 feet therefrom, or of those directly

opposite thereto extending 100 feet from the street frontage of such opposite lots, shall be filed with the zoning official. Thereafter, such amendments shall not become effective except by a favorable vote of three-fourths of all the members of the village council. These provisions shall not, however, apply to any amendment which initially zones property added to the coverage of this chapter. No protest against any change in or amendment to the regulations or district boundaries established by this chapter shall be valid or effective under the provisions of section 32-84 unless it is in the form of a written petition actually bearing the signatures of the requisite number of property owners and stating that the signers do protest the proposed change or amendment and unless it shall have been received by the zoning official in sufficient time to allow at least two normal workdays excluding Saturdays, Sundays and legal holidays, before the date established for a public hearing on the proposed change or amendment to determine the sufficiency and accuracy of the petition.

(b) Protest petitions only apply to zoning map amendments and are not applicable to text amendments.

(c) For the purposes of this section, vacant positions on the council and members who are excused from voting shall not be considered 'members of the council' for calculation of the requisite supermajority.

(d) A petitioner can withdraw their protest any time up to the voting time on the rezoning.

(Ord. No. 29, § 5.5, 8-17-1991; Ord. No. 2006-1006, 10-26-2006)

Secs. 32-86--32-100. Reserved.

DIVISION 4. BOARD OF ADJUSTMENT

State Law References: Board of adjustment, G.S. 160A-388.

Sec. 32-101. Establishment.

(a) The village council shall appoint a board of adjustment consisting of five members and two alternates. The two alternates shall substitute at meetings for absent members. When substituting, such alternates shall have the same voting privileges as an appointed member. The initial establishment of the board will involve staggered term appointments as follows:

(1) Two members appointed for three-year terms.

(2) Three members appointed for two-year terms.

(3) Alternate members appointed for two-year terms.

After initial seating of the board, all members and alternates shall be appointed by the village council for three-year staggered terms.

(b) The two alternates shall substitute in the absence or temporary disqualification of any regular member or to fill a vacancy pending appointment of a member.

(c) A member of the board shall not participate in or vote on any quasi-judicial matter in a manner that would violate affected persons' constitutional rights to an impartial decision maker. Impermissible conflicts include, but are not limited to, a member having a fixed opinion prior to hearing the matter that is not susceptible to change; undisclosed ex parte communications; a close familial, business, or other associational relationship with an affected person; or a financial interest in the outcome of the matter. If an objection is raised to a member's participation and that member does not recuse himself or herself, the remaining members shall by majority vote rule on the objection.

(Ord. No. 29, § 6.1, 8-17-1991; Ord. No. 2006-1007, 10-26-2006)

Sec. 32-102. Procedures.

(a) *Officers.* The board of adjustment shall hold its first meeting in the month of August. At that meeting, the board of adjustment shall elect one of its members to serve as chair and preside over the board's meetings and one member to serve as vice-chair to serve as acting chair in the absence of the chair. The persons so designated shall serve in these capacities for one year and shall be eligible for reelection. Vacancies in these offices may be filled for the unexpired term only.

(b) *Meetings.*

(1) Meetings of the board of adjustment shall be held at the call of the chair and at such other times as the majority of the board may determine. All meetings of the board of adjustment shall be open to the public. The board shall keep minutes of its procedures, showing the vote of each member upon each question, or, if absent or failing to vote, an indication of such fact; and final disposition of appeals shall be taken, all of which shall be of public record. The concurring vote of four-fifths of the members of the board shall be necessary to reverse any order, requirement, decision or determination of the zoning official or to decide in favor of the applicant any matter upon which it is required to pass under any ordinance or to grant a variance from the provisions of this chapter.

(2) Vacant positions on the board and members who are disqualified from voting on a quasi-judicial matter shall not be considered 'members of the board' for calculation of the requisite supermajority if there are no qualified alternates available to take the place of such members.

(c) *Appeals.* An appeal from the decision of the zoning official may be taken to the board of adjustment by any person, firm, or corporation aggrieved, or by any officer, department, board or bureau of the town. Such appeal shall be taken within 90 days

after the decision by the zoning official, by filing with the zoning official and with the board a notice of appeal, specifying the grounds thereof. The zoning official shall forthwith transmit to the board all the papers constituting the record upon which the action appealed from was taken. The board of adjustment shall fix a reasonable time for hearing of the appeal, giving notice to all participants by registered mail. An appeal stays all proceedings in furtherance of the action appealed from, unless the zoning official certifies to the board, after notice of the appeal has been filed with him, that by reason of the facts stated in the certificate a stay would, in his opinion, cause imminent peril to life or property or that because the violation charge is transitory in nature, a stay would seriously interfere with the enforcement of this chapter, in which case, proceedings shall not be stayed other than by a restraining order, which may be granted by the board or by a court of record to whom an appeal has been made.

(Ord. No. 29, § 6.2, 8-17-1991; Ord. No. 2006-1008, 10-26-2006)

Sec. 32-103. Duties generally.

It is the intent of this chapter that all questions of interpretation and enforcement shall first be presented to the zoning official or his authorized representative, and that such questions shall be presented to the board of adjustment only on an appeal from the decision of the zoning official or his authorized representative, and that recourse from the decision of the board of adjustment shall be to the courts as provided by law.

(Ord. No. 29, § 6.3, 8-17-1991)

Sec. 32-104. Administrative review and variances.

(a) *Generally.*

(1) The board of adjustment shall hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by the zoning official in the enforcement of this chapter. The board may, so long as such action is in conformity with the terms of this chapter, reverse or affirm wholly or partly or may modify the order, requirement, decision or determination and to that end shall have the powers of the zoning official from whom appeal is taken.

(2) The board of adjustment shall authorize upon appeal in specific cases variance from the terms of this chapter as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of this chapter will result in undue hardship, so that the spirit of this chapter shall be observed and substantial justice done.

(3) The chairman or any member temporarily acting as chairman is authorized to administer oaths to witnesses in any matter coming before the board. All testimony before the board must be under oath and recorded.

(4) The decision of the board of adjustment shall be delivered to the village clerk, to the applicant by personal service, by certified mail, or registered mail, return receipt requested and to anyone else at the hearing who makes a request for a copy. A charge shall be made to the appellant according to town policy in order to cover administrative and advertising costs.

(b) *Granting variances.*

(1) Public hearing and certain conditions required. In order to grant a variance, the board of adjustment must conduct a public hearing and find the following conditions to be met:

a. There are extraordinary and exceptional conditions pertaining to the particular piece of property in questions because of its size, shape, or topography that are not applicable to other lands or structures in that same district;

b. Granting the variance requested will not confer upon the applicant any special privileges that are denied to other residents of the zoning districts in which the property is located;

c. A literal interpretation of the provisions of this chapter would deprive the applicant of rights commonly enjoyed by other residents of the zoning district in which the property is located;

d. The requested variance will be in harmony with the purpose and intent of this chapter and will not be injurious to the neighborhood or to the general welfare;

e. The special circumstances are not the result of the actions of the applicant; and

f. The variance requested is the minimum variance that will make possible the legal use of the land, building or structure.

(2) *Evaluation of impact of grant.* In considering all proposed variances from this chapter, the board shall, before making any finding in a specified case, first determine that the proposed variance will not constitute any change in the zone shown on the zoning map and will not impair an adequate supply of light and air to adjacent property, or materially increase the public danger of fire and safety, or materially diminish or impair established property values within the surrounding area, or in any other respect impair the public health, safety, morals and general welfare.

(3) *No variance for prohibited uses.* No permitted use of land in other districts shall be considered grounds for the issuance of a variance. Under no circumstances shall the board of adjustment grant a variance to allow a use not permissible under the terms of this chapter in the district involved, or any expressly or by implication prohibited by the terms of this chapter in the district.

(4) *Attachment of conditions.* In granting a variance the board may attach thereto such conditions regarding the location, character, and other features of the proposed building, structure, or use as it may deem advisable in furtherance of the purposes of this chapter. Violation of such conditions and safeguards when made a part of the terms under which the variance is granted, shall be deemed a violation of this chapter and punishable under sections 32-61 through 32-65 of this chapter.

(Ord. No. 29, § 6.4, 8-17-1991)

Sec. 32-105. Appeals.

Appeals to the superior court may be taken by any person, firm, or corporation aggrieved, or by any officer, department, board or bureau of the village affected by any decision of the board of adjustment, provided such appeals shall be taken within 30 days after the decision of the board of adjustment is filed in the office of the zoning official, or after a written copy thereof is delivered to the applicant, whichever is later.

(Ord. No. 29, § 6.5, 8-17-1991)

Sec. 32-106. General provisions.

No land owned by the State of North Carolina may be included within an overlay district or a special use or conditional use district without the approval by the Council of State as required by G.S. 160A-392.

(Ord. No. 2006-1009, 10-26-2006)

Secs. 32-107--32-120. Reserved.

**ARTICLE III.
ZONING DISTRICTS AND REGULATIONS***

* **State Law References:** Authority to divide territorial jurisdiction into districts, G.S. 160A-382.

Sec. 32-121. Zoning districts established.

(a) In order to implement the intent of this chapter and the charter, there are hereby created zoning districts with the following designations:

- (1) PD-1 Planned Development 1
- (2) PD-2 Planned Development 2
- (3) PD-2C Planned Development 2 Commercial

- (4) PD-3 Planned Development 3
- (5) PD-3C Planned Development 3 Commercial
- (6) PD-3C-1 Lighthouse-Chapel Overlay District
- (7) PD-4 Planned Development 4
- (8) MFPO Maritime Forest Protection Overlay
- (9) NC Neighborhood Commercial

(b) The creation of the zoning districts in subsection (a) of this section is a recognition of the charter and an attempt to implement the master plans, which have been developed for Bald Head Island's unique environmental setting and the island's current development character.

(c) In setting out the respective districts, careful consideration is given to the suitability of each and every district of the particular regulations applied thereto. Also considered are the necessary, proper and comprehensive arrangements of various land uses and densities of population in accordance with well-thought-out master plans for the physical development of the area.

(Ord. No. 29, § 8.1, 8-17-1991)

Sec. 32-122. District boundaries and zoning map.

The boundaries of the districts are shown upon the map accompanying the ordinance from which this chapter is derived and made a part hereof, entitled "Zoning Map, Village of Bald Head Island, North Carolina." The zoning map and all the notations, references and all amendments thereto, and other information shown thereon is hereby made a part of this chapter the same as if such information set forth on the map were all fully described and set out in this chapter. The zoning map properly attested is on file in the office of the village clerk and is available for public inspection.

(Ord. No. 29, § 8.2, 8-17-1991)

Sec. 32-123. Interpretation of district boundaries.

Where uncertainty exists with respect to the boundaries of any district shown on the zoning map, the following rules shall apply:

(1) *Use of property lines.* Where district boundaries are indicated as approximately following street lines, and lot lines, such lines shall be construed to be such boundaries. Where streets, watercourses, and similar areas with width are indicated as the district boundary, the actual district boundary line shall be the centerline of such area.

(2) *Use of the scale.* In unsubdivided property or where a zone boundary divides a lot, the location of such boundary, unless the same is indicated by dimensions, shall be determined by use of the scale appearing on the map.

(3) *Zoning official.* In case any further uncertainty exists, the zoning official shall interpret the intent of the map as to the location of such boundaries.

(4) *Board of adjustment.* The decision of the zoning official may be appealed to the board of adjustment by an affected property owner.

(Ord. No. 29, § 8.3, 8-17-1991)

Sec. 32-124. Interpretation of district regulations.

Regulations for each district shall be enforced and interpreted according to the following rules:

(1) *Uses by right and conditional uses.* All listed permitted uses are permitted by right according to the terms of this chapter. Conditional uses are permitted subject to compliance with the additional regulations specified.

(2) *Minimum regulations.* Regulations set forth in this chapter shall be minimum regulations. If the requirements set forth in this chapter are at variance with the requirements of any other lawfully adopted rules, regulations or ordinances, the more restrictive or higher standard shall govern.

(3) *Restrictive covenants and deed restrictions.* Unless restrictions established by covenants and deed restrictions running with the land are prohibited by the provisions of this chapter, nothing contained in this chapter shall be construed to render such covenants or restrictions inoperative.

(Ord. No. 29, § 8.4, 8-17-1991)

Sec. 32-125. Descriptions and purposes of the districts.

(a) *PD-1 planned development 1 district.*

(1) Planned development 1 district is established as a district in which the principal use of the land is for dwellings. It is the intent that this district encourage the construction and continued use of the land for single-family residential dwellings. This district is intended to continue the use of and enjoyment of the lighthouse, golf course, tennis courts, property owners clubhouse and other leisure activities and their attendant uses. Furthermore, this district benefits by having all lots adjacent to common areas which are to be enjoyed by all property owners or limited common areas which are necessary to serve a few adjoining lots.

(2) Uses of this district shall not include any commercial or trade activity except that associated with a golf course or private clubhouse and limited activities attendant to an inn facility.

(3) It is the intent of this district to preserve and protect as much as possible the natural environment by minimizing lot coverage and maximizing common areas and open spaces.

(b) *PD-2 planned development 2 district.*

(1) Planned development 2 district is established as a district in which the principal use of the land is for residential dwellings, the preservation and protection of a sizable maritime forest and, in general, development compatible with planned development 1 district.

(2) Furthermore, it is the intent of this district to protect the natural environment by limiting the maximum lot coverage, providing common areas adjacent to all lots, clustering residential nodes, and preserving a sizeable maritime forest area without intrusions. However, this area may include utility facilities necessary for development of the island.

(c) *PD-2C planned development 2 commercial district.* This district is established as a district in which the principal uses of the land are for commercial, municipal and utility service areas for the entire island. This district is intended to provide:

(1) A town hall service area;

(2) Commercial service areas;

(3) A pedestrian-oriented commercial center;

(4) A property owner's clubhouse and related sports activities and their attendant uses; and

(5) Transient inns and their attendant facilities.

(d) *PD-3 planned development 3 district.* Planned development 3 district is established as a district in which the principal use of land is residential but with some offices allowed and bed and breakfast without commercial restaurant facilities.

(e) *PD-3C planned development 3 commercial district.* Planned development 3 commercial district is established as a district in which the principal use of land is for mixed use which includes residential uses, commercial services, offices, marina and marina related uses, club facilities, transient inn uses and leisure activities and their attendant uses. Furthermore, it is the intent of this district to encourage the construction

and continued use of land necessary for the embarkation and debarkation of ferry passengers.

(f) *PD-4 planned development 4 district.* Planned development 4 district is established as a district in which the principal use of the land is for single-family residential dwellings on large lots, leisure activities and the protection of the natural environment.

(g) *MFPO maritime forest protection overlay district.* The specifications and standards of this district were established in order to permit development that is compatible with the environmentally sensitive nature of the Bald Head Island and Middle Island maritime forests, and to preserve land in a natural state where such land is considered to be a vital link in the local groundwater replenishment cycle and where the destruction of natural vegetation could have a harmful effect on the stability of the soil and its resistance to erosion. More specifically, the maritime forest protection overlay district is designed to protect natural features and functions of the area in the interest of health, safety and general welfare of the residents and visitors to Bald Head Island and Middle Island. Such features include, but are not limited to, saltspray sheer zone vegetation, forest wetlands, relic dunes, and dune ridges.

(1) *Applicability.* The provisions of this district shall, to the extent permitted by the law, apply to those areas within the corporate limits of the village that may be, from time to time, designated on the official map or maps designating certain areas thereon as maritime forest protection overlay district adopted by the village. This overlay district is intended to provide additional protection to the maritime forest, while allowing all uses contained in the PD district, in which the overlay occurs, to be allowed. The golf course from the fairways, tees, and greens to adjacent rights-of-way or lot lines are expected from this overlay district.

(2) *Performance standards.* The following performance standards apply to all uses within the maritime forest protection overlay district. These performance standards are in addition to or over and above the requirements of the applicable zoning district.

a. *Prestaking or preconstruction lot clearing.* Some clearing of understory trees and shrubs may be required to prepare a site for sale or survey or to stake the proposed building site. Permission to clear such understory, trees and shrubs shall not be required by the building inspector, but shall be limited to such vegetation with a three-inch caliper at four feet above grade.

b. *Lot alteration.* No alteration of a lot or building site shall occur prior to the issuance of a building permit. Trees shall not be removed except as necessary for the construction of the principal structure, accessory use, parking area, driveway access and septic tank/nitrification field system. Soil disturbing activities and site alteration shall not exceed the minimum necessary to provide for the location of the principal use structure, any accessory use improvements, driveway access, and utility service improvements. No specimen tree (a 24-inch diameter trunk at four feet above ground level) shall be removed unless construction is impractical without the removal of such tree.

c. *Construction containment.* The area of construction shall be limited to five feet outside of the perimeter of structure construction and two feet outside of a driveway referred to in this chapter as "limit of construction." A lay down yard for construction material must be shown on plans submitted for approval as well as the limits of construction. Both of these areas shall be surrounded by a construction fence which shall be maintained until all construction is completed. Movement of construction equipment or placement of material outside of this containment is prohibited.

d. *Wetland buffer.* Natural wetlands and ponds shall not be filled. No paved area or any part of a ground absorption wastewater treatment system shall be located within 20 feet of any stream, pond, or wetland. Pilings for a residence may be placed in the wetlands boundary as long as no fill is placed in the wetlands. For lots platted before April 1, 1991, fill is allowed to the extent permitted by applicable regulatory agency, only if the property is unbuildable or unaccessible without the fill permit. Open decking or boardwalks may be built over wetlands where approved by the local CAMA permit officers and division of coastal management or other appropriate governmental agency or authority.

e. *Off-street parking, driveways and carports.* Parking areas on a lot shall be located under the principal structure whenever possible. All off-street parking improvements and driveways shall be designed to minimize impervious lot coverage. Driveway widths shall be limited to ten feet.

f. *Clearing and pavement width for roads, streets, and culs-de-sac.*

1. The total combined width of paved area within a right-of-way for a road or street shall not exceed 22 feet.

2. The total width of paved area within a cul-de-sac at the end of a road or street shall not exceed 30 feet; nor more than 30 feet of any road or street right-of-way, regardless of the total width of such right-of-way shall be cleared of plant or tree growth.

Notwithstanding the provisions of this section, the width of paved area and the width of cleared right-of-way for intersections of streets or roads and culs-de-sac may exceed the permitted limits set out hereinabove to accommodate an appropriate turning radius, as determined by the village council, for vehicular traffic, including without limitation, emergency vehicles, fire protection and fighting equipment or vehicles and construction vehicles.

g. *Plant material installation.* There shall not be planted on any lot any shrubbery, trees, herbs, grasses or other flora unless same appears on the list of permissible shrubbery, trees, herbs, grasses or other flora to ensure that no plant material foreign to the natural ecology of the maritime forest protection overlay district which may be harmful to such ecology will be introduced into the maritime forest protection overlay district. Bald Head Island design guidelines recommendations and standards for development will be helpful to property owners in planning the installation of plant material.

(3) *Technical regulations.* Within the maritime forest district the following dimensional, setback, height, and other requirements shall be in effect:

a. Setbacks. The following setback requirements shall be applicable:

Single-family Lots of or over 9,000 square feet

Front yard 35 feet minimum

Side yard 10 feet minimum

Rear yard 10 feet minimum

Side yard corner lot 15 feet minimum

Single-family Lots up to 9,000 square feet

Front yard 25 feet minimum

Side yard 5 feet to 20 feet (15 feet
combined minimum of
the setbacks from joint
property lines)

Rear yard 10 feet minimum

Residential Cluster Lots

Front yard 10 feet minimum

Side yard 0 feet

Rear yard 10 feet minimum

(h) *PD-3C-1 lighthouse-chapel overlay district.* The specifications and standards of this district are established in order to permit development that is compatible with the pastoral environment of this district.

(i) *NC neighborhood commercial district.* The neighborhood commercial district (NC) is primarily intended to accommodate very low intensity office, and personal service uses within residential areas. The district is established to provide convenient locations for businesses, which serve the needs of island residents and visitors without disrupting the character of the neighborhood. The neighborhood commercial district is a transitional land use zoning district in which the principal use of land is residential with some office

and service uses allowed to serve the surrounding residential districts and in which traffic and parking congestion can be reduced to a minimum in order to preserve residential values and promote the general welfare of the surrounding residential districts.

(1) *Buffer requirements.* Nonresidential uses which abut undeveloped lots or lots utilized for residential purposes shall maintain a ten-foot undisturbed vegetative buffer along rear and side property boundaries.

(2) *Parking and driveway requirements.*

a. Minimum number of required off-street parking spaces, by landuse.

| <i>Residential Uses</i> | <i>Required Spaces</i> |
|---------------------------------------|-------------------------|
| Single-family dwellings | 2 per dwelling unit |
| Duplex dwellings | 2 per dwelling unit |
| <i>Nonresidential Uses</i> | <i>Required Spaces</i> |
| Library | 1 per 400 sq. ft. |
| Real Estate Office | 1 per 500 sq. ft. |
| Offices, other than real estate | 1 per 500 sq. ft. |
| Utility Services | 1 per 500 sq. ft. |
| Clinics | 1 per 500 sq. ft. |
| Chapel | 1 per 3 sanctuary seats |
| Utility facilities, public or private | 1 per 500 sq. ft. |

b. Location and design of parking areas/driveways.

1. All parking areas shall be located and designed so as to avoid undue interference with the use of public streets and alleys.

2. There shall be a maximum of one driveway per lot. In the case that adjacent lots are under single ownership, shared driveways shall be utilized in an attempt to provide the minimum number of access points possible.

(3) *Maximum floor area ratio.* The total square footage of floor area permitted in the neighborhood commercial zoning district shall be determined as a ratio to the total square footage of the land area of the site. The ratio shall be .20. The floor area shall be the sum of the areas on all floors of the building measured from the outside faces of the exterior walls, including halls, lobbies, stairways, elevator shafts, enclosed porches and balconies, and belowgrade floor areas.

(4) *Recombination of lots.* Lots may not be recombined for the purpose of increasing the size of the structure built on the lot. The maximum floor area ratio would apply to the largest lot existing prior to the recombination.

(5) *Prohibited uses and structures.*

- a. Commercial, retail sales.
- b. Restaurants, cafes and other food services.
- c. Warehousing, storage, and distribution facilities.
- d. All uses and structures not of a nature specifically or provisionally permitted in this chapter.

(Ord. No. 29, § 8.5, 8-17-1991)

Sec. 32-126. Permitted and conditional uses.

The following uses are listed as permitted (P) or conditional (C) or special (S) use in each zoning district. Prohibited uses are either not listed or a blank space appears in the column. Such permitted or conditional uses as set forth in this section shall be the only uses to which any land or structures located thereon shall be put and shall be the exclusion of all other uses whether listed in this section or not. (See article VII of this chapter for provisions governing conditional uses and special uses.)

| <i>Uses</i> | <i>PD-1</i> | <i>PD-2</i> | <i>PD-2C</i> | <i>PD-3</i> | <i>PD-3C</i> | <i>PD-3C-1</i> | <i>PD-4</i> | <i>NC</i> |
|--|-------------|-------------|--------------|-------------|--------------|----------------|-------------|-----------|
| RESIDENTIAL HOUSING TYPES | | | | | | | | |
| Accessory uses to residential dwelling | P | P | P | P | P | | P | P |
| Dwelling, duplex | C | C | | P | P | | | C |
| Dwelling, multi-family (including townhouse, condos) | P | C | P | P | P | | | |

| | | | | | | | | |
|--|---|---|---|---|---|---|---|---|
| Dwelling, single-family, attached or detached | P | P | P | P | P | | P | P |
| Zero lot line dwellings | P | P | P | P | | | | |
| Chapel | P | C | | | | P | | C |
| Home offices and occupation | P | P | | P | | | P | P |
| NONRESIDENTIAL | | | | | | | | |
| Accessory structures | P | P | P | P | P | | P | P |
| Bicycle shop including rental and repair | | | | P | | P | | |
| Clinics, medical services | | | P | | P | | | P |
| Clubhouse, public or private | P | C | C | C | P | | C | |
| Commercial filming activity | | | S | | S | | | |
| Commercial, retail sales | | | P | | P | C | | |
| Freestanding baffled lighting | | | C | | C | C | | |
| Golf course, including pro shop and related services | P | P | | | | | | |
| Government offices and facilities | C | C | P | C | P | P | C | C |
| Library | P | P | P | P | P | C | | P |
| Lodging facilities, including inn, hotel and motel | P | | P | P | P | | | |
| Marina and marina related | | | | P | P | | C | |
| Premanufactured structure | | | P | | | | | |
| Real estate offices | | | P | | P | C | C | P |
| Recreational facilities | C | C | C | C | C | C | C | C |

| | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| Offices, other than real estate | | | P | | P | C | | P |
| Water transportation including docks, piers, ticket booths, vehicle parking, etc. | | | | | P | | C | |
| Postal services | | | P | | P | P | | |
| Restaurants, cafes, and other food services (limited to club) | P | | P | | C | | | |
| Restaurants, cafes and other food services (not a part of club facilities) | | | P | | P | | | |
| Utility facilities, public or private | C | C | C | C | C | | C | C |
| Utility facilities, public or private | P | P | P | P | P | P | P | P |

(Ord. No. 29, § 8.6, 8-17-1991; Ord. of 3-18-2000; Ord. No. 2006-1102, 11-17-2006; Ord. No. 2009-0502, 5-5-2009)

Sec. 32-127. Dimensional density and structure requirements.

(a) *Dimensional requirements by district.* The dimensional requirements table (Table 1 of this section) lists dimensional density maximums and minimum structure requirements for each zoning district.

(b) *Corner visibility.* No planting, fence or other obstruction to visibility at elevations of three to seven feet above street level shall be erected, maintained or allowed to exist within 15 feet of the intersection of any street right-of-way lines.

Table 1: Dimensional Requirements

Residential:

| <i>Dimension Requirements for Dwelling Units</i> | PD-1 | PD-2 | PD-2C | PD-3 | PD-3C | PD-3C-1 | PD-4 | N |
|---|-------|-------|-------|--|-------|---------|--------|----|
| Minimum Lot Size Square Feet | 9,500 | 7,000 | 900 | All References to Type I, II, III, IV, V, VI, VII, | 400 | 5,000 | 20,000 | 9, |

| | | | | | | | | |
|---|---------|---------|--------|---|-------|-----|-------|-------|
| Maximum Number of Dwelling Units per Acre (SF/MF) | 4.6/14 | 6.2/14 | 14 | and VIII, lots in the PD-3 Zoning District shall refer to the Urban Code of the Harbour Association | 14 | 8 | 2.1 | 4. |
| Minimum Front Yard Setback (SF/MF) | 35'/10' | 10'/10' | 10' | | 10' | 10' | 35' | 30' |
| Minimum Side Yard Setback (SF/MF) | 10'/0' | 10'/0' | 10'/0' | | 5'/0' | 10' | 10' | 15' |
| Minimum Side Yard Setback on Corner Lots | 15' | 15' | 15' | | 15' | 10' | 25' | 20' |
| Minimum Rear Yard | 10' | 10' | 10' | | 5' | 10' | 10' | 15' |
| Maximum Building Height (1) (SF/MF) | 35'/45' | 35'/45' | 45' | | 50' | 45' | 35' | 35' |
| Maximum Lot Coverage (2) | 25% | | | | | | | 30% |
| Minimum Dwelling Unit (3) Size: Square Footage | 1,600 | 1,000 | <900 | | <400 | | 1,600 | 1,000 |

Harbour Lots

referenced in section 32-127, note (3)

| | | | |
|------------------------------|--|-------|--|
| Type I-V and VII & VIII Lots | | 3,200 | |
| Minimum Lot Size Square Feet | | | |
| Type VI Lot | | 900 | |

| | | | |
|--|--|-------|--|
| Minimum Lot Size Square Feet | | | |
| Type I-V and VII & VIII Lots (Maximum Units Per Acre) | | 13.61 | |
| Type VI Lot (Maximum Units Per Acre) | | 48.4 | |

Note: For the Type I, II, III, IV, V, VI, VII, and VIII lots, for minimum lot size and applicable setbacks refer to the Urban Code recorded in those restrictive covenants for the Bald Head Harbour.

Non-Residential

| <i>Dimension Requirements for Non-Residential Units</i> | PD-1 | PD-2 | PD-2C | PD-3 | PD-3C | PD-3C-1 | PD-4 | NC |
|--|-------|-------|-------|--------------------------|-------|---------|--------|-------|
| Minimum Lot Size Square Feet | 9,500 | 7,000 | 900 | 400 | 400 | 5,000 | 20,000 | 9,500 |
| Minimum Front Yard Setback | 35' | 10' | 15' | Refer to Urban Land Code | 0' | 10' | 35' | 30' |
| Minimum Side Yard Setback | 10' | 10' | 5' | | 0' | 10' | 10' | 15' |
| Minimum Side Yard Setback on Corner Lots | 15' | 15' | 10' | | 5' | 10' | 25' | 20' |
| Minimum Rear Yard Setback | 10' | 10' | 10' | | 0' | 10' | 10' | 15' |
| Maximum Building Height (1) | 45' | 45' | 45' | 45' | 50' | 45' | 35' | 35' |

Note: For use of the above-referenced dimensional requirements table, the following rules shall apply:

(1) The building height is measured from the lowest natural point on the ground beneath a building and its attached structure to the highest point on its roof. Where any elevation beneath the building footprint falls below an elevation of five feet above mean sea level (amsl), the lowest elevation shall be considered five feet amsl.

(2) Up to 300 square feet can be screened porch provided roof of porch forms integral part of roof line of main structure.

(3) All references in this Table 1 of this section to Types I, II, III, IV, V, VI, VII, and VIII lots shall refer to the designation of such lots as set forth in those restrictive covenants for the Bald Head Harbour, recorded in book 697, page 267, and book 722 at page 952 of the county registry, and as shown on those maps of the same recorded in map cabinet S, page 142 and map cabinet U, page 157, map cabinet U, page 41, map cabinet U, page 66, and map cabinet S, page 300, of the county registry. N/A-Not applicable.

(4) Notwithstanding any provision to the contrary contained in this chapter, in zones PD-3 and PD-3C, to the extent that an automatic fire sprinkler system shall be installed in the primary living unit sought to be permitted for construction on any lot, encroachments as more fully described in this chapter shall be allowed in such setbacks. These encroachments shall include roof overhangs, bay windows, utility system enclosures or screens, fences, trellises, walkways, and similar appurtenant structures. Furthermore, should any garage (structure intended for storage of electric powered vehicles, whether or not inclusive of a crofter or other habitable space) include an automatic fire sprinkler system, the structure shall be allowed within the applicable setback. In no event shall any overhang or encroachment extend across any property line, or over any street right-of-way. A fire sprinkler system shall be defined and installed as per NFPA 13; 13 (R), 13 (D).

(5) Amendments to this chapter, dated January 22, 1999, shall not apply to any subdivision approval for residential cluster housing use, as to which all requirements of this chapter, as of the date of approval of such subdivision, shall be applicable.

(Ord. No. 29, § 8.7, 8-17-1991; Ord. No. 2006-1001, 10-20-2006; Ord. No. 2007-1001-2, 10-26-2007)

Sec. 32-128. Site development plan.

A site development plan drawn to scale shall contain the following information for both multifamily and single-family dwelling and commercial properties:

(1) *Multifamily:*

a. The name of planned development;

b. The exact boundary lines of the planned development fully dimensioned by lengths and bearings, and the location on intersecting boundary lines of adjoining lands;

c. Scale denoted both graphically and numerically;

d. The plans for utility layouts, including sewers, storm sewers, water distribution lines, natural gas, telephone and electric service, illustrating connections to systems and/or sewage disposal systems. Plans must show line sizes, the location of fire hydrants, blow-offs, manholes, pumps, force mains, and gate valves;

e. Street names;

f. The location, purpose, and dimensions of areas to be used for purposes other than residential;

g. Minimum building setback lines;

h. The names of owners of adjoining properties and any adjoining subdivisions of record (or proposed and under review);

i. The location and dimensions of all rights-of-way, utility or other easements, riding trails, natural buffers, pedestrian or bicycle paths, and areas to be dedicated to public use with the purpose of each stated;

j. Right-of-way lines, and pavement widths of all streets and the location and width of all adjacent streets and easements;

k. Property lines, building or other structures, watercourses, bridges, culverts, storm drains, and water retention or detention areas on the land to be subdivided;

l. Sufficient engineering data to determine readily and reproducibly on the ground every straight or curved boundary line, street line, lot line, right-of-way line, easement line, and setback line, including dimensions, bearing, or deflection angles, radii, central angles and tangent distances for the centerline of curved streets and curved property lines that are not the boundary or curved streets. All dimensions shall be measured to the nearest one-tenth of a foot and all angles to the nearest minute;

m. The accurate locations and descriptions of all monuments, markers and control points;

n. The deed restrictions or any other similar covenants proposed for the planned development, if any;

o. The date of the survey and plat preparation;

p. North arrow and declination;

q. The name and location of any property, within the planned development or within any contiguous property, that is listed on the U.S. Department of Interior's National Register of Historic Places; likewise any property that has been designated by local ordinances as an historic property pursuant to 160A-400.1 et seq.

r. The name, address, and telephone number of owner, registered surveyor, land planner, architect, landscape architect, and professional engineer responsible for the subdivision and the registration number and seal of the professional engineer and registered surveyor;

s. Flood hazard areas according to most recent FEMA flood insurance rate map stating date of map adoption;

t. Topographic information showing vertical contour every two feet;

u. Show boundaries of areas of environmental concern (CAMA), show boundaries of outstanding resource waters (DEM), and show COE 404 wetlands;

v. Total number and location of proposed dwelling units and other structures; total residential floor area; total height; total open space area;

w. An inventory of all trees of caliper greater than 12 inches at four feet above ground level, those existing and those to be removed;

x. Provisions for open space;

y. Any other information requested by the village planning board or council.

(2) *Single-family*. For all single lot development proposals, a site development plan, drawn to scale, shall contain the following information:

a. A perimeter survey showing:

1. The lot boundaries, the bearing and distance of each;

2. The location of applicable front, side and rear yard lines; adjacent streets;

3. Any and all existing structures showing the location thereof on the survey, as well as distances from the closest lot line;

4. Any and all proposed structures or proposed alteration or extension of an existing structure;

5. All existing and proposed structures and intended use;

6. Topographical information showing vertical contours every two feet;

7. Boundaries of areas of environmental concern as defined in the Coastal Area Management Act;

8. The 404 line as established by the U.S. Army Corps of Engineers and any other pertinent information necessary to determine compliance with the Coastal Area Management Act, Federal Emergency Management Act, and any other local, state, or federal statutes, ordinances or regulations applicable to the lot;

9. Proposed location of driveway;

b. The location and square footage of the proposed structure or addition thereof and its total height;

c. The total square footage of the lot;

d. The total square footage of the lot covered by impervious cover;

e. The type of sewage disposal system and proposed source of potable water;

f. A detailed site plan for the lot, which shall show the locations and types of naturally occurring vegetation and growth, including all trees thereon with a trunk equal to or greater than 12 inches in width at a height four feet above the ground, and the locations thereof. The drawing shall include the limit of construction line and proposals for restoration or relandscaping of any area of vegetation disturbed by the proposed use;

g. Such other information as may be required by the zoning officer concerning the lot as may be necessary to determine compliance of the proposed development of the site with this chapter; and

h. Planting plan.

(3) *Nonresidential commercial.* For nonresidential (commercial) all elements under subsection (1) a. through x. of this section.

(4) *Vesting approval.* Vesting provision-approval of a site development plan by the village council will vest a property with zoning rights applicable at that time. Such vesting approval is valid for a period of two years. This vesting is intended to carry out provisions of G.S. 160-385.1 and site development plans as used in this chapter constitute site specific development plans under the statute.

(Ord. No. 29, § 8.8, 8-17-1991)

Secs. 32-129--32-160. Reserved.

ARTICLE IV. ACCESSORY USES

Sec. 32-161. Dwellings as accessory uses.

(a) Dwellings may have accessory uses in residential districts if located inside the principal home used as a residence by the owner or relatives and for which no rent is charged. Manufactured homes shall not be used as accessory residences in any residential district.

(b) Dwellings may be accessory uses in the PD-3 district if located inside the principal building.

(Ord. No. 29, § 9.1, 8-17-1991)

Sec. 32-162. Retail sales and services as accessory uses.

Retail sales and services are permitted as accessory uses when clearly incidental to the principal use. In institutional settings such activities may include gift and book shops, coffee shops, lounges, pro shops, and beauty shops and barbershops.

(Ord. No. 29, § 9.2, 8-17-1991)

Sec. 32-163. Ornamental structures, fences and walls.

(a) *Specifications.* Ornamental structures not to exceed ten feet in height, fences and walls not to exceed four feet in height, and ground-level wooden walkways not to exceed 18 inches in height, may be constructed or erected on any property, or within any applicable building setback provided these structures do not impede site path visibility. Fences and walls shall be limited to four feet in height except that, in the following locations, fences and walls shall not exceed six feet in height:

(1) Within any nonresidential zone, when the purpose of the fence is to provide security or is to screen from rights-of-way or adjoining properties nonresidential activities or uses; or

(2) To provide screening between a residentially zoned property and a nonresidentially zoned property.

(b) *Scientific or ecological studies.* Notwithstanding any provision in this chapter to the contrary, fences or similar structures constructed for purposes of scientific or ecological study or analysis are allowed, subject to the following conditions:

(1) The zoning official determines that the purpose of the fence or similar structure is in the best interest of the village;

(2) The location, height and style of fencing is appropriate for the intended use as determined by the zoning official;

(3) The applicant has procured permission to construct the fence from the appropriate landowner; and

(4) The zoning official determines that the fence or structure will have no adverse impact on adjoining properties.

(c) *Maritime forest protection overlay district.* In the maritime forest protection overlay district, no disturbance, damage or destruction of trees, and only minor disturbance, damage or destruction of naturally occurring vegetation and growth shall result from the construction or placement of the proposed ornamental structures, walls, walkways or fences.

(d) *Permit required.* A permit for the permitted uses in this section must be procured prior to construction.

(e) *Sand fencing construction standards.* The purpose of the following regulations is to promote the most effective method of sand accretion utilizing sand fencing, and to minimize the fencing's impact on nesting sea turtles and emerging hatchlings:

(1) Sand fencing erected seaward of the peak of the primary dune or protective storm berm shall be erected at angles of at least 45 degrees to the shoreline, facing the predominate wind direction. Individual fence sections should not exceed 25 feet in length spaced parallel to each other at least nine feet apart. If sand fence sections are erected in segments ten feet in length or less, parallel to each other, they may be spaced no less than seven feet apart. Such sand fencing shall be installed landward of the mean high water mark to avoid damage by wave action. No fencing may be installed that unreasonably restricts public use of hard sand beach areas.

(2) Sand fencing erected within 150 feet landward of the peak of the primary dune or protective storm berm shall be erected in a continuous line parallel to the shoreline, with no breaks or openings allowed in the fencing, except for beach access points. There must be a minimum of 20 feet maintained between the closest point of fencing constructed landward and seaward of the peak of the primary dune or protective storm berm.

(3) In the absence of a primary dune or storm berm within an area of privately-owned property reasonably appropriate for dune recreation, the building inspector may establish the appropriate location for sand fence erection.

(4) Continuous sand fencing erected landward of the peak of the primary dune or protective sand berm must be kept intact without gaps, or it shall be immediately removed or repaired. It shall be the responsibility of the building inspector to notify the owner of any derelict or nonconforming sand fencing, and to require immediate remedy.

(5) Sand fencing erected for the purpose of delineating beach access points is exempt from the provisions of this section. A permit for sand fencing must be procured prior to construction.

(Ord. No. 29, § 9.3, 8-17-1991; Ord. of 4-15-2000; Ord. of 4-16-2010)

Sec. 32-164. Home occupations.

(a) The use must be conducted entirely within the dwelling by a member of the immediate family residing on the premises. No persons outside of the immediate family members will assist or be employed. No more than 25 percent of the floor space within the dwelling may be used in connection with such occupation.

(b) No chemical equipment or product shall be used except those which are normally used for purely domestic or household purposes. No equipment or process shall be used in such home occupation which creates noise, noxious odors, glare, fumes or other nuisance or electrical or mechanical interference detectable to the normal senses off the lot, if the occupation is conducted in a single-family housing unit, or outside the housing unit if conducted in other than a single-family housing unit. In the case of electrical interference, no equipment or process shall be used which creates visual or audible interference in any radio or television receivers off the premises, or causes fluctuations in line voltage off the premises. No equipment or process shall be used which creates electromagnetic disturbances off the premises.

(c) No commodity or product display shall be visible from the exterior of the dwelling.

(d) There shall be no change in the outside appearance of the building or premises, or other visible evidence of the conduct of such home occupation, including, without limitation, the displaying of any type of sign.

(e) The activity involved shall not noticeably detract from the outward residential character of the neighborhood.

(f) Pedestrian traffic, vehicle traffic, and any other activity associated with a home occupation shall not significantly disrupt the peace and tranquility of the residential neighborhood.

(g) Any equipment is to be stored inside an enclosed shelter, shed or garage. There shall be no outside storage.

(h) If, at any time there is any noncompliance with the provisions of this chapter relating to limited home occupations, then the zoning official will serve notice of violation and order to cease.

(i) A property owner proposing a home occupation must first file an application for such proposed use with the zoning official and affirm that he has read and understands the provisions of this article.

(Ord. No. 29, § 9.4, 8-17-1991)

Secs. 32-165--32-190. Reserved.

ARTICLE V. SUPPLEMENTAL REGULATIONS

Sec. 32-191. Enforcement and interpretation.

Regulations for each district shall be enforced and interpreted according to the following rules.

(1) *User by right.* All listed permitted uses are permitted by right (P) or condition (C) in each zoning district according to the table of uses contained in section 32-126.

(2) *Minimum regulations.* Regulations set forth in this chapter shall be minimum regulations. If the requirements set forth in this chapter are at variance with the requirements of any other lawfully adopted rules, regulations or ordinances, the more restrictive or higher standard shall govern.

(3) *Restrictive covenants and deed restrictions.* Unless restrictions established by covenants and deed restrictions running with the land are prohibited by the provisions of this chapter, nothing contained in this chapter shall be construed to render such covenants or restrictions inoperative.

(4) *Dimensional requirements and other regulations.*

a. *General building restrictions.* Construction on numbered single-family lots within the development shall be governed by the following general minimum requirements:

1. All buildings shall be constructed in such a manner as to comply with the North Carolina Coastal Area Management Act and all regulations propounded pursuant thereto and the Federal Emergency Management Act and all regulations propounded pursuant thereto.

2. The exterior of all approved buildings located within this subdivision shall have been

completed within six months after construction shall have been commenced and failure to complete the exterior of such buildings within the six-month period shall operate as a forfeiture of the permit granted.

b. *Prohibited uses.* It is the intent and purpose of the village to create a residential and commercial community of the highest quality and, at the same time, endeavor to retain the natural, unspoiled beauty now existing on the island; and, to that end, the following restrictions shall apply:

1. No fuel tanks or storage receptacles shall be exposed to public view. Trash and garbage receptacles may be located at appropriate locations on any lot so long as they are appropriately enclosed or screened as to exclude their exposure to the public.

2. Each lot owner within the development shall maintain and preserve his property in a clean, orderly and attractive appearance. Upon the failure on the part of any such owner to adhere to such proper, clean, orderly and attractive maintenance of his property, and upon ten days' written notice, the village may file a suit against such owner for specific performance.

3. No open or exposed storage, including junk or abandoned items of personal property, shall be maintained on any property within the village; no trash or refuse, including leaves shall be burned in an open incinerator within the development except by special permit.

4. No animals, livestock or poultry of any kind shall be raised, bred, or kept within the village, except that dogs, cats, or other household pets may be kept, provided that they are not kept, bred or maintained for any commercial purpose, and are kept under control by the owner at all times.

5. In an effort to effectively control obnoxious insects and pests, the village reserves the right to enter upon any residential lot and use such measures as are generally recommended for effecting such controls.

6. The drilling of private wells for residential irrigation or potable water purposes where a public or private utility service is available is expressly prohibited.

c. Regulations affecting construction.

1. Prior to the initiation of any construction of any structure by any person, such person shall:

i. Obtain a building permit;

ii. Place marl on access driveway; and

iii. Erect snow fence and stabilize at limits of construction immediately after installation of pilings.

2. Each structure constructed shall meet each of the following criteria in addition to complying with all applicable state and local laws and regulations applicable thereto prior to the issuance by the building inspector of a certificate of compliance:

i. All inspections conducted and passed by the building inspector;

ii. All landscaping is complete and conforms to the preapproved plans and permit thereof;

iii. Water and sewer available;

iv. Minimum eight-inch by eight-inch pilings shall be required as supporting members for any structure;

v. The "contractor" shall provide an eight-foot-wide minimum driveway with a "trafficable surface". If marl surfaces or other loose material are used for the driveway, it shall all be edged with concrete, wood, brick or another approved material. A concrete apron, 16 feet wide at the street, tapering to the width of the driveway, is required. A pressure treated Pine or equivalent wood edging, a minimum of four inches by six inches, shall be used at all times to encase the required concrete apron; and

vi. Two guest parking spaces off the street;

vii. Six feet deep by six feet wide at road by eight feet wide at drive all weather apron;

viii. All exterior lights shall be baffled lights, low profile luminaries, permitted pole lighting, or approved freestanding baffled lighting and located more than 100 feet landward of the stable line of natural vegetation. New construction of commercial uses, and improvements to existing commercial uses shall install adequate lighting to promote safety measures, due to increased population and traffic in such areas, as determined by the village manager or building inspector. Provisions for such lighting shall be installed prior to issuance of a certificate of occupancy for the commercial structure. Floodlights, or other unshielded lights are strictly prohibited. All lighting must comply with chapter 10, article III, of this Code.

ix. All trash can receptacles must be animal-proofed and immediately accessible from the driveway;

x. Beach walks four feet wide and no more than one foot above grade and must comply in all respects with section 28-34 of this Code;

xi. All utility elements (HVAC, solar, etc.) screened to match house screening and colors and shall be located above the base flood elevation except that electric meter boxes may be located below base flood when such evacuation would require placing meter face more than six feet above grade;

xii. No visible antennas;

xiii. All new construction will install water saving devices in plumbing fixture units; and

xiv. A certificate of elevation shall be obtained and forwarded to the building inspector as soon as the governing structure is in place.

(Ord. No. 29, §§ 10.1--10.4, 8-17-1991; Ord. of 3-18-2000; Ord. No. 2006-001, 1-20-2006)

Secs. 32-192--32-220. Reserved.

ARTICLE VI. NONCONFORMING USES*

* **Cross References:** Buildings and building regulations, ch. 6.

Sec. 32-221. Purpose and intent.

After August 17, 1991, pre-existing structures or lots of record and existing and lawful uses of any building or land which does not meet the minimum requirements of this chapter for the district in which they are located or which would be prohibited as new development in the district in which they are located shall be considered as nonconforming. It is the intent of this chapter to permit these nonconforming uses to continue until they are removed, discontinued, or destroyed, but not to encourage such continued use, and to prohibit the expansion of any nonconformance.

(1) Substandard lots of record and structures. Any lot of record or structure existing at the time of adoption of this chapter, which does not meet one or more of the minimum requirements of this chapter for the district in which it is located, shall be subject to the following exceptions and modifications:

a. Adjoining lots. When two or more adjoining lots with continuous frontage are in one ownership at any time after the adoption of this chapter, and such lots individually are less than the minimum square footage required in the district in which they are located, then such group of lots shall be considered as a single lot or several lots of minimum permitted area and width for the district in which located.

b. Lot not meeting minimum lot size requirements. Except as set forth in this chapter, in any district in which single-family dwellings are permitted, any lot or record existing at the time of the adoption of this chapter which has dimensions which are less than required by this chapter may be used as a building site for a single-family dwelling providing the lot area and width are not less than 80 percent of the requirements in the district. If the lot is smaller or narrower, a variance may be requested of the board of adjustment.

c. Yard requirements modified. Except as set forth in subsection (1)a of this section, where a lot has width or depth less than that required in the district in which it is located, the zoning official shall be authorized to reduce the yard requirements for such lot by not more than 20 percent. Additional or other forms of yard modification may be permitted with a variance granted by the board of adjustment.

d. Enlargement of nonconforming structures. Any building which is nonconforming solely because of its encroachment in a required yard area may be extended in any lawful manner that does not further encroach in that yard.

(2) Nonconforming uses of buildings. The nonconforming use of a building may be extended throughout the building provided no structural alterations, except those required by law or ordinance or ordered by an authorized officer to secure the safety of the building, are made therein but no such use shall be extended to occupy any land outside such building. If the nonconforming use of such building is discontinued for a continuous period exceeding 180 days, every future use of such premises shall be in conformity with the provisions of this chapter; provided that this provision shall not apply to any nonconforming commercial or industrial use which normally operates less than 90 calendar days in any given calendar year. The nonconforming use which normally operates less than 90 calendar days in any given year (i.e., seasonal operation) shall not be resumed after 365 days have passed without operation. This provision shall not prevent the restoration of a nonconforming building, or a building used for nonconforming use which has been destroyed to the extent of not more than 50 percent of its replacement value, but only if such building is restored within one year of the date of its destruction.

(3) Nonconforming uses of land. The nonconforming use of land shall not be enlarged or increased, nor shall any nonconforming use be extended to occupy a greater area of land than that occupied by such use at the time of the passage of this chapter. If any nonconforming use of land, other than for the location of a mobile home or mobile office is discontinued for a continuous period exceeding 120 days, any future use of land shall be in conformity with the provisions of this chapter. If the nonconforming use of land for location of a mobile home or mobile office is discontinued, either by destruction of the mobile home or by removal thereof, any further use of land shall be in conformity with the provisions of this chapter except as provided in subsection (1)d. of this section.

(Ord. No. 29, §§ 11.1--11.3, 8-17-1991)

Secs. 32-222--32-250. Reserved.

ARTICLE VII. CONDITIONAL USES

Sec. 32-251. Purpose.

The development and execution of this chapter is based on the division of the village into districts within which the use of land and buildings and the bulk and location of buildings and structures in relation to the land are substantially uniform. It is recognized, however, that there are some land uses which are basically in keeping with the intent and purposes of the district where permitted, but which may have an impact on the area around them which can only be determined by review of the specific proposal. These uses may be established, under certain conditions and with proper controls, in such a manner as to minimize any adverse effects. In order to ensure that these uses, in their proposed locations, would be compatible with surrounding development and in keeping with the purposes of the district in which they are located, their establishment shall not be as a matter of right, but only after review and approval of a conditional use permit as provided in this article.

(Ord. No. 29, § 12.1, 8-17-1991)

Sec. 32-252. Application and fees.

Applications for conditional use permits, signed by the applicant, shall be addressed to the planning board. A fee in an amount currently in effect by action of the village council will be paid at the time of application. Each application shall contain or be accompanied by such legal description maps, plans, and other information so as to completely describe the proposed use and existing conditions.

(1) *Structures.* Location of all structures within 50 feet of the property, location and depth, if known, of any existing utility lines in the property or along any adjacent street.

(2) *Other requirements.*

a. Location of property boundaries, location of any easements for utility lines or passage which cross or occupy any portion of the property for proposed lines;

b. Detailed construction plans shall be submitted prior to issuance of a building permit;

c. The applicant shall provide to the zoning official a list of names and addresses of all adjacent property owners along with one set of envelopes stamped and with typed addresses to each person on the list. These addressed envelopes and the list shall be submitted at least eight work days prior to the public hearing. The zoning official shall then mail a copy of the legal notice to each adjacent property owner. A second set of identically prepared envelopes shall be submitted to the zoning official if the planning board denies the request and the applicant wishes to appeal to the board of adjustment, otherwise a second set is not required before the meeting of the board of adjustment. The second set shall be submitted at least eight work days prior to the meeting at which the board of adjustment is to review the request;

d. A site development plan as set forth in section 32-128 of this chapter shall be provided with each application.

(Ord. No. 29, § 12.2, 8-17-1991)

Sec. 32-253. Procedures for reviewing applications.

The conditional uses, as specified in the various districts may be established only after review of the application by the planning board and approval by the board of adjustment. The planning board shall consider the application at its next meeting held at least 30 days after its receipt and shall within the following 45 days recommend to the board of adjustment the approval, modification or denial of the conditional use permit. In its recommendation to the board of adjustment, the planning board shall express its view with regard to the following criteria:

- (1) The use requested is listed among the conditional uses in the district for which application is made; or is similar in character to those listed in that district;
- (2) The requested use will not impair the integrity or character of the surrounding or adjoining districts, nor adversely affect the safety, health, morals, or welfare of the community or of the immediate neighbors of the property;
- (3) The requested use is desirable to the public convenience or welfare;
- (4) Adequate utilities, access roads, drainage, sanitation or other necessary facilities have been or are being provided; and that adequate measures have been or will be taken to provide ingress or egress so designed as to minimize the traffic congestion in the public streets; and
- (5) That the conditional use shall, in all other respects, conform to the applicable regulations of the district in which it is located.

Within 36 days of receipt of the recommendation of the planning board, the board of adjustment shall hold a public evidentiary hearing on the application for a conditional use permit. The board of adjustment shall cause notice of the hearing to be published once a week for two successive weeks commencing not less than ten days and not more than 25 days before the date fixed for the hearing. Following the hearing, the board of adjustment shall approve the application, deny it, or approve it subject to such conditions as the board of adjustment may find appropriate and necessary to minimize any adverse effects of the conditional use. The permit issued shall specify the condition use or uses approved.

(Ord. No. 29, § 12.3, 8-17-1991)

Sec. 32-254. General provisions concerning conditional use permits.

(a) *Compliance with other codes.* Granting of a conditional use permit does not exempt the applicant from complying with all of the requirements of building codes and other ordinances.

(b) *Revocation.* In any case where the conditions of a conditional use permit have not been or are not being complied with, the zoning officer shall give the permittee notice in writing that the conditions of the conditional use permit have been violated, specifying the manner in which such conditions have been violated and ordering compliance therewith within ten days of the date that such notice shall be mailed to the permittee at the address set forth on his application therefor or the date on which the application is personally delivered to the permittee, whichever shall first occur. If, at the end of such ten-day period, that conditions of the permit have not been met by the permittee, the zoning officer shall give to the permittee written notice of his intent to seek revocation of the conditional use permit. Such notice shall be in writing and shall specify the conditions of the permit which have been violated by the permittee and shall specify the time and place of the next meeting of the planning board, at which time the board shall review evidence presented by the zoning officer with regard to the alleged violation and allow the holder of the permit to make a statement. The planning board may recommend to the board of adjustment that it consider revocation of the conditional use permit. The board of adjustment shall hold a public evidentiary hearing to consider such a recommendation. The board of adjustment shall cause notice of the hearing to be published once a week for two successive weeks commencing not less than ten days and not more than 25 days before the date fixed for the hearing. Following the hearing, the board of adjustment shall therefore revoke, modify, or leave intact the original use permit according to its findings. Such permit shall be revoked only if the board finds that a condition or conditions of the permit have been violated and that such condition or conditions are and remain a material condition or conditions to the permit and that such violation adversely affects the surrounding or adjacent zoning districts. The conditional use permit may be modified as the board shall, in its discretion, deem to be appropriate if the board shall find that conditions of the permit have been violated but that such violated condition has, due to a change in circumstances, become a condition which is not material or that the violated condition does not adversely affect the surrounding or adjacent zoning district.

(c) *Expiration.* In a case where a conditional use permit has not been exercised within the time limit set by the board of adjustment or within six months if no specific time limit has been set, then without further action, the permit shall be null and void. Exercised, as set forth in this section, shall mean that binding contracts for the construction of the main building have been let; or in the absence of contracts that the main building is under construction to a substantial degree; or that prerequisite conditions involving substantial investment are contracted for, in substantial development, or completed. When construction is not a part of the use, exercised shall mean that the use is in operation in compliance with the conditions set forth in the permit.

(d) *Duration of conditional use.* Any conditions imposed on a conditional use authorized and exercised shall be perpetually binding upon the property unless expressly limited by the conditional use permit or subsequently changed or amended by the board of adjustment after a public hearing.

(e) *Conditions and guarantees.* Prior to the granting of any conditional use the board of adjustment may stipulate such conditions and restrictions upon the establishment, location, or construction, maintenance, and operation of the conditional use as it deems necessary for the protection of the public and to secure compliance with the standards and requirement specified in this chapter. In all cases in which conditional uses are granted, the board of adjustment shall require such evidence and guarantees as it may deem necessary to ensure that the conditions stipulated in connection therewith are being and will be complied with.

(1) Such conditions may include a time limitation.

(2) Conditions may be imposed which require that one or more things be done before the use requested can be initiated. For example, "that a solid board fence be erected around the site to a height of six feet before the use requested is initiated."

(3) Conditions of a continuing nature may be imposed. For example, "exterior loud speakers shall not be used between the hours of 10:00 p.m. and 9:00 a.m."

(f) No vote greater than a majority vote shall be required by the village board of adjustment for a conditional use permit, to issue such permits. For the purposes of this section, vacant positions on the board and members who are disqualified from voting on a quasi-judicial matter shall not be considered 'members of the board' for calculation of the requisite majority.

(Ord. No. 29, § 12.4, 8-17-1991; Ord. No. 2006-1010, 10-26-2006)

Sec. 32-255. Special use.

(a) *Purpose.* It is recognized that certain temporary uses of land and buildings regulated by this chapter may not fall within the permitted or conditional uses for such land or buildings and still be within the intent and purpose of the district but which may have an impact on the area around such lands which can only be determined by review of a specific proposal for use thereof. Thus, any activity which is permissible as a special use as set forth in section 32-126 of this chapter may be permitted on a temporary basis under certain conditions and with proper controls so as to minimize adverse impact on adjacent areas as well as remote areas of the village. In order to ensure that such uses do not substantially, materially and adversely affect public health, safety and convenience, are not substantially injurious to the use or value of adjoining property and would be in harmony with surrounding areas and not offensive to the comprehensive plan of development for the village, such uses may be allowed but only after review and approval of an application for a special use permit as provided in this chapter.

(b) *Special use application.* Application for a special use permit, signed by an applicant, shall be addressed directly to the village council and shall include a fee in an amount currently in effect by action of the village council, which shall be paid at the time of submission of the application. Each application shall contain the following:

(1) A legal description or plat of the area which is the subject of the special use application, including areas of ingress and egress, and evidence that use of such property has been approved by the owner;

(2) A listing of the owners as shown on the public records of the county of any properties lying within 500 feet of any area which is the subject of the application;

(3) Detailed description of proposed use;

(4) Dates and times of proposed filming activities;

(5) Maximum number of employees to be on the location at any given time;

(6) Number of vehicles to be located on the site at any given time;

(7) Provision for overnight storage of vehicles and equipment;

(8) Whether the filming will include outdoor filming and, if so, whether such will be conducted at night and, if so, efforts to be made to limit off-site lighting or noise; and

(9) If the permit is sought for the use of public property in the proposed commercial filming activity, the application shall further include the following:

a. Evidence that the filmmaker has in existence or has applied for a public liability insurance policy, insuring both the filmmaker and the village of the currently required amount for comprehensive general liability insurance, automobile liability coverage, and workers' compensation and employer's liability coverage;

b. A detailed description of proposed filming activities including a description of the means by which damage to public or private property will be avoided;

c. Any intent to obstruct, at any time, any portion of any private or public right-of-way; and

d. Clean-up schedule.

(c) Procedures for reviewing applications.

(1) Any special uses proposed in any zone may be established only after review of the application by the village council. The council shall consider the application at its next meeting held at least 45 days after the receipt of the application by the village manager. Within 60 days of receipt of the application for the special use permit, the village council shall hold a public evidentiary hearing on the application for a special use permit and the council shall cause notice of the hearing to be mailed to each property owner with land within 500 feet of the property which is the subject of the application and published once a week for two successive weeks commencing not less than ten days and not

more than 25 days prior to the date fixed for the hearing. At the hearing the council shall take evidence and make findings. The council shall approve any application upon proof of the following criteria and, in the absence of such proof, the council shall deny the application. The applicant shall have the burden of proving the following criteria:

- a. The application meets all requirements for such application as set forth in this chapter;
- b. The proposed use will not substantially, materially and adversely affect public health, safety or convenience;
- c. The project will not substantially damage or injure the value of adjoining property;
- d. The use is in harmony with the surrounding areas;
- e. The use is in conformity with the comprehensive plan of development for the village, as appropriate; and
- f. The use is a special use in the zone for which application is permitted.

The council may approve the application contingent upon such conditions as shall be set forth in subsection (d) of this section.

(2) No vote greater than a majority vote shall be required by the village council for a special use permit, to issue such permits. For the purposes of this section, vacant positions on the board and members who are disqualified from voting on a quasi-judicial matter shall not be considered 'members of the board' for calculation of the requisite majority.

(d) Conditions. The village council may impose as a condition of any special use permit one or more of the following conditions as shall, in the finding of the council, accomplish the criteria set forth in subsections (c)(1)--(6) of this section, inclusive:

- (1) The use be limited geographically to the property described in the application;
- (2) The maximum number of employees, workers or vehicles located within the described area at any one time not exceed the numbers therefor set forth in the application;
- (3) The filmmaker shall provide for the presence of adequate public safety, health or other officials, to ensure that the filming activity is secure and orderly and shall pay to the village those fees as shall be set forth for any village services used in association with the special use;
- (4) The applicant not remove, trim or damage in any manner any vegetation located on public property;

(5) The filmmaker observe and conform to all applicable local ordinances or state or federal regulations or statutes relating to the use of the property;

(6) To the extent that any commercial filming activity shall be conducted on public property, the council may further require, as a condition of any special use permit, the filmmaker:

a. Execute an agreement to indemnify, defend and hold harmless the village, its officers, agents and employees from and against any and all claims, actions, causes of action, damages, liability and expenses of any kind, including reasonable attorney's fees arising from bodily injury or loss of life or property or damage thereto arising from or out of any occurrence associated in any manner with the commercial filming activity;

b. Not obstruct any public right-of-way so as to entirely prevent travel thereon and only obstruct a single lane of travel of any public right-of-way for specified periods of time during which there shall be present not less than two public safety officers from the village for purposes of traffic control;

c. Be responsible for maintenance of a clean and orderly location and shall take steps necessary to avoid the accumulation of any trash on any public property or adjacent private lands, and at the termination of the special use permit, the applicant shall be responsible for and pay all costs associated with cleaning up the site and restoration of the site to its condition prior to such activity;

d. Not use any public property so as to interfere with any essential government activity conducted thereon;

e. Deposit with the village manager evidence that the filmmaker has in effect for the effective dates of the permit a public liability insurance policy in the currently required amount for comprehensive general liability insurance, automobile liability coverage, workers' compensation and employer's liability coverage, together with evidence that the premiums thereon have been paid through and including the final date of the special use permit; and

f. The filmmaker deposit with the village a performance bond in the currently required amount and a security deposit in the currently required amount, the bond and security deposit to be held by the village in a non-interest-bearing account until the filmmaker's commercial filming activities permitted shall be concluded, the bond and security deposit guaranteeing performance of all conditions of the special use permit and which may be applied by the village against the cost of rectifying any breaches of the special use permit by the filmmaker as determined by the village manager;

(7) Such other conditions as, in the opinion of the council, shall be necessary to ensure that the special use shall meet the criteria set forth in subsections (c)(1) through (6) of this section.

(e) Filmmakers to pay in advance for use of public property or services. Any filmmaker shall pay in advance for the use of public property or services in association with the special use activity in accordance with the adopted fee schedule for utilization of such services including but not limited to: public safety officer on duty, marked patrol vehicles, fire inspector on duty, additional fire inspectors required, special inspections or pre-production permits, fire/rescue vehicles, barricades, public property, and EMS personnel.

(f) Notice of violations to filmmaker. In any case where the conditions of any special use permit have not been met or shall, in any manner, be violated, the zoning officer shall give the filmmaker notice in writing that the conditions of the special use permit have been violated, specifying the manner in which such conditions have been violated and ordering compliance therewith within three days of the date that such notice shall be delivered to the filmmaker at the address set forth on his application therefor. If, at the end of such three-day period, the conditions of the permit have not been met by the filmmaker, the zoning officer shall give to the filmmaker written notice of his intent to seek revocation of the permit. Such notice shall be in writing and shall specify the conditions of the permit which have been violated by the filmmaker and shall specify the time and place of the next meeting of the council, at which time the council shall review evidence presented by the zoning officer with regard to the alleged violation and shall further allow the filmmaker to make a statement or to present evidence of compliance with all aspects of the special use permit. The council shall hold a public evidentiary hearing to consider the issue of compliance. Following the hearing the council may revoke, modify or take no action with regard to the existence of the special use permit. The council shall revoke the permit if the council finds a violation of the conditions thereof and that such conditions are and remain material to the permit. The special use permit shall be modified by the council if it deems such violated conditions are not, at that time, material to the permit but may do so upon such conditions as the council, in its discretion, determines shall be necessary to ensure future compliance with the special use permit.

(g) Expiration of permit. The council shall set a date for the expiration of the special use permit and the permit shall expire as of the date set therefor, and subsequent to the expiration date thereof no special use activity shall be conducted pursuant to such permit.

Ord. No. 29, § 12.5, 8-17-1991; Ord. No. 2006-1011, 10-26-2006)

Secs. 32-256--32-290. Reserved.

ARTICLE VIII. PLANNED UNIT DEVELOPMENT

Sec. 32-291. Purpose and intent.

(a) The purpose and intent of these planned unit development regulations is to promote innovative design in development by providing flexibility in regard to permitted uses and bulk regulations. These regulations are designed to promote the development of attractive, desirable communities of place, where residents and visitors can work and live in a development pattern that integrates residential and nonresidential uses in a design that is accessible to pedestrians and encourages the use of alternative modes of transportation and shared parking and offers greater conveniences to the residents of the village.

(b) It is the intent and policy of the village to encourage planned unit developments because of the extensive planning that is required prior to development. Planned unit developments allow the village to plan for large areas and to manage the impacts of growth on the provision of government services and infrastructure.

(c) It is the intent of the village to encourage the use of this section in conjunction with the other elements of this chapter in order to encourage the development of new communities.

(d) It is the intent of the village to provide flexibility in design in order to achieve, to the greatest possible degree, land development which is responsive to the natural and environmental assets and liabilities of any given site. Environmentally sensitive features should be protected and development concentrated in more suitable or less sensitive areas in order to preserve the island's unique natural resources. Development should be located and undertaken in a manner that will be the least disruptive to the natural functions of the environmentally sensitive lands. The maintenance and restoration of trees and other elements of the environmentally sensitive lands is an integral part of any planned unit development activities.

(Ord. No. 29, § 13.1, 8-17-1991)

Sec. 32-292. 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 indicated a different meaning:

Commercial use means the occupancy, use, or intended use of land or structures or any portion thereof for the transaction of business, whether wholesale or retail, or the rendering or receiving of services. Warehousing, if directly related to on-site commercial activity, shall be considered to be commercial use.

Master plan means a development plan depicting an entire proposed planned unit development, including proposed phases, which is submitted for council approval in accordance with this chapter.

Mixed-use development means a project which integrates a variety of land uses including but not limited to residential, commercial, office, retail, public, or entertainment, in a compact urban form.

Mixed-use structure means a structure that will contain both commercial, on at least one floor, and residential within the same structure.

Open space means any portion of a parcel or area of land or water which is open and primarily undisturbed by structures, including areas maintained in a natural and undisturbed character. The only aboveground structures which are allowed within an open space are walkways and structures related thereto, such as benches, all of which are intended to accommodate casual, pedestrian use, and minor utility structures for pumps, wells and similar purposes.

Recreational use means the occupancy, use, or intended use of land or structures or any portion thereof by persons for relaxation, amusement, play or the like.

Residential unit means an enclosure of one or more rooms providing permanent provisions for living, sleeping, eating, cooking, and sanitation designed and/or constructed for permanent occupancy by one family. Accessory uses, including crofters, to the extent it is under the same ownership and on the same lot as the principle residential unit shall be deemed a part of the principle use.

Residential use means the buildings for residence such as attached or detached single-family dwellings, apartment complexes, condominiums, townhouses, cottages, etc., and their associated outbuildings such as garages, storage buildings, gazebos, etc.

Single-family dwelling, attached, means a structure containing more than one single-family dwelling unit in which the units are physically attached and each has its own separate exterior entranceway and a separately owned lot.

Single-family dwelling, detached, means a structure containing one dwelling unit that is freestanding.

Site specific plan means a development plan depicting a specific phase of development of an approved planned unit development master plan. The site specific plan contains more detailed information than the master plan, as this plan is submitted to village staff for final review, approval, and recordation of a specific phase. Site specific plans shall be submitted for preliminary as well as final approval in accordance with the two step site specific approval process defined in section 32-305 of this chapter.

(Ord. No. 29, § 13.2, 8-17-1991; Ord. No 2000-21, 9-16-2000; Ord. No. 2005-012, 7-15-2005)

Cross References: Definitions generally, § 1-2.

Sec. 32-293. Districts in which allowed.

Planned unit developments are permissible in all zoning districts, provided that an application for the planned unit development is submitted, reviewed, and approved in accordance with this chapter. The planned unit development district is an overlay district which is applied only at the request of the applicant.

(Ord. No. 29, § 13.3, 8-17-1991)

Sec. 32-294. Minimum area of development.

The parcel proposed for development as a planned unit development shall be a minimum of ten contiguous acres.

(Ord. No. 29, § 13.4, 8-17-1991)

Sec. 32-295. Design standards.

Planned unit developments are exempt from this chapter and chapter 26, subdivisions, with the exception of the following:

(1) *Wetlands.* Ecologically sensitive lands, such as marsh, Carolina Bays, pocosins and swamps, when in the ownership of the owner/applicant, are to be preserved whenever possible for the public interest. For such lands, as long as such areas are left undisturbed, they shall be included in the gross density.

(2) *Maximum ground coverage.*

a. Maximum ground coverage of sites developed as residential structures and accessory uses shall be 30 percent of the gross site area for these uses.

b. Maximum ground coverage of sites developed as nonresidential shall be 50 percent of the site specific area for these uses.

c. Applicant may exceed restrictions if applicant can effectively demonstrate, through an innovative engineered design, that the protection provided by the design would be equal to or exceed the protection by the limitations of 30 and 50 percent as specified in subsections (2)a and (2)b of this section.

(3) *Streets/internal trafficways.* A basic characteristic of a planned unit development is that the internal trafficways or streets, whether public or private, do not follow fixed linear geometric lines as do most streets, but instead are curvilinear and of meandering character. This is intended to provide for the further protection of trees, landscape specimens, and other environmentally sensitive concerns by building around these areas and for deliberate slower paced traffic movements and making generous use of features that promote lower vehicular speeds. Creative design of trafficways is

encouraged. All planned unit developments must adhere to chapter 26, subdivisions, article III, design standards, of this Code. Prior to the approval of a final plat, the developer shall have installed all required improvements, or guaranteed their installation in accordance with chapter 26, subdivisions, article IV, final approval, of this Code.

(4) *Setbacks.* Minimum setbacks and distances between structures shall be as follows: minimum distance between internal structures shall be as required by the North Carolina Department of Insurance, and a minimum setback of 25 feet shall be required from any peripheral property line of the planned unit development except, where the peripheral property line is the boundary between the planned unit development and the State of North Carolina Maritime Forest Preserve, the required minimum setback shall be 20 feet. A minimum of ten feet shall be required for all front property lines.

(5) *Utilities.* Each development shall be capable of service with a water system and a sewage disposal system meeting standards and requirements of the state. When a development is within 1,000 feet of a water or sewer system, and the system has the capacity to provide the necessary water and sewer, the developer shall connect to such system and shall design a water distribution system for the subdivision meeting any requirements of state and village ordinances. Except as otherwise allowed by this chapter, all utilities and easements for each planned unit development must be provided in accordance with subsection 26-124(f)(4). Notwithstanding that provision, or any other provision of this section, and with the approval of the village manager, water and sewer line installations may be located under the paved surfaces of public roads if such construction is reasonably necessary to preserve natural features of the land, including trees. All utilities shall be installed underground.

(Ord. No. 29, § 13.5, 8-17-1991; Ord. No. 2000-21, § 1, 9-16-2000; Ord. No. ZO-01-04, 6-18-2004)

Sec. 32-296. Allowable uses.

(a) Except as provided in subsection (c) of this section, notwithstanding the permitted or conditional uses specified as allowed in the underlying zoning district, a planned unit development may contain any or all of the following uses:

(1) If the parcel proposed for development as a planned unit development is less than 20 acres, only residential use of any type permitted by article III of this chapter and associated recreational uses, will be allowed.

(2) If the parcel proposed for development as a planned unit development is equal to or greater than 20 acres, any use not otherwise prohibited in the village may be allowed, provided that no more than ten percent of the gross acreage of the planned unit development shall be used for commercial use.

(b) All uses that are set out in an approved master land use plan shall thereafter be treated as permitted uses within the planned unit development.

(c) A minimum of 70 percent of the total number of allowable residential units in an approved planned unit development shall be single-family. Thirty percent may be developed as residential uses other than single-family. Notwithstanding this requirement, once a master plan is approved in accordance with this provision, the number of single-family residential units approved may be reduced, as long as the number of non-single-family residential uses is not increased, notwithstanding the fact that such decrease in single-family residential units may result in a build-out density whereby more than 30 percent of the total residential units are other than single-family units.

(d) Any allowed use may be combined with any other use in a planned unit development or individual building, at the discretion of the village council.

(Ord. No. 29, § 13.6, 8-17-1991; Ord. No. 2000-21, § 1, 9-16-2000)

Sec. 32-297. Recreational and open space requirements.

(a) Each planned unit development shall provide at least 20 percent of the parcel proposed for development in open space. Of the total required open space, ten percent shall be in uses other than golf course. Such required open space may be developed and incorporated into a central amenities package and shall be contiguous except where otherwise deemed appropriate.

(b) Upon approval by the village council as part of its approval of the master plan, any or all of the required open space reserved under subsection (a) of this section may be dedicated to the village for recreational or open space purposes.

(c) Any required open space which is not dedicated to the village shall be maintained by a homeowners' or property owners' association or other nonprofit organization with appropriate restrictions recorded which restrict in perpetuity the use of such land and facilities to open space and recreational uses, as shown on the master plan.

(Ord. No. 29, § 13.7, 8-17-1991)

Sec. 32-298. Residential density.

Planned unit developments shall have residential densities no greater than the maximum density allowed for the predominate zoning classification, by acreage, based on the following formula:

$(\text{Maximum single-family density} \times 70\%) + (\text{Maximum Multifamily density} \times 30\%) \times 50\%$
= Maximum planned Unit development residential density (in units/acre)

(Ord. No. 29, § 13.8, 8-17-1991)

Sec. 32-299. Density bonuses.

In approving an application for planned unit development, if the village council finds that an increase in density will not have an adverse impact on the public health, safety, and welfare of the village and that the development meets the purpose and intent of this chapter, the village council, at their discretion, may grant a density bonus of up to 15 percent of permitted gross density calculated according to the following:

- (1) Construction of on-site bike and/or fitness trails or facilities: not more than five percent;
- (2) Construction of park, open space or greenway facilities that exceed minimum village standards: not more than five percent;
- (3) Creative use of stormwater impoundments (ponds) for recreation, views over water, incorporation in parks or for waterfront promenades: not more than five percent;
- (4) Development following the standards of traditional urban development: not more than ten percent; and
- (5) Donation of school or other public facility site: not more than ten percent.

(Ord. No. 29, § 13.9, 8-17-1991)

Sec. 32-300. Development standards and improvement requirements.

(a) The village may approve as a part of the planned unit development process, notwithstanding any requirements of the underlying zoning ordinance, the lot dimensions, setbacks, parking, interior landscaping, and buffers within the planned unit development.

(b) Planned unit developments containing both residential and nonresidential uses shall be designed, located and oriented on the site so that the nonresidential uses are directly accessible to residents of the planned unit development. For the purposes of this section, directly accessible shall mean pedestrian and vehicular access by way of improved sidewalks or paths and streets that do not involve leaving the planned unit development or using a major thoroughfare. Directly accessible does not necessarily mean that nonresidential uses need to be located in a particular location but that the siting of such uses considers the accessibility of the residential areas of the planned unit development to the nonresidential use.

(Ord. No. 29, § 13.10, 8-17-1991)

Sec. 32-301. Phasing of development.

(a) Construction of the nonresidential portions of the planned unit development, phase or section, shall be designed and phased to ensure that the impacts of the nonresidential development upon the surrounding community and properties will not be

detrimental to further residential development of the community and adjacent properties, or the use and enjoyment of adjacent residential properties. Impact of the nonresidential portion includes but is not limited to the visual impact and perception of the nonresidential development. Construction of the commercial development which is part of the planned unit development shall commence no earlier than such time as building permits have been issued for 15 percent of the dwellings in the planned unit development, unless another schedule which fulfills the intent of this section has been approved by the village council as part of the master plan approval.

(b) All open space and recreational amenities shall be dedicated and completed before certificates of occupancy may be issued for more than 50 percent of the dwellings in the planned unit development or, if the approved master plan divides the planned development into phases, in that phase of the planned unit development of which the amenity is a part.

(Ord. No. 29, § 13.11, 8-17-1991)

Sec. 32-302. Elements of the planned unit development.

(a) Applications for planned unit development approval shall contain three elements for approval:

(1) A master plan of the proposed planned unit development;

(2) A site specific plan for each development phase within the planned unit development; and

(3) A document package as required under section 32-303.

(b) The planned unit development shall require the submission of a master plan for review by the technical review committee, planning board and final approval of the village council.

(c) Following approval of the master plan, the planned unit development plan shall require the submission, approval, and recordation of one or more final site specific plats. The final planned unit development plat shall contain the language, "approved as a planned unit development plat." Site specific final plat approval is contingent on review by appropriate village authorities and approval by the village manager or his designee.

(Ord. No. 29, § 13.12, 8-17-1991)

Sec. 32-303. Special requirements.

Before site specific plat approval is issued, appropriate documents, deed restrictions, or similar covenants guaranteeing adequate maintenance and continued operation of all

assured open space and other private service facilities, shall be filed with the village manager for approval and then be properly recorded.

(Ord. No. 29, § 13.13, 8-17-1991)

Sec. 32-304. Master plan application approval.

(a) Preapplication conference.

(1) A preapplication conference between the applicant and the appropriate village staff shall occur prior to any presentation to the planning board. The request for a conference must be submitted by the applicant. The primary purpose of this conference is to provide assistance and guidance to the applicant for the swift and least interruptible review of the proposed planned unit development. To ensure an equal understanding, this conference will provide a mutual exchange of basic information that is needed to facilitate and clarify the requested review process for all planned unit developments.

(2) Once the preapplication conference is complete, the applicant will prepare a master plan of the entire planned unit development. The applicant will complete the master plan compliance sheet as a requirement of the application.

(b) Submission. Submission and review procedures for master plan approval shall be in accordance with chapter 26, article II, procedures for plat approval, notwithstanding the provisions for information required on preliminary plats. The master plan shall contain all information as set forth in subsection (c) of this section.

(c) Master plan plat requirements. The master plan will contain and label the following elements:

- (1) Tax parcel number;
- (2) Existing zoning;
- (3) Major thoroughfares;
- (4) Recreational areas;
- (5) Golf courses/other recreational amenities;
- (6) Lakes (natural or manmade);
- (7) Buffer strips;
- (8) Single-family residential area;
- (9) Multifamily residential area;

- (10) Total acreage of commercial area;
- (11) Total acreage of the planned unit development;
- (12) Total acreage of the residential use;
- (13) Total acreage of the recreational use;
- (14) Total acreage of the open space;
- (15) Total number of commercial units;
- (16) Total number of residential units by type;
- (17) Total density per acre;
- (18) North arrow;
- (19) Infrastructure layout;
- (20) Total impervious coverage for residential development;
- (21) Total impervious coverage for non-residential and commercial area;
- (22) Walking paths/bike trails;
- (23) Scale, date, and legal description of site;
- (24) Adjacent property owners;
- (25) Phases of development (if recording in phases);
- (26) Ten copies of the master plan (for office use only); and
- (27) The village staff shall have the authority to require other information as necessary to determine compliance with this chapter, or other local, state, or federal regulations.

(d) *Authority to approve.* The council shall have the authority to approve the planned unit development master plan application following a determination that the plan meets the requirements of this article.

(Ord. No. 29, § 13.14, 8-17-1991)

Sec. 32-305. Site specific plan approval.

(a) If the planned unit development is of the size that it must be completed in phases, it is the responsibility of the applicant or owner to present site specific plans of each phase, prior to the development of that phase, to the village manager or his designee. The applicant or agent will be presented with a planned unit development compliance sheet to assist with the completing of the site specific plan in a more accurate and efficient manner. The site specific plans are in more detail and must contain all information as required for preliminary plats in chapter 26, article VII, of this code.

(b) If the proposed planned unit development is to be completed in one initial phase, the applicant or owner may submit a master plan that contains all of the elements of the site specific plan.

(c) Site specific approval is a two-step process. The preliminary site specific plat must have village approval prior to installation of the required improvements. Following the installation of the required improvements, a final site specific plat shall be approved by the village manager. A mylar with the appropriate information will be required for signatures of the village manager or his designee so that the applicant or owner can record the site specific plan. Submission of the preliminary site specific plans and final site specific plans must occur no later than 14 days prior to the regularly scheduled technical review committee meeting. Filing fees as set forth by the village council in their approved fee schedule, which shall be modified from time to time, shall be payable to the village upon submission of such preliminary and final plans. Necessary revisions of plans resulting from technical review committee comments must be received 14 days prior to the subsequent technical review committee meeting to be considered at that meeting. If the number of submittals are such that additional staff time is necessary to review the documents, then at the discretion of the village manager or his designee those submittals not being reviewed will be continued to the agenda for the next regularly scheduled meeting of the technical review committee, occurring no more than 45 days from the previous technical review committee.

(d) Approval of any site specific plan shall be valid for a period of 24 months from and after the date of approval thereof. Within 24 months of the date of approval of any site specific plan, the developer shall install all required improvements or make any provisions for guarantee of the installation thereof pursuant to section 26-201 of this code and thereafter may submit a final site specific plan for approval by the manager or his designee. Failure of the developer to install improvements or provide and post the necessary guarantees in lieu thereof and to provide to the manager a final plat for approval or to record such approved final plat within such 24-month period shall void the approval of the site specific plan. Any subsequent proposed development of such property shall be approved only upon conformity with the terms and conditions of this chapter.

(Ord. No. 29, § 13.15, 8-17-1991; Ord. No. 2001-17, 8-25-2001)

Sec. 32-306. Amendments to master plan and site specific plans.

Any and all amendments to the master plan and/or site specific plans for the planned unit development shall be subject to the following review procedures:

(1) Village manager approval is required for the following:

- a. Changes which result in a decrease in assigned density for a specific parcel, either residential or nonresidential.
- b. Change in land use designation from multifamily to single-family or a change from any other use to open space/passive recreation.
- c. Minor changes in major infrastructure features (i.e., roads/access, sewer, water, storm drainage) of the master plan area which are clearly beneficial to the occupants of the master plan area.
- d. Minor changes in order to correct typographical errors or other revisions not affecting compliance with any of the substantive features of the planned unit development.

(2) The village council approval is required for the following:

- a. Significant changes in major infrastructure features (i.e., roads/access, sewer, water, storm drainage) of the master plan.
- b. Change in land use designation to increase density for master plan or site specific plan.
- c. Any other significant change to the master plan or site specific plan as determined by the village manager.

(Ord. No. 29, § 13.16, 8-17-1991)

Sec. 32-307. Enforcement provisions.

(a) Any person violating any section of this chapter shall be guilty of a class 3 misdemeanor and punishable by a fine not to exceed \$50.00 or imprisonment not to exceed 20 days. Each day that a violation continues shall be considered a separate and distinct offense.

(b) In addition to and not in lieu of any criminal remedies set forth in subsection (a) of this section, the village may apply to any court of competent jurisdiction for a temporary restraining order, preliminary injunction and permanent, mandatory or prohibitory injunction preventing the unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance or use of any land or structures in violation hereof, including order of abatement directing that buildings or other structures located on any property subject hereto be closed, demolished or removed, if necessary, to come into compliance herewith.

(c) The village's remedies for violations hereof as set forth in this section shall be cumulative.

(Ord. No. 29, § 13.17, 8-17-1991)

Sec. 32-308. Procedures for establishing a moratorium.

(a) The village may adopt temporary moratoria on any village development approval required by law. The duration of any moratorium shall be reasonable in light of specific conditions that warrant imposition of the moratorium and may not exceed the period of time necessary to correct, modify, or resolve such conditions. Except in cases of imminent and substantial threat to public health or safety, before adopting an ordinance imposing a development moratorium with a duration of 60 days or any shorter period, the governing board shall hold a public hearing and shall publish a notice of the hearing in a newspaper having general circulation in the area not less than seven days before the date set for the hearing. A development moratorium with the duration of 61 days or longer, is subject to the notice and hearing requirements of G.S. 160A-364 [153A-323]. Absent an imminent threat to public health or safety, a development moratorium adopted pursuant to this section shall not apply to any project for which a valid building permit issued pursuant to G.S. 160A-417 [153A-357] is outstanding, to any project for which a conditional use permit application or special use application has been accepted, to development set forth in a site-specific or phased development plan approved pursuant to G.S. 160A-385.1 [153A-344.1], to development for which substantial expenditures have already been made in good faith reliance on a prior valid administrative or quasi-judicial permit or approval, or preliminary or final subdivision plats that have been accepted for review by the village prior to the call for public hearing, if subsequently approved, shall be allowed to proceed to final plat approval without being subject to the moratorium.

(b) Any ordinance establishing a development moratorium must expressly include at the time of adoption each of the following:

(1) A clear statement of the problems or conditions necessitating the moratorium and what courses of action, alternatives to a moratorium, were considered by the village council and why those alternative courses of action were not deemed adequate.

(2) A clear statement of the development approvals subject to the moratorium and how a moratorium on those approvals will address the problems or conditions leading to the imposition of the moratorium.

(3) An express date of termination of the moratorium and a statement setting forth why that duration is reasonably necessary to address the problems or conditions leading to imposition of the moratorium.

(4) A clear statement of the actions, and the schedule for those actions, proposed to be taken by the village during the duration of the moratorium to address the problems or conditions leading to imposition of the moratorium.

(c) No moratorium may be subsequently renewed or extended for any additional period unless the village shall have taken all reasonable and feasible steps proposed to be taken by the village in its ordinance establishing the moratorium to address the problems or conditions leading to the imposition of the moratorium and unless new facts and conditions warrant an extension. Any ordinance renewing or extending a development moratorium must expressly include, at the time of adoption, the findings set forth in (b)(1) through (b)(4) of this section, including what new facts or conditions warrant the extension.

(d) Any person aggrieved by the imposition of a moratorium on development approvals required by law may apply to the appropriate division of the General Court of Justice for an order enjoining the enforcement of the moratorium, and the court shall have jurisdiction to issue that order. Actions brought pursuant to this section shall be set down for immediate hearing, and subsequent proceedings in those actions shall be accorded priority by the trial and appellate courts. In any such action, the village shall have the burden of showing compliance with the procedural requirements of this section.

(Ord. No. 2006-1012, 10-26-2006)

Secs. 32-309--32-330. Reserved.

ARTICLE IX. SIGNS

DIVISION 1. GENERALLY

Sec. 32-331. Title.

This article shall be known and may be cited as the "Sign Ordinance of the Village of Bald Head Island, North Carolina," and may be referred to as the sign ordinance.

(Ord. No. 60A, art. I, § 1, 11-13-1999)

Sec. 32-332. Purpose.

The purpose of this article is to establish limitations on signs to ensure that they are appropriate to the neighborhood, building, or use to which they are appurtenant, and are adequate, but not excessive, for their intended purpose as a means of communication; to maintain and enhance the aesthetic environment of the island; to improve pedestrian

and other traffic safety; to minimize the possible adverse affect of signs on nearby public and private property; and to enable the fair and consistent enforcement of this article.

(Ord. No. 60A, art. I, § 2, 11-13-1999)

Sec. 32-333. Authority.

This article is hereby adopted under the authority and provisions of the G.S. 160A-381 et seq.

(Ord. No. 60A, art. I, § 3, 11-13-1999)

Sec. 32-334. Jurisdiction.

This article govern each and every sign erected within the corporate limits of the village as indicated on the official corporate boundary map of Bald Head Island, North Carolina.

(Ord. No. 60A, art. I, § 4, 11-13-1999)

Sec. 32-335. Usage of words and terms.

For the purpose of interpreting this article, certain words or terms are herein defined. Except as defined in this article, all other words used in this article shall have their everyday dictionary definition.

(Ord. No. 60A, art. II, § 1, 11-13-1999)

Sec. 32-336. Definitions.

For the purposes of this article, the following words and phrases shall be defined as specified in this section:

Banner sign means a sign made of fabric or any nonrigid material with no enclosing framework.

Bollard means a wooden post constructed and erected for the purposes of location identification of buildings and building sites.

Bollard cap means a cover or top for a bollard constructed for the purposes of advertising the sale, rental, or lease of property.

Building-mounted sign means a sign attached to, painted on, inscribed on or deriving its major support from a building, including a wall sign, a projecting sign or an awning sign.

Bulletin board means a sign used to announce meetings or programs to be held on the premises of a church, library, museum, community center, Bald Head Island Club, or similar noncommercial places of public assembly.

Changeable copy means copy that is or can be changed manually in the field or through mechanical means (e.g., reader boards w/changeable letters).

Construction sign means a sign placed at the construction site identifying or announcing the project or the name of the architect, engineer, or contractor involved in the development of the project.

Copy means any words, letters, numbers, figures, characters, symbols, logos, or insignia that are used on a sign display surface area.

Decorative flag means a piece of fabric bearing a distinctive design which is purely ornamental in purpose.

Direction sign means a sign directing traffic toward a specific destination remote to the location of the sign.

Directory sign means a subsidiary sign listing the names, uses, and/or location of various residential developments.

Double-faced sign means a sign having two sides bearing similar information on both sides.

Freestanding sign means a sign, supported by one or more columns, uprights or braces, in or upon the ground, but not attached to any building. A sign attached to a flat surface not a part of the building, such as a fence or wall, shall be considered a freestanding sign.

Golf course means a course with nine or more holes for playing golf, including any accessory driving range, clubhouse, office, restaurant, concession stand, picnic tables, pro shop, maintenance building, restroom facility, or similar accessory use or structure. This term shall not include miniature golf courses, nor shall it include driving ranges, which are not accessory to a golf course.

Government means any agency, office bureau, or corporation licensed by any duly authorized authority of the United States, the state, the county, any regional government, or the village.

Ground mounted sign means a freestanding sign which extends from the ground or which has a support which places the bottom thereof less than two feet from the ground.

Holiday decorations means displays erected on a seasonal basis in observance of religious, national, or state holidays, which are not intended to be permanent in nature and which contain no advertising material.

Illegal sign means any sign erected or maintained in violation of this article or erected, altered, removed, or replaced in violation of this article, or any amendments hereto.

Instructional sign, on-premises, means a sign designed to guide golf cart and/or pedestrian traffic by using such terms as entrance, exit, one-way, or similar directional instruction, but not including any advertising message. The name or logo of the business or use to which the sign is giving direction may not be included on the sign.

Logo means a business trademark or symbol.

Lot means a parcel of land whose boundaries have been established by some legal instrument such as a recorded deed or a recorded map and which is recognized as a separate legal parcel for purposes of transfer of title.

Multifamily development means two or more multifamily dwellings located on a single property.

Multifamily dwelling means a building containing three or more dwelling units, and where the building is designed to be or is occupied by three or more families living independently from each other.

Nonconforming sign means any sign that met all legal requirements when constructed but does not comply with this article or a subsequent amendment hereto.

Off-premises sign means a sign that directs attention to a business commodity, service, or establishment conducted, sold, or offered at a location other than the premises on which the sign is erected.

On-premises sign means a sign that directs attention to a business commodity, service, or establishment conducted, sold, or offered on the premises on which the sign is erected.

Parcel means a tract or plot of land.

Portable sign means any sign that is not permanently affixed to a building, structure, or the ground or that is not designed to be permanently affixed to a building, structure, or the ground.

Private road and street mean any road or street which is not publicly owned and/or maintained and is used for access by the occupants of the development and their guests.

Public street means a street consisting of a publicly dedicated right-of-way and a roadway maintained by the village.

Right of way means an area owned or maintained by the village, a public utility, or a private concern for the placement of such utilities and/or facilities for the passage of vehicles and pedestrians, including roads, pedestrian walkways or utilities.

Sign means any words, lettering, parts of letters, figures, numerals, phrases, sentences, emblems, devices, structures, designs, trade names, or trademarks by which anything is made known, such as are used to designate an individual, a firm, an association, a corporation, a profession, a business, or a commodity or products, which are visible from any public street or adjacent property which by its nature attracts attention.

Sign height means the distance measured from the highest point of a sign, including any molding, trim, border, or frame from ground level at the base of the sign.

Special event means any activity or circumstance of an organization which is not part of its daily activities. Such activities may include, but are not limited to, fundraising membership drives, or temporary events conducted by civic, philanthropic, educational, or religious organizations.

Temporary sign means a sign that can be used only for a designated period of time.

Traffic sign means a sign indicating federal, state, or municipal regulations for golf cart, vehicle, bicycle, and/or pedestrian movement.

Village manager means the chief administrator of the village who is responsible to the council for administering all municipal affairs placed in his charge by them.

Wall sign means a building-mounted sign attached to, painted on, inscribed or deriving its major support from a wall, and which projects less than 12 inches from the wall.

(Ord. No. 60A, art. II, § 2, 11-13-1999)

Cross References: Definitions generally, § 1-2.

Sec. 32-337. Word interpretations.

For the purpose of this article, certain words shall be interpreted as follows:

The term "lot" includes the word "plot" or "parcel" or "tract."

The term "shall" is always mandatory and not merely directory.

The term "structure" shall include the word "building."

The term "used for" shall include the meaning "designed for."

(Ord. No. 60A, art. III, § 1, 11-13-1999)

Sec. 32-338. Calculation of sign area.

Sign area shall be calculated as the area within a parallelogram, triangle, circle, semicircle or other regular geometric figure including all letters, figures, graphics or other elements of the sign, together with any material or framing that is an integral part of the display or used to differentiate the sign from the backdrop or structure against which it is placed. The sign area is defined as the area within a single, continuous perimeter enclosing the extreme limits of characters, lettering, logos, illustrations, or ornamentations, together with any material or color forming an integral part of the display or to differentiate the sign from the background to which it is placed. Structural supports bearing no sign copy shall not be included in the sign area. If the sign is located on a decorative fence or wall, when such fence or wall otherwise meets these or other ordinances or regulations and is clearly incidental to the display itself, the fence or wall shall not be included in the sign area.

(Ord. No. 60A, art. II, § 3, 11-13-1999)

Sec. 32-339. Violations.

Any of the following shall be classified as a violation of this article except as permitted or nonconforming and shall be subject to the enforcement remedies and penalties provided by this article and by state law:

- (1) Installing, creating, erecting or maintaining any sign in a way that is inconsistent with any plan to permit governing such sign or the lot on which the sign is located;
- (2) Installing, creating, erecting or maintaining any sign requiring a permit without such a permit;
- (3) Failing to remove any sign that is installed, created, erected or maintained in violation of this chapter or for which the sign permit has lapsed; or
- (4) Continuing any such violation. Each such day of a continued violation shall be considered a separate violation when applying the penalty portions of this article.

Each sign installed, created, erected or maintained in violation of this article shall be considered a separate violation when applying the penalty sections of this article.

(Ord. No. 60A, art. III, § 2, 11-13-1999)

Sec. 32-340. Enforcement and remedies.

Any violation or attempted violation of this article or of any condition or requirement adopted pursuant hereto may be restrained, corrected or abated, as the case may be, by injunction or other appropriate proceedings pursuant to state law. In the case of a violation of this article, the remedies available to the village shall include the following:

- (1) Issuing a stop work order for any and all work on any signs on the same lot or lots;
- (2) Seeking an injunction or other order of restraint or abatement that requires the removal of the sign or the correction of the nonconformity.
- (3) Issuing a citation to cause the violation to be corrected and imposing a penalty for failure to do so;
- (4) Seeking in court the imposition of any additional penalties that can be imposed by such court under this chapter; and
- (5) In the case of a sign that poses an immediate danger to the public health or safety, taking such measures as are available to the village under the applicable provisions of this article and the building code for such circumstances.

The village shall have such other remedies as are and as may from time to time be provided for or allowed by state law for the violation of this article.

(Ord. No. 60A, art. III, § 2.1, 11-13-1999)

Sec. 32-341. Citation.

(a) If through inspection, it is determined that a person has failed to comply with the provisions of this article, the building inspector shall issue a notice of violation by certified mail to the violator. Violations shall be corrected within 30 days of the receipt of such notice except that a violation for failing or refusing to remove a temporary sign after the permit has expired must be corrected within ten days of delivering a notice to the address of the applicant shown on the application or the owner of the property. If the violation is not corrected within the specified time period, a citation subject to a \$25.00 civil penalty shall be issued.

(b) If the offender does not correct the violation set forth in the citation within 72 hours after being cited, a second citation subject to a \$25.00 civil penalty for the same violation shall be issued. The violator shall be guilty of a class 3 misdemeanor as defined in G.S. 14-4 upon failure to correct the violation set forth in the citation within 72 hours and failure to pay the imposed fine, and will be subject to an additional fine of \$200.00.

(c) These civil penalties are in addition to any other penalties or actions imposed by a court for violation of the provisions of this article.

(d) All such remedies provided in this article shall be cumulative. To the extent that state law may limit the availability of a particular remedy set forth herein for a certain violation or a part thereof, such remedy shall remain available for other violations or other parts of the same violation.

(e) For the purpose of calculating any time period imposed or required by this division, the first day of any activity or action required or authorized shall be excluded and the last day shall be included.

(Ord. No. 60A, art. III, § 2.2, 11-13-1999)

Sec. 32-342. Amendments.

The village council may from time to time amend the terms of this article, but no amendment shall become effective unless it shall have been proposed by or shall have been submitted to the planning board for review and recommendation. The planning board shall have 60 days within which to make a recommendation. If the planning board fails to make a recommendation within the specified time, it shall be deemed to have recommended approval for the amendment.

(Ord. No. 60A, art. III, § 4, 11-13-1999)

Sec. 32-343. Prohibited signs.

Signs not expressly authorized by this article shall be considered prohibited in all zoning districts. Prohibited signs shall include, but are not limited to the following:

(1) Any sign which obstructs the view of pedestrians, bicyclists, and vehicles using any street, approach to any street intersection, or which interfered with the effectiveness of or obscures any traffic sign shall be prohibited. Any sign located in such a way as to deny a visual access to an existing sign.

(2) Any sign (other than a government sign) placed on any curb, sidewalk, post, pole, hydrant, bridge, tree, or other surface and located in, over, or across any public or private street or right-of-way, unless expressly authorized by this article.

(3) Temporary, nonpermanent signs, including over-head streamers, unless expressly authorized by this article.

(4) Any sign that is attached to or mounted on a roof or projects above the plane of the building facade.

(5) Any sign which contains or consists of strings of light bulbs.

(6) Moored balloons or other floating signs that are tethered to the ground or to a structure.

(7) Portable or freestanding signs, including any sign painted or displayed on vehicles if such vehicle is parked in a location for the primary purpose of displaying the sign which advertise or identify a specific commercial event.

(8) Separate signs attached to a freestanding sign or its supporting structure advertising services.

(9) Neon or internally lit signs.

(10) Off-premises commercial signs, or other off-premises signs unless expressly authorized by this article.

(11) Window signs.

(12) Revolving signs.

(13) Electrically operated, mounted, and illuminated signs.

(14) Any moving sign, windblown sign, or device to attract attention, whether or not any such device carries a written message, all or part of which is set in motion by wind, mechanical, electrical, or any other means. This shall include, but not be limited to, propellers, and discs.

(15) Any flashing sign or device displaying flashing or intermittent lights or lights of changing degrees of intensity. Any searchlight or similar device.

(Ord. No. 60A, art. III, § 5, 11-13-1999)

Sec. 32-344. Nonconforming signs.

All nonconforming signs are permitted to exist, provided that the signs shall not be:

(1) Changed, altered, or replaced by another nonconforming sign, except that copy may be changed on an existing sign.

(2) Expanded or modified in any way.

(3) Relocated, except in conformance with the requirements of this article.

(Ord. No. 60A, art. III, § 6, 11-13-1999)

Secs. 32-345--32-360. Reserved.

**DIVISION 2.
PERMITS**

Sec. 32-361. Permit required.

(a) No sign, except as otherwise provided in this article, shall be painted, constructed, erected, remodeled, refaced, relocated, expanded or otherwise altered until a sign permit has been obtained from the building inspector in accordance with the provisions of this section.

(b) Notwithstanding subsection (a) of this section, changing or replacing the permanent copy on an existing lawful sign shall not require a permit, provided the copy change does not change the nature of the sign such as to render the sign in violation of this article.

(Ord. No. 60A, art. IV, § 1, 11-13-1999)

Sec. 32-362. Application for permit.

Applications for permits shall contain or have attached to it the following information:

(1) The street number of the structure on which the sign is to be erected, and the tax parcel number of the property on which the sign is to be located.

(2) Names, addresses, and telephone numbers of the applicant, owner of the property on which the sign is to be erected or affixed, the owner of the sign, and the person or contractor erecting or affixing the sign.

(3) A site or plat plan of the property involved, showing accurate placement of the proposed sign including setbacks, all structures, etc.

(4) Two detailed scaled drawings of the plans and specifications of the sign to be erected or affixed. The building inspector shall inform the applicant prior to the application of this requirement. Such plans shall include but shall not be limited to details of dimensions, materials, copy, and size of the proposed sign. In addition, these drawings shall show size of sign, logo, trademark, letters, words, numbers and all other information to be included in the sign to determine conformity to this article and consistency with regard to other signs and the integrity of the island.

(5) Other information as the building inspector may require to determine full compliance with this and other applicable codes.

(Ord. No. 60A, art. IV, § 2, 11-13-1999)

Sec. 32-363. Issuance of permits.

Upon the filing of an application for a sign permit, the building inspector shall examine the plans and specifications, and as deemed necessary, may inspect the premises upon which the sign is proposed to be erected or affixed. If the proposed sign is in

compliance with all the requirements of these regulations and other applicable codes, a permit shall be issued. Any permit issued in accordance with this article shall automatically become null and void unless the work for which it was issued has visibly been started within 6 months of the date of issue or if the work authorized by it is suspended or abandoned for one year.

(Ord. No. 60A, art. IV, § 3, 11-13-1999)

Sec. 32-364. Fees.

To obtain a sign permit, all fees, in accordance with the approved fee schedule shall be paid.

(Ord. No. 60A, art. IV, § 4, 11-13-1999)

Secs. 32-365--32-380. Reserved.

**DIVISION 3.
CONSTRUCTION AND MAINTENANCE**

Sec. 32-381. Design, construction and maintenance.

All signs shall be designed, constructed and maintained in accordance with the following standards:

- (1) All signs shall comply with applicable provisions of the state building code at all times.
- (2) Except where specifically exempted by this article, all signs, including the supports, frames and embellishments thereto, shall not be located within any public right-of-way, nor shall any sign be attached, affixed or painted on any utility pole, tree, rock or other natural object.
- (3) Except for flags and regulated temporary signs conforming in all respects with the requirements of this division, all signs shall be constructed of wood or other semipermanent materials and shall be permanently attached to the ground, a building or another structure by direct attachment to a rigid wall, frame or structure.
- (4) All signs shall be maintained in good structural condition, in compliance with all building and electrical codes and in conformance with the code at all times.
- (5) The village building inspector shall possess the authority to order the painting, repair, alteration or removal of a sign which constitutes a hazard to the health, safety or public welfare by reason of inadequate maintenance, dilapidation, or obsolescence. Notice to the owner shall be by personal service or registered mail, return receipt

requested. Upon notification, the owner shall have 30 days to complete repairs. If the owner fails to complete repairs within appropriate time frames, then the village shall have all remedies as available in this article.

(6) The immediate premises around a sign shall be kept free from debris. However, no person may damage, destroy, or remove any trees, shrubs or other vegetation located within the right-of-way of any public or private street or road for the purpose of increasing or enhancing the visibility of any sign, unless specifically approved by the village manager.

(Ord. No. 60A, art. V, § 1, 11-13-1999)

Sec. 32-382. Reconstruction of damaged signs or sign structures.

(a) Any permitted or nonconforming sign or sign structure which has been damaged may be repaired and used as before, provided all repairs are initiated within 60 days and completed within 120 days of such damage. However, if the sign should be declared unsafe by the village building inspector, the owner of the sign or the owner of the property whereon the sign is located, shall immediately correct all unsafe conditions in a manner satisfactory to the village building inspector.

(b) For purposes of this section, a nonconforming sign (or its structure) shall be considered destroyed, and therefore shall not be repaired or replaced, if it receives damage to the extent of more than 50 percent of its value as determined by the village building inspector. Signs destroyed by proven vandalism may be replaced, but may not be changed, altered, or enlarged from their original state.

(Ord. No. 60A, art. V, § 2, 11-13-1999)

Sec. 32-383. Removal of sign upon termination of business.

A sign, including its supporting structure or brackets, shall be removed by the owner or lessee of the premises upon which the sign is located when the business which it advertises is no longer on the premises. Such sign, if not removed within 30 days from the termination of occupancy by such business, shall be in violation of this chapter, and shall be removed at the owner's expense.

(Ord. No. 60A, art. V, § 3, 11-13-1999)

Sec. 32-384. Dilapidated signs.

All signs shall be maintained in good working condition so as to present a neat and orderly appearance. The building inspector may give written notice to remove or repair, within 30 days, any sign which shows gross neglect or which becomes dilapidated. Failure to comply shall be a violation of this article.

(Ord. No. 60A, art. V, § 4, 11-13-1999)

Secs. 32-385--32-400. Reserved.

DIVISION 4. GENERAL SIGN REGULATIONS

Sec. 32-401. Signs permitted in all districts.

The following signs shall be permitted in all zoning districts, subject to the standards set forth in this section and elsewhere in this article, and shall require a sign permit unless otherwise indicated:

(1) *Temporary signs.* Temporary signs shall be nonilluminated and limited to the following types:

a. Construction signs, which identify the architects, engineers and contractors involved with the construction. Construction signs shall be a maximum of four square feet in area and a maximum height of six feet. Such signs shall be removed upon issuance of a certificate of occupancy. A sign permit shall be required if the sign is not included in the building permit application.

b. Signs advertising only the name, time, place and information concerning any bona fide festival, bazaar, or similar event, when conducted by a public agency, nonprofit organization, or for the benefit of any civic, fraternal, religious or charitable cause; provided that all such signs shall be removed within 24 hours after the last day of the event to which they pertain. Signs for this purpose shall be erected no earlier than seven days prior to the event. Overhead banners erected over or across any public or private street right-of-way are permissible for these purposes, provided that the bottom of the sign is a minimum of 16 feet above the right-of-way. The maximum sign area shall be 128 square feet per sign. No more than three such signs shall be erected for each event. A sign permit is required.

c. Real estate signs, advertising the sale, rental or lease of the premises or part of the premises on which the sign is displayed. Real estate signs shall be a maximum of one square foot in area per side and a maximum height of four feet. Sign copy shall be allowed only on one side of the sign. Such signs shall be removed within seven days after the property has been sold. These temporary signs shall not require a permit.

d. Seasonal decorations: Such banners shall not display the name of a business or shopping center, nor the words "open," "sale," "vacancy," or other similar words or phrases related to the business activity on the premises. No permit is required for these signs.

e. Open house signs, indicating the availability of an agent in conjunction with the advertisement of the sale, rental or lease of the premises or part of the premises on

which the sign is displayed. Open house signs shall be a maximum of one square foot in area per side and a maximum height of four feet. Sign copy shall be allowed on both sides of the sign. Such signs shall be removed immediately after the open house is complete. These temporary signs shall not require a permit.

f. Government signs: No permit is required for these signs.

(2) *Permanent signs.*

a. Traffic control signs on private property, such as "stop," "yield" and similar signs. These signs shall contain no commercial message of any sort. These signs shall be constructed to specifications in appendix A which is on file and available for inspection in the village offices. Traffic control signs may be located within a public or private street with approval of the village manager.

b. Informational signs of a public utility regarding its lines, pipes or facilities. No permit is required.

c. Names of buildings, dates of erection, monumental citations, commemorative tablets, insignia of local, state or federal government, and the like when carved into stone, concrete or similar material or made of bronze, aluminum or other permanent type construction and made an integral part of the structure.

d. Informational signs of a public or quasi-public nature identifying or locating a public building, parking area, historic area, major tourist attraction or similar public or quasi-public activity; and also including signs identifying parking lots, or other facilities relating to such places or activities. The village manager shall have the authority to approve such signs only to the extent that such signs shall be of the minimum size and number to reasonably convey information provided thereby.

e. Directional signs provided that:

1. All such signs shall be located off the road right-of-way.

2. The maximum area of the sign shall be four square feet.

3. Only one directional sign shall be allowed per residential development (planned unit developments, subdivisions, multi-family developments only). In the event that residential developments are adjacent to or in close proximity to each other, and are under single ownership, the developments shall share signage area in order to decrease the number of signs on the island. The village manager shall determine whether shared signage is required. Directional signs shall meet all specifications defined in appendix B which is on file and available for inspection in the village offices.

4. In the event that residential developments utilize such signage, the square footage utilized shall be subtracted from the total square footage allowed for the development's project identification sign.

5. The maximum height of the sign shall be five feet.

f. Golf course signs relating to golf play and conduct shall be allowed, provided that such sign does not exceed two square feet in area. No permit is required.

g. Historical markers, monuments, or signs erected by public authority. No permit is required.

h. Directional maps. The village manager shall have the authority to approve such signs only to the extent that such signs shall be of the minimum size and number to reasonably convey information provided thereby.

i. Government signs.

j. Road or street name signs. These signs shall be constructed to specifications in appendix C which is on file and available for inspection in the village offices.

k. Instructional on-premises signs. The village manager shall have the authority to approve such signs only to the extent that such signs shall be of the minimum size and number to reasonably convey information provided thereby. These signs shall be constructed to specifications in appendix D which is on file and available for inspection in the village offices.

(Ord. No. 60A, art. VI, § 1, 11-13-1999; Ord. No. 2001-009, § 1, 5-19-2001)

Sec. 32-402. Sign regulations for residential uses.

Residential uses shall be considered those permitted in this chapter. The following signs shall not require a permit unless otherwise indicated:

(1) *Single-family dwelling unit identification.* One building-mounted sign or freestanding sign, not exceeding two square feet in area for each dwelling unit, shall be permitted. Such sign shall indicate only the name of the occupant, the name of the dwelling unit or property unit or property, and/or its location. Such freestanding signs shall not exceed two feet in height.

(2) *Multifamily building identification.* One or more building-mounted signs, not exceeding four square feet per building, shall be permitted for the purpose of identifying a multifamily building. The language on such signs shall be for identification purposes only, not including any message of a commercial nature.

(3) *Room rental identification.* One building-mounted sign not exceeding two square feet in area for the purpose of identifying a dwelling unit renting rooms to visitors shall be permitted. The sign shall be in addition to any sign permitted by this section.

(4) *Home occupations.* Signs for the purpose of identifying home occupations shall be prohibited.

(5) *Decorative flags.* One wall-mounted decorative flag, not to exceed ten square feet in area, shall be allowed for a dwelling unit. Such flag shall not indicate the name or logo of a business or home occupation, nor a written message pertaining to a business or home occupation.

(6) *Subdivision or project identification.* Freestanding ground-mounted signs, with a maximum area of 24 square feet, shall be permitted for the identification of a subdivision, apartment or condominium complex, planned development, and each multi-family site contained within a planned unit development, if located at the entrance to the project, on project property. No more than one sign shall be permitted at each entrance (a maximum of two per project). If such signs are "double-faced", the sign shall be limited to 15 square feet per face. The maximum height for these type signs shall be five feet. A permit is required for project identification signs.

(7) *Additional regulations for signs allowed by this section.*

a. Unless otherwise indicated, freestanding signs shall have a maximum height of five feet.

b. No sign shall project beyond the property line or be located on or project over a private or village right-of-way, except that subdivision or project identification signs may be allowed within such area if approved by the village manager, upon a determination that the location of such sign does not interfere with utilization of the right-of-way (functional or visual), and upon a further finding that the signs must be maintained by a property owner's association or the property owner. Authorization of the property owner to use the property must be provided.

c. All signs shall be nonilluminated, unless otherwise specified.

(Ord. No. 60A, art. VI, § 2, 11-13-1999; Ord. No. 2005-011, 7-15-2005)

Sec. 32-403. Sign regulations for commercial and not-for-profit uses.

The following signs shall require a sign permit unless otherwise indicated:

(1) *Single business on a single lot.*

a. Type of signs permitted: building-mounted.

b. Number of signs permitted: one. For buildings fronting on more than one public street, each frontage shall be considered separately when calculating building-mounted sign area, and may be allowed a maximum of two signs.

c. Maximum sign area: nine square feet.

(2) Two or more businesses in the same building, or on the same lot or on adjoining properties under the same ownership, and having shared parking lots and/or driveways.

a. Type of signs permitted: building-mounted.

b. Number of signs permitted: one sign for each business with a separate main exterior entrance. Where two or more businesses share a main exterior entrance, one sign shall be permitted to be shared by the businesses located therein. Where one or more business has a rear entrance from an adjacent parking lot, one additional sign may be placed at the rear entrance.

c. Maximum sign area: nine square feet per sign.

(3) Commercial subdivision or commercial designed complex project identification sign. Freestanding ground-mounted signs, with a maximum area of 24 square feet shall be permitted for the identification of a commercial subdivision or commercial designed complex, if located at the entrance to the project. No more than one sign shall be permitted at each entrance (a maximum of two per project). If such signs are double-faced, the sign shall be limited to 15 square feet per face. The maximum height for these type signs shall be five feet. A permit is required for project identification signs.

(4) Not-for-profit business.

a. Type of signs permitted: building-mounted and bulletin boards.

b. Number of signs permitted: one building mounted, one bulletin board.

c. Maximum sign area: nine square feet--building mounted; 20 square feet--bulletin board (may be freestanding).

(5) Additional regulations for signs allowed by this section.

a. Unless otherwise indicated, freestanding signs shall have a maximum height of five feet.

b. No sign shall project beyond the property line or be located on or project over a private or village right-of-way, except that signs for not-for-profit uses may be allowed within such area if approved by the village manager, upon a determination that the location of such sign does not interfere with utilization of the right-of-way (functional or

visual), and upon a further finding that the signs must be maintained by the nonprofit entity responsible for the sign.

c. Illumination shall be limited to two 60-watt bulbs.

(Ord. No. 60A, art. VI, § 3, 11-13-1999)

Sec. 32-404. Supplemental sign regulations.

The following regulations shall apply for all signs, unless specified otherwise in this article:

(1) All permanent signs must be made or constructed of wood or other semipermanent materials.

(2) All signs shall be set back a minimum of five feet from the property line or ten feet from the edge of the road surface, whichever is greater. This provision shall not apply to traffic signs. Bollard caps, placed on existing street address bollards, located within the street right-of-ways are exempt from this requirement.

(3) Traffic signs for private streets shall be allowed in rights-of-way, with appropriate setbacks from roadway surfaces to promote public safety as determined by the village manager.

(4) Signs, other than those specified in this article as permitted, shall be considered prohibited signs.

(5) All signs shall be nonilluminated, unless otherwise specified.

(6) Notwithstanding any other provisions contained within this article, in multifamily developments and nonresidential developments where various uses or occupants are subject to legally enforceable restrictions imposed by covenant or lease, the zoning board of adjustment may approve project signage guidelines, if the guidelines are consistent with the intent of this article, and promotes creative and attractive signage, constructed in accordance with a uniform plan of control and approval, so that neither aesthetics nor maintenance standards embodied by this article are compromised.

(7) Temporary, nonpermanent signs erected for nonprofit agencies or events, as defined in section 32-401(1)b, may display commercial logos or advertising limited to ten percent of the total sign area, on a sign which advertises the name, time, place, and information concerning any bona fide festival, bazaar, or similar event.

(Ord. No. 60A, art. VI, § 4, 11-13-1999)

Sec. 32-405. Hardship cases.

Whenever the location, topography or configuration of any lot on which any permitted use is conducted is such as will cause a hardship by the limitations placed on the signs permitted by this article due to sight distances, existing vegetation, location of buildings on adjacent lots and/or the topography of the parcel, the zoning board of adjustment may grant a modification to these regulations. A modification may be approved if it is found that:

(1) It is designed, constructed and operated to adequately safeguard the health, safety and welfare of the occupants of the adjoining and surrounding property;

(2) It does not unreasonably impair an adequate supply of light and air to adjacent property;

(3) It does not increase public danger from fire or otherwise unreasonably restrict public safety; and

(4) It does not impair the established property values in surrounding areas.

(Ord. No. 60A, art. VI, § 5, 11-13-1999)

APPENDIX A PERSONNEL *

* **Editors Note:** in this appendix are the most recent personnel regulations for the Village of Bald Head Island as amended through April 2, 2001.

Cross References: ch. 2.

State Law References: generally in municipalities, G.S. 160A-162 et seq.; authority to adopt personnel rules, G.S. 160A-164.

[Article I.] Purpose

[Article II.] Scope

[Article III.] Policy and Procedures

Sec. I. Objectives.

Sec. II: System.

Sec. III: Responsibilities.

Sec. IV: Rating System

Sec. V: Evaluation Procedures.

Sec. VI: Merit Pay Amounts.

Sec. VII: Performance Standards and Rating Summary Instructions.

[ARTICLE I.] PURPOSE

To establish and maintain an equitable performance evaluation and development program that defines and improves the performance level of all employees, regular full and parttime positions, in order to advance the goals of the organization.

[ARTICLE II.] SCOPE

This policy shall apply to all regular full and parttime positions. This policy describes the Village's appraisal system and the procedures that will be followed to make it work effectively. It includes guidelines for scheduling of the appraisal interview process, Manager/Department Head preparation, the conduct of an interview, recordkeeping, use of performance appraisal information and follow-up actions.

[ARTICLE III.] POLICY AND PROCEDURES

Section I. Objectives.

1.1 *Communication*: To create and maintain an atmosphere for open communication between supervisors and employees concerning job performance and expectations; to ensure that feedback is provided on a regular, on-going basis between supervisors and employees; and to ensure that all employees have the opportunity to discuss and understand organizational goals and expectations.

1.2 *Performance Improvement*: To regularly discuss the job performance of all employees based on job-related criteria; to identify during that discussion both accomplishments and areas for performance improvement for each employee; to discuss specific plans for those areas in which performance improvements can be made.

1.3 *Employee Development*: To provide information which can be used jointly by supervisors and employees to determine appropriate training needs and resources. To discuss and identify how employees can prepare for potential advancement opportunities where appropriate.

1.4 *Personnel Actions*: To provide background information and documentation for consideration in conjunction with all personnel actions that may occur, such as promotions, reductions in force, discipline, merit raises transfers, etc.

1.5 *Recognition and Rewards*: To establish a system whereby employees receive recognition and appreciation when it is earned, and, where appropriate, to use the performance evaluation program as the basis for financial reward of those employees whose accomplishments merit such rewards.

Section II: System.

2.1 *Occupational Groups*: All position classifications of the Village have been assigned to an occupational group to allow for more specific performance criteria. A list of these occupational groups may be obtained from the Administrative Assistant or Village Manager.

[a.] General Professional/Supervision

- Assistant Village Manager/Planner
- Finance Director
- Village Clerk
- Tax Administrator/Administrative Assistant

[b.] Clerical/Administrative Support

[c.] Postal Administrative

- Postmaster

[d.] Code Enforcement

- Building Inspector

[e.] Human Services Professional & Paraprofessional

- Fire Chief/EMS Supervisor
- Paramedic Assistant Chief
- Paramedic Captain
- Paramedic Lieutenant
- Senior Firefighter/Paramedic
- Firefighter/Paramedic

[f.] Law Enforcement

-Police Chief

-Captain

-Lieutenant

-Corporal

-Sergeant

-Patrol Officer

[g.] Labor and Trades Supervision

-Public Works Director

[h.] Labor and Trade

-Assistant Public Works Director

-General Maintenance Worker

[i.] Lead Workers

[j.] Supervisors

2.2 Performance Standards: Performance standards were developed according to occupational groups based on representative employees and representative supervisors who use the forms. The forms cover all employees in both full and parttime capacities. Performance standards are based on the following criteria:

- (a) Clearly job-related;
- (b) Terms of behavior that can be observed;
- (c) Specific and descriptive behavior;
- (d) Results/outputs; and
- (e) Measurable, when possible and feasible.

2.3 Supervisory Supplement: A supplemental form is available to help focus on the supervisory aspects of an employee's job. When employees have significant

responsibility for supervising other employees (including conducting performance evaluations), this form should be used along with the appropriate occupational forms.

2.4 Lead Worker Supplement: A supplemental form is available to help discuss the lead worker performance for employees who have such responsibilities. Lead worker tasks are those involved in training, assigning, and reviewing the work of co-workers when the employee is not the direct supervisor, and therefore, many of the Supervisory Supplement elements are not applicable.

Section III: Responsibilities.

3.1 Each person or group identified below has a very important role to play in the Performance Evaluation and Development Program to ensure the system's overall success.

A. Village Council.

- Approve policy guiding the system;
- Provide funding for training;
- Respect and support the internal chain of command in administering the program; and
- Conduct performance evaluations with their appointees.

B. Village Manager.

- See that policies are effectively implemented;
- Conduct performance evaluations with employees under his/her direction;
- Ensure that the system is working effectively within the organization;
- Ensure that all employees receive a performance evaluation;
- Recommend resources necessary to support the training and other system needs;
- Communicate with Village Council regarding the systems needs, their roles, and program status;
- Provide effective training necessary for program success;
- Provide continuous and refresher training as necessary;
- Evaluate the training for effectiveness;

- Request necessary funds and resources to support training programs and evaluation of system;
- Monitor effective use of policies and procedures related to the system; Coordinate appeals and provide internal consultation on appeal resolutions where appropriate;
- Send out monthly schedule of evaluation dates to departments;
- Monitor use of system across departmental lines and provide analysis and feedback on consistency issues;
- Monitor the merit pay program for consistency, fairness and accurate and complete information; and
- May overturn the decisions of a Department Head or Supervisor to allow merit pay increases where inconsistencies, failure to follow established policies and procedures, funding availability, or other circumstances exist.

C. Department Heads.

- Support and promote the system insuring that policies and objectives are effectively implemented;
- Create an environment to ensure that the performance evaluation process is an open, two-way discussion between the employees and supervisors about the employees performance;
- Develop new departmental goals as a result of performance evaluation conference agreements;
- Conduct performance evaluations with their employees;
- Monitor the system and make recommendations for needed changes;
- Review the use of the system across the divisions and work units to ensure consistency;
- Motivate Supervisors to conduct effective evaluations;
- Ensure on-going feedback and documentation so performance evaluation is accurate and there are "no surprises";
- Coach and assist employees in personal and professional development and performance improvement; and
- Be equitable, honest, and consistent in use of the system.

D. Supervisors.

- Conduct performance evaluations on schedule;
- Link performance evaluation discussions and content to identified departmental and Village goals and performance standards;
- Learn and use the process and tool effectively;
- Assign weights of performance categories in discussions with employees at the beginning of the performance period.

E. Employees.

- Make suggestions for improving the system to the supervisor;
- Follow the chain of command in addressing concerns about individual performance evaluations; and
- Actively participate in discussion in the performance evaluation conference.

Section IV: Rating System

4.1 *Important Note:* The purpose of the performance evaluation form is to help the supervisor:

- 1) Focus on job-related criteria;
- 2) Review the entire evaluation period (six months or one year), not just the most recent months;
- 3) Provide feedback on relevant aspects of the employee's performance;
- 4) Document the performance evaluation; and
- 5) Logically conclude the overall performance rating.

The numerical summary at the end of the form is only one indication of performance; other important aspects for consideration may be found in the summary comments. When the overall performance rating differs from the final score, that difference shall be documented and justified accordingly. The Manager, department head, and/or supervisor are expected to use reason, logic and good judgment in determining the overall rating of performance. Employees should be rated using the performance standards.

4.2 *Numerical Weighting System*: Each performance factor will be weighted. All performance categories should total 100 percent. The weighting system is designed to recognize that some categories may be more important than others. These weights may vary from job to job, even within the same classification. Weights should be determined at the beginning of the performance period and employees informed of their particular importance.

4.3 *Performance Categories and Numerical Ratings*: The performance of employees will be rated in one of the following categories and earn the corresponding rating:

A. *Superior (4)*: Fully meets all job requirements identified for the position. In addition, performance consistently and significantly exceeds job requirements in important aspects of work. Work is performed at a sustained high level of proficiency. The employee expands the scope of his/her tasks and responsibilities or the amount of work performed resulting in increased productivity for the work unit. The employee accomplishes the most difficult and complex assignments with minimum supervision and maximum quality. Specified examples of such performance are readily available.

B. *Above Expected (3)*: Fully meets all major job requirements identified for the position. In addition, performance frequently exceeds job requirements in several areas. Supervision is required only for special or unusual assignments or problems.

C. *Expected (2)*: Fully meets all major job requirements in a competent manner. The employee may occasionally exceed some job requirements. Accomplishes his/her duties in a reasonable and consistent manner demonstrating proficiency in the job. If there are occasional lapses in performance, they do not create any substantial problems for the organization, nor have any major impact on delivery of services. Normal supervision is required.

D. *Needs Improvement (1)*: Performance meets job requirements in important categories at least marginally. However, the performance is inconsistent or unreliable in one or more job categories. The employees needs to improve proficiency to more fully meet the needs for which the position was established. Remedial attention and close supervision are required.

E. *Unacceptable (0)*: Performance is inconsistent and one or more major job requirements are not met. Work tasks are not performed or must be repeated due to low quality. Remedial attention and close supervision are required. Failure to correct performance deficiencies in an appropriate amount of time may result in suspension, demotion, or dismissal. A rating at this level should be coordinated with the progressive disciplinary process. In no case should an employee's performance remain in the unsatisfactory category for more than ninety (90) days. The Manager and/or Department Head shall conduct another performance review with the employee before the end of the ninety (90) day period.

Section V: Evaluation Procedures.

5.1 Performance Evaluation Conferences: Performance evaluation conferences with all Village employees will be conducted within thirty (30) days of the employee's anniversary date. Performance evaluation conferences will be conducted by the employee's supervisor and the Village Manager. The conference will encompass a period of time from the last conference to the present. Additional conferences may be held at the Manager's discretion. The actual evaluation will be completed by the employee's supervisor.

5.2 Performance Evaluation Dates: Performance evaluation dates will be the date the employee is hired. Evaluation dates will remain unchanged by reclassification, salary range reassignment, transfer, or promotion.

5.3 Probationary Performance Evaluation Conferences: Probationary performance evaluations of new employees will be conducted at the end of the probationary period. Employees who serve more than a six-month probationary period will also participate in a performance evaluation after six months and at the end of their probationary period. Additional conferences may be held at the Manager's discretion. An employee must receive a rating of no less than "Expected" in order to move from probationary to permanent status. An employee whose performance fails to meet expectations but shows clear promise of successful performance may have the probationary period extended for a period to be determined by the Manager. This provision in no way restricts the Village from dismissing an employee whose performance or conduct is considered unsatisfactory at any point in the probationary period.

5.4 Performance Standards: Departments may update and revise performance standards as needed to maintain current and accurate performance criteria. When standards cover more than one department, then the Manager will coordinate the effort. The Manager shall be responsible for notifying the Department Head when changes are made. Department Heads are then responsible for initiating the changes in their particular department. All revisions must be reviewed by the Department Head and receive final approval from the Manager. Revisions will be reviewed for degree to which they are objective, observable, and job-related performance criteria.

5.5 Changes in Supervision: When a change in an employee's supervisor is eminent due to promotion, transfer or other action of the employee or supervisor, the current supervisor will conduct an interim performance evaluation including meeting with the employee and completing all necessary forms. This provision is effective whenever the employee has worked with the existing supervisor ninety (90) days or more of the employee's current evaluation period. The interim performance evaluation information should be considered by the new supervisor, along with performance observed and documented by the new supervisor in determining the employee's overall rating for the performance period.

In addition, when there is a change in supervision, the new supervisor and employee should jointly review the employee's performance standards and goals, discuss meanings of words and expectations, and set weights.

5.6 *Documentation*: All performance evaluation forms will be signed by the employee, supervisor, intermediate levels of supervision, and department head and forwarded to the Manager with any accompanying memoranda or other documentation for reviewing and filing. The employee shall be given a copy of the forms and other documents to keep after all signatures and comments have been completed. All relevant sections of the performance evaluation forms, including all signatures, will be completed by the appropriate person(s) prior to processing the forms.

5.7 *Review*: Any employee who believes that his/her performance evaluation is inaccurate may request a review session with the Manager.

Section VI: Merit Pay Amounts.

Purpose: To establish and maintain an equitable performance evaluation and development program that defines and improves the performance level of all employees in regular full and part-time positions in order to advance the organizational goals.

6.1 *Merit Pay*: Pay amounts will be awarded based on the overall performance rating the employee receives for the full year in performance review conference and documented on the form at the review date. These amounts may vary from year to year depending on budget availability. The standard amounts are as follows:

- A. *Superior*: The employee will be awarded a merit increase of 5 percent.
- B. *Above Expected*: The employee will be awarded a merit increase of 2.5 percent.
- C. *Expected*: The employee will not be awarded a merit adjustment.
- D. *Needs Improvement*: The employee will not be awarded a merit adjustment.
- E. *Unacceptable*: The employee will not be awarded a merit adjustment.

6.2 *Merit Pay Bonus*: Employees who are at the top of the salary range for their position classification are eligible to be considered for a merit pay bonus. Merit bonuses shall be awarded based upon the performance of the employee as described in the performance evaluation standards. Merit pay bonuses shall be awarded in a lump sum payment and do not become part of the base pay.

Section VII: Performance Standards and Rating Summary Instructions.

7.1 *Weight*: The Village Manager and Department Head will determine the weights of the performance factors at the beginning of the review period collaboratively with the employee. Weights should be based on the job requirements, not the employee's performance. When more than one employee has the same identical job, weights should be the same and determined in a team approach.

7.2 Meets Standards: In reviewing the standards with the employee, the supervisor shall place a check mark in the box for each standard that is met. Use "N/A" if that task is not applicable to the employee's job. Place "N/O" in the box if you have not observed the performance. If a performance standard(s) has not been met, then leave the box blank. Go to "Fails to Meet Standards" and check #1 box and then circle the number that corresponds to the standard that was not met.

7.3 Exceeds Standards: The supervisor will place a check in a box here to represent significant good performance that deserves recognition and appreciation. Use N/A if the task is not applicable to the employee's job.

7.4 Fails to Meet Standards: The supervisor will place a check here to represent a need to improve performance.

7.5 Rating Summary: At the end of the review period, list the weights and ratings in the Rating Summary section of the cover form. To obtain the total received by the employee, multiply the rating times the weight and place the total in the score column. Then add the score columns to obtain the final total.

7.6 Overall Rating: Check the category that corresponds with the final total. Read the definition of that category on the back of the cover form to ensure that it is the proper category and the definition accurately describes the employee's performance. If the definition of the employee's performance varies from the Overall Ratings Comments Section, then identify the definition that is accurate and clearly and specifically note the reasons for the deviation.

CONFIDENTIAL

Employee Name:

Department: _____ Position:

Village of Bald Head Island Performance Evaluation and Development Program

Purpose: To establish and maintain an equitable performance evaluation and development program that defines and improves the performance level of all employees in regular full and part-time positions in order to advance the organizational goals.

Objectives:

A. Communications: To create and maintain an atmosphere for open and frank communications between supervisors and employees concerning job performance and expectations; to ensure that feedback is provided on a regular, on-going basis between supervisors and employees; and to ensure that all employees have the opportunity to discuss and understand organizational goals and expectations.

B. *Performance Improvement*: To regularly discuss the job performance of all employees based on job-related criteria; to identify during that discussion both accomplishments and areas for performance improvement for each employee; to discuss specific plans for those areas in which performance improvements can be made.

C. *Employee Development*: To provide information, which can be used jointly by supervisors and employees to determine appropriate training needs and resources. To discuss and identify how employees can prepare for potential advancement opportunities where appropriate.

D. *Personnel Actions*: To provide background information and documentation for consideration in conjunction with all personnel actions that may occur, such as promotions, reductions in force, discipline, merit raises transfers, etc.

E. *Recognition and Rewards*: To establish a system whereby employees receive recognition and appreciation when it is earned, and, where appropriate, to use the performance evaluation program as the basis for financial reward of those employees whose accomplishments result in merit such rewards.

THIS FORM IS CONFIDENTIAL AND SUBJECT TO THE NORTH CAROLINA GENERAL STATUTE 153-98 WHEN COMPLETED AND IS NOT A MATTER OF PUBLIC RECORD.

Employee Name: Date:

Position: Department:

Type of Action: (Choose One)

_____ Probationary _____ 6 Months _____ 12 Months _____ Other

_____ Annual Performance Review (Review Period from: _____ to: _____)

Accomplishments/Performance Strengths:

Areas of Improvement:

Goals for Next Year:

Disciplinary Actions During Review Period:

Career Development: training needs and/or ways to prepare for advancement:

RATING SUMMARY

| Performance Factor | Rating | Weight | Score |
|---------------------------|--------|--------|-------|
| I. _____ | _____ | _____ | _____ |
| II. _____ | _____ | _____ | _____ |
| III. _____ | _____ | _____ | _____ |
| IV. _____ | _____ | _____ | _____ |
| V. _____ | _____ | _____ | _____ |
| VI. _____ | _____ | _____ | _____ |
| VII. _____ | _____ | _____ | _____ |
| Lead Worker Supplement | _____ | _____ | _____ |
| Supervisory Supplement | _____ | _____ | _____ |
| Totals: | _____ | _____ | _____ |

Overall Rating: Check appropriate category. See important note and definitions on back of this cover.

| | |
|-------------------------|--------------|
| _____ Superior | (3.51--4.00) |
| _____ Above Expected | (2.76--3.50) |
| _____ Expected | (1.76--2.75) |
| _____ Needs Improvement | (1.00--1.75) |
| _____ Unacceptable | (0.00--0.99) |

Supervisor's Signature: _Date:

Overall Rating Comments:

Employee's Signature: _Date:

Comments:

Dept. Head's Signature: _Date:

Comments:

RATING SYSTEM

Important Note: The purpose of the performance evaluation form is to help the supervisor: 1) focus on job-related criteria; 2) review the entire evaluation period (six months or one year), not just most recent months; 3) give feedback on relevant aspects of the employee's performance; 4) document the performance evaluation; and 5) think through a logical decision on the overall performance rating. The numerical summary at the end of the form is only one indication of performance; other important aspects for consideration may be found in the summary comments. When the overall performance rating differs from the final score, that difference shall be documented and justified accordingly. The Manager, department head, and/or supervisor are expected to use reasoned logic and good judgment in determining the overall rating of performance. Employees should be rated using the performance standards.

Numerical Weighting System: Each performance factor will be weighted. All performance categories should total 100 percent. The weighting system is designed to recognize that some categories may be more important than others. These weightings may vary from job to job, even within the same classification. Weights should be determined at the beginning of the performance period.

PERFORMANCE RATING DEFINITIONS

Superior (4): Fully meets all job requirements identified for the position. In addition, performance consistently and significantly exceeds job requirements in important aspects of work. Work is performed at a sustained high level of proficiency. The employee expands the scope of his/her tasks and responsibilities or the amount of work performed resulting in increased productivity for the work unit. The employee accomplishes the most difficult and complex assignments with minimum supervision and maximum quality. Specified examples of such performance are readily available.

Above Expected (3): Fully meets all major job requirements identified for the position. In addition, performance frequently exceeds job requirements in several areas. Supervision is required only for special or unusual assignments or problems.

Expected (2): Fully meets all major job requirements in a competent manner. The employee may occasionally exceed some job requirements. Accomplishes his/her duties in a reasonable and consistent manner demonstrating proficiency in the job. If there are occasional lapses in performance, they do not create any substantial problems for the organization, nor have any major impact on delivery of services. Normal supervision is required.

Needs Improvement (1): Performance meets job requirements in important categories at least marginally. However, the performance is inconsistent or unreliable in one or more job categories. The employees needs to improve proficiency to more fully meet the needs for which the position was established. Remedial attention and close supervision are required.

APPENDIX B

GRANT CRITERIA AND PROCEDURES FOR LOCAL IMPLEMENTATION AND ENFORCEMENT PROGRAMS UNDER THE COASTAL AREA MANAGEMENT ACT*

* **Editors Note:** herein are the latest grant criteria and procedures for local implementation and enforcement programs under the Coastal Area Management Act being G.S. 113A-100 et seq. Obvious misspellings have been corrected without notation. Additions made for clarity are indicated by brackets.

Cross References: ch. 2.

Section .0100 - Purpose

15A NCAC 71 .0101 Authority.

15A NCAC 71 .0102 Policy.

Section .0200 - Policy and Standards

15A NCAC 71 .0201 Value of coastal resources.

15A NCAC 71 .0202 Multi-unit programs.

15A NCAC 71 .0203 Eligibility: funding level.

15A NCAC 71 .0204 Local ordinance required.

15A NCAC 71 .0205 Accountability.

15A NCAC 71 .0206 Future funding.

Section .0300 - Application Procedures

15A NCAC 71 .0301 Application form.

15A NCAC 71 .0302 Application process.

15A NCAC 71 .0303 Reserved.

15A NCAC 71 .0304 Reserved.

15A NCAC 71 .0305 Grant administration.

15A NCAC 71 .0306 Grant conditions.

Section .0400 - Generally Applicable Standards

15A NCAC 71 .0401 Program costs.

15A NCAC 71 .0402 Ineligible activities.

15A NCAC 71 .0403 Computations.

15A NCAC 71 .0404 Designated local official.

15A NCAC 71 .0405 Permit projections.

15A NCAC 71 .0406 Application fees.

15A NCAC 71 .0407 Grant consistency.

15A NCAC 71 .0408 Grant administration.

Section .0500 - Local Implementation and Enforcement Plans

15A NCAC 71 .0501 Purpose.

15A NCAC 71 .0502 Definitions.

15A NCAC 71.0503 Adoption.

15A NCAC 71 .0504 Record of hearings and comments.

15A NCAC 71 .0505 Content of plan.

15A NCAC 71 .0506 Allocation of authority.

15A NCAC 71 .0507 Local permit officer.

15A NCAC 71 .0508 Consideration of application by permit officer.

15A NCAC 71 .0509 Notice of civil action.

15A NCAC 71 .0510 Commission review and acceptance of the local plan.

15A NCAC 71 .0511 Commitment to adopt local management plan as ordinance.

Section .0600 - Amendment of Local Management Plan

15A NCAC 71 .0601 Notice and public hearing requirement.

15A NCAC 71 .0602 Coastal Resources Commission approval.

Section .0700 - Failure to Enforcement and Administer Plan

15A NCAC 71 .0701 Sanction for violations by the local permit-letting agency.

15A NCAC 71 .0702 When an action exceeds the local authority.

SECTION .0100 - PURPOSE

15A NCAC 71 .0101 Authority.

These rules are promulgated pursuant to G.S. 113A-112 and G.S. 113A-124 by the Secretary of the Department of Environment, Health, and Natural Resources in his capacity as executive head of the North Carolina agency designated by the Governor to administer federal funds granted by the National Oceanic and Atmospheric Administration under the Federal Coastal Zone Management Act.

History Note:

Authority G.S. 113A-112;
113A-124;

Eff. December 10, 1977;

Amended eff. May 1, 1990.

15A NCAC 71 .0102 Policy.

The purpose of these criteria is to establish the means and procedures by which local governments may request and receive the funds necessary to implement locally developed Coastal Area Management Act implementation and enforcement programs. These provisions are designed to ensure that no local government will have to forego the assumption of permit-letting authority because of inadequate local finances or to severely burden its local budget in order to undertake a Coastal Area Management Act local implementation and enforcement program. These provisions are designed to ensure that localities will be treated uniformly yet equitably with the goal that two localities in similar situations will be similarly treated.

History Note:

Authority G.S. 113A-112;
113A-124;

Eff. December 10, 1977;

Amended eff. August 1, 1978.

SECTION .0200 - POLICY AND STANDARDS

15A NCAC 71 .0201 Value of coastal resources.

The Department of Natural Resources and Community Development and the Coastal Resources Commission recognize the increased financial burden imposed by Coastal Area Management Act implementation efforts, realize that the protection of coastal lands and waters is beneficial to state and national interests, and believe that the cost of coastal management should be shared by all levels of government.

History Note: Authority G.S. 113A-112;
113A-124;

Eff. December 10, 1977;

ARRC objection lodged March
15, 1990.

15A NCAC 71 .0202 Multi-unit programs.

Implementation and enforcement programs sponsored by more than one local government (multi-unit programs) are encouraged where such consolidations are likely to operate more efficiently and effectively. Such consolidated programs allow the employment of a person or persons who can spend a substantial percentage of time in Coastal Area Management Act permit-letting activities and thereby afford an opportunity to build expertise, operate more efficiently, and foster the economic administration of the program.

History Note: Authority G.S. 113A-112;
113A-124

Eff. December 10, 1977.

15A NCAC 71 .0203 Eligibility: funding level.

History Note: Authority G.S. 113A-112;
113A-124;

Eff. December 10, 1977;

Repealed eff. August 1, 1978.

15A NCAC 71 .0204 Local ordinance required.

Each local government applying for an implementation and enforcement grant shall have adopted local ordinance(s) necessary to give effect to the local implementation and enforcement plan that has been approved by the Commission for its jurisdiction.

History Note: Authority G.S. 113A-112;

113A-124;

Eff. December 10, 1977.

15A NCAC 7I .0205 Accountability.

In general, local governments that are subgrantees of federal and state funds administered by the Department of Environment, Health, and Natural Resources will be subject to accounting techniques and procedures similar to those applicable to the Department of Environment, Health, and Natural Resources as grantee of federal funds administered by the National Oceanic and Atmospheric Administration. More specifically, the requirements of General Statutes and standards generally applicable to local governments, Federal Management Circulars 74-4 and 74-7, and National Oceanic and Atmospheric Administration administrative grants standards will be observed. These standards and regulations are the same as those applicable to Coastal Area Management Act land use planning grants.

History Note:

Authority G.S. 113A-112;
113A-124;

Eff. December 10, 1977;

Amended eff. May 1, 1990;
May 20, 1980.

15A NCAC 7I .0206 Future funding.

The award of a grant by the Department of Environment, Health, and Natural Resources is in no way a commitment to award such grants in subsequent years or to enter into grant amendments in the case of grant award.

History Note:

Authority G.S. 113A-112;
113A-124;

Eff. December 10, 1977;

Amended eff. May 1, 1990.

SECTION .0300 - APPLICATION PROCEDURES

15A NCAC 7I .0301 Application form.

History Note:

Authority G.S. 113A-112;
113A-124;

Eff. December 10, 1977;

Repealed eff. August 1, 1978.

15A NCAC 7I .0302 Application process.

(a) An application form is not required for local governments having entered into previous agreements with the Department for reimbursement under this Rule. Local governments without previous agreements are directed to contact the Division of Coastal Management at P.O. Box 27687, Raleigh, North Carolina 27611.

(b) The geographic jurisdiction will be the same as identified in the local Implementation and Enforcement Program. Where two or more local governments are combined for grant administration, a written statement to this effect must be submitted to the Division of Coastal Management and signed by the appropriate local officials.

(c) Based on the availability of state and/or federal funds, agreements will be renewed on an annual basis. Currently, the grant year runs from July 1 through June 30, and local governments can expect to receive amendments to their contracts after the end of each grant year updating the previous agreements.

History Note:

Authority G.S. 113A-112;
113A-124;

Eff. December 10, 1977;

Amended eff. October 1, 1988;
October 1, 1982; May 20, 1980.

15A NCAC 7I .0303 Reserved.

15A NCAC 7I .0304 Reserved.

History Note:

Authority G.S. 113A-112;
113A-124;

Eff. December 10, 1977;

Amended eff. October 1, 1982;
August 1, 1978;

Repealed eff. August 1, 1988.

15A NCAC 7I .0305 Grant administration.

(a) Reimbursement will be made quarterly upon submittal of composite records after the last day of the last month of the relevant quarter. Composite records will include each applicant's name, the date of the application, the date of public notice, the relevant AEC type, the permit decision, the decision date and any vouchers for training expenses, special projects or other documents as required by the contract between the locality and the Department of Environment, Health, and Natural Resources.

(b) Grant Contract. Prior to the disbursement of funds, the locality and the Department will become parties to a contract.

History Note:

Authority G.S. 113A-112;
113A-124;

Eff. August 1, 1978;

Amended eff. May 1, 1990;
November 1, 1984; October 1,
1982; May 20, 1980.

15A NCAC 71 .0306 Grant conditions.

(a) All contracts shall provide notice of any conditions which affect the quarterly grant payments.

(b) At a minimum, the following conditions will apply:

(1) Per permit reimbursements will only be made after certification is received by the secretary (from the local permit officer) that all CAMA standards have been observed when the permitted activity is completed;

(2) Final quarterly payment for a given fiscal year will be withheld pending receipt by the secretary of an annual permit summary, said summary to consist of a description of all permits processed in the locality by the applicant's name, address, date of application, AEC type, permit decision, and decision date;

(3) Quarterly verification from the relevant field office/CAMA field consultant specified in the contract that the following permit information has been received for each permit processed in the quarter:

(A) One copy of the permit application mailed to the appropriate field consultant or field office of the Division of Coastal Management within five working days of acceptance by the local government;

(B) One copy of the legal notice associated with the application,

(C) One copy of the final decision and any associated permit conditions;

(4) Approval of any special project necessitates compliance with conditions deemed necessary by the secretary to ensure compliance with the standards and policies of this subchapter.

(c) No quarterly payment will be made until all applicable grant conditions are met. Local governments not meeting the timetable specified in subparagraph (b)(3) of this Rule will not be reimbursed for the permits in question.

History Note:

Authority G.S. 113.4-124;

Eff. May 20, 1980;

Amended eff. May 1, 1990;
June 12, 1981.

SECTION .0400 - GENERALLY APPLICABLE STANDARDS

15A NCAC 71 .0401 Program costs.

(a) Costs associated with the management of a local Implementation and Enforcement Program will be recovered on a per permit basis established by the Secretary unless specified elsewhere in this Rule.

(b) The per permit reimbursement rate has been set in consideration of local costs, such as salaries, office supplies, copying, mailing and telephone use, and funds made available to the Division of Coastal Management. These rates are set as follows:

(1) All county permit-letting authorities are eligible to receive seventy-five dollars (\$75.00) for each processed permit.

(2) All municipal permit-letting authorities are eligible to receive fifty-five dollars (\$55.00) for each processed permit.

(3) For multi-unit programs involving a county and a municipality, the higher county rate applies, however, programs involving two or more municipalities will use the municipal rate.

(4) Mandatory follow-up inspections are required when the permitted activity is completed, and such inspections will be documented on a form specified by the Secretary; the follow-up inspection fee received by all local governments is set at forty dollars (\$40.00).

(c) Funds for field and office equipment have been made available for the first four years of the permit program. Due to funding limitation, no further funds will be allocated for the purpose.

(d) Training costs for Local Permit Officers (LPOs) at the Department of Environment, Health, and Natural Resources annual training session are limited to a maximum of one hundred fifty dollars (\$150.00)/LPO upon submittal of proper receipts. No funds will be provided for attendance at CRC meetings.

History Note:

Authority G.S. 113.4-112;
113.4-124;

Eff. December 10, 1977;

Amended eff. May 1, 1990;
October 1, 1982; May 20, 1980;
August 1, 1978.

15A NCAC 7I .0402 Ineligible activities.

(a) Costs not associated with CAMA permit letting are not eligible for reimbursement.

(b) The following costs are presumed not to be eligible:

(1) The costs of local appeal;

(2) Attorneys' fees;

(3) Bookkeeping or accountant costs;

(4) Fines and penalties.

History Note:

Authority G.S. 113A-112;
113A-124;

Eff. December 10, 1977;

Amended eff. August 1, 1978.

15A NCAC 7I .0403 Computations.

History Note:

Authority G.S. 113A-112;
113A-124;

Eff. December 10, 1977;

Repealed eff. August 1, 1978.

15A NCAC 7I .0404 Designated local official.

History Note: Authority G.S. 113A-112;
113A-124;

Eff. December 10, 1977;

Amended eff. August 1, 1978;

Repealed eff. November 1,
1984.

15A NCAC 7I .0405 Permit projections.

History Note: Authority G.S. 113A-112;
113A-124;

Eff. December 10, 1977;

Amended eff. August 1, 1978;

Repealed eff. October 1, 1982.

15A NCAC 7I .0406 Application fees.

The application fees collected by the locality shall be used only to defray the administrative costs associated with processing a CAMA application. Deficits resulting from administrative costs exceeding amounts received from application fees shall be recovered from per permit reimbursements. The current application fee is now twenty-five dollars (\$25.00).

History Note: Authority G.S. 113A-112;
113A-119; 113A-124;

Eff. December 10, 1977;

Amended eff. October 1, 1982;
May 20, 1980; August 1, 1978.

15A NCAC 7I .0407 Grant consistency.

The application shall be consistent with the local implementation and enforcement plan adopted by the locality and approved by the Coastal Resources Commission.

History Note: Authority G.S. 113A-112;
113A-124;

Eff. December 10, 1977.

15A NCAC 7I .0408 Grant administration.

History Note:

Authority G.S. 113A-112;
113A-124;

Eff. December 10, 1977;

Amended eff. October 1, 1982;
May 20, 1980; August 1, 1978;

Repealed eff. November 1,
1984.

**SECTION .0500 - LOCAL IMPLEMENTATION AND ENFORCEMENT
PLANS**

15A NCAC 7I .0501 Purpose.

The Coastal Area Management Act authorizes, but does not require, a city or county in the coastal area to act as a permit-letting agency for minor development permits in areas of environmental concern. These Rules establish the criteria for preparation of local implementation and enforcement plans by local governments. Before a local government can become a permit-letting agency, a plan consistent with these criteria must be submitted to the Coastal Resources Commission for approval. These criteria are provided to assist local government in:

- (1) Establishing procedures to be followed in developing local implementation and enforcement programs;
- (2) Establishing the scope and coverage of said programs;
- (3) Establishing minimum standards to be prescribed in said programs;
- (4) Establishing staffing requirements of permit-letting agencies;
- (5) Establishing permit-letting procedures;
- (6) Establishing priorities of regional and statewide concern;
- (7) Establishing that the program is consistent with the land use plan.

History Note:

Authority G.S. 113A-117;

113A-124(c);

Eff. November 1, 1984;

Amended eff. December 1,
1991.

15A NCAC 71 .0502 Definitions.

(a) All definitions set out in G.S. 113A-100 through 128 apply herein.

(b) The following definitions apply whenever these words appear in this section:

(1) City. The word "city" means any of the incorporated cities within the 20 coastal counties.

(2) County. The word "county" means any one of the 20 counties in the coastal area.

(3) Land Use Plan. The term "land use plan" refers to the plan prepared by local government for submission to the Coastal Resources Commission pursuant to Part 2 of the Coastal Area Management Act.

(4) Local Management Program. The term "local management program" means the local implementation and enforcement program of a coastal city or county that has expressed an intention (as described in G.S. 113A-117) to administer a permit program for minor development in areas of environmental concern located within such county or city.

(5) Local Permit Officer. The term "local permit officer" refers to the locally designated official who will administer and enforce the minor development permit program in areas of environmental concern and all part of the land-use plan which the local government may wish to enforce over the entire planning area.

(6) Management Plan (Plan). The term "management plan" refers to the written description of the management program which must be submitted to the Coastal Resources Commission.

(7) Secretary. The word "Secretary" refers to the Secretary of Environment, Health, and Natural Resources.

History Note:

Authority G.S. 113A-116;
113A-117; 113A-124(c);

Eff. November 1, 1984;

Amended eff. May 1, 1990.

15A NCAC 71.0503 Adoption.

Each local permit-letting agency submitting a letter of intent before July 1, 1976 must adopt a management plan before July 1, 1977. A local permit-letting agency submitting a letter of intent later than two years after July 1, 1974, must adopt a management plan within the time stated by the Commission upon receipt of a letter of intent.

History Note:

Authority G.S. 113A-116;
113A-117(b);

Eff. November 1, 1984.

15A NCAC 71 .0504 Record of hearings and comments.

Each permit-letting agency must compile and maintain a complete record of the public hearing on its proposed management plan and comments received pursuant to G.S. 113A-117. The record of the public hearing, written comment, and any documentation filed with the local permit-letting agency as to the proposed management plan must:

- (1) Consist of a written account from the minutes or transcribed from an electronic recording, and all written documents;
- (2) Remain open for 15 days after the hearing;
- (3) Be available to the Commission upon request.

History Note:

Authority G.S. 113A-117(b);
113A-124(c)(5);

Eff. November 1, 1984.

15A NCAC 71 .0505 Content of plan.

(a) The plan for the local implementation and enforcement program shall include the following elements:

- (1) The geographic extent of jurisdiction of the local management program;
- (2) A description of the criteria to be used in choosing the permit officer;
- (3) Methods of permit processing and coordinating procedures;

(4) Methods for identifying and taking into account projects and impacts of regional, state and national concern;

(5) A copy of all existing or proposed local ordinances relating to zoning and land use in areas of environmental concern or any other relevant subject in order that the Commission may determine:

(A) Whether there is sufficient authority to enforce the program described in the local management plan;

(B) Whether any local ordinances are inconsistent with the approved land use plan. No plan will be approved for any county or city if the Commission determines either that the local government unit lacks sufficient authority to enforce the program or that the local government unit has an ordinance or ordinances inconsistent with its land use plan.

(b) The plan may also include the following elements for the remainder of the zoning jurisdiction of the county or city:

(1) A copy of all local ordinances relating to land use or any other subject relevant to land use;

(2) Procedures for assuring consistency of governmental actions with the approved land use plan for the entire jurisdiction.

(c) The remaining rules within this section provide criteria which shall act as guidelines for cities and counties in drafting the local management plan describing their local management program.

History Note:

Authority G.S. 113A-117;
113A-124(c);

Eff. November 1, 1984.

15A NCAC 71 .0506 Allocation of authority.

(a) A county may establish permit-letting authority for any city or part thereof that lies within said county if such city does not submit a letter of intent to the Commission or states to the Commission its intent not to become a local permit-letting agency.

(b) A city management plan shall be limited to its corporate boundaries and to any extra-territorial zoning area over which it may have established control at the time it requested authority to act as a permit-letting agency or over which it later gains control.

(c) A county implementation and enforcement plan shall be limited to areas not covered by any city plans unless the county acts as the permit-letting agency for a city or cities.

A county may begin such duties only after the county's implementation and enforcement plan has been amended to include such area.

(d) In any city in which neither the city nor the county elects to become the permit-letting agency, the secretary will have that duty.

(e) Only the Department of Environment, Health, and Natural Resources may issue a permit for a major development.

History Note:

Authority G.S. 113A-117(b);
113A-124(c)(5); Eff. November
1, 1984;

Amended eff. May 1, 1990.

15A NCAC 71 .0507 Local permit officer.

(a) The local plan shall designate an existing official or create a new position for an official who shall receive, review and take all appropriate action as to applications for minor development permits. The locality shall inform the Department of all permit officers who will implement or enforce the local management plan.

(b) The plan shall specify the job requirements as mandated by these criteria.

(c) The permit officer shall attend the department's training course within one year of his appointment. The officer shall also attend those regular regional work sessions held by the Department to inform and coordinate the activities of the local permit officers in each region.

(d) In order to continue to process permits in a timely fashion and to avoid the issuance of passive grants, eligible permit-letting agencies shall immediately notify the Commission in writing when the local permit officer resigns or is for any reason unable to perform his or her duties.

(e) This notice shall indicate the method or methods by which the locality will continue to process permits in a thorough and timely fashion. Such methods can include, but are not limited to, the following:

(1) The appointment of a temporary local permit officer (LPO) until such time as a permanent replacement is selected.

(2) The appointment of one or more LPO(s).

(3) Evidence that an agreement exists between the locality and another appropriate agency for the assumption of the permit program.

(4) A formal request that the secretary assume the permit function for the locality.

(f) From date of receipt and acceptance of application and/or decision on an application, the local permit officer must within five working days mail and/or submit copies of same to the appropriate field consultant or the nearest field office of the Division of Coastal Management.

(g) The permit officer shall, on a quarterly basis, summarize for the commission the receipt and disposition of all permit applications for the immediately preceding quarter.

History Note:

Authority G.S. 113A-121(b);
113A-117; 113A-124;

Eff. November 1, 1984;

Amended eff. May 1, 1990.

Cross References: and employees, § 2-61 et seq.

15A NCAC 71 .0508 Consideration of application by permit officer.

(a) The method of consideration of minor development permit requests by the permit officer must be uniform in application and must be set out in writing and available for public inspection. The permit officer shall use only forms approved by the Commission in its handling of any minor development permit application.

(b) The local management plan shall specify the procedures which will be followed in the handling and consideration of all applications for a minor development permit, including appropriate response to receipt of an application for a major development permit.

(c) The permit officer shall maintain a record of all applications, correspondence, public notices, responses from public notices, and a copy of his final disposition for all permit applications whether issued or denied.

(d) The permit officer, in his handling of all minor development permit applications, must use a numbering system which will be developed by the Commission in consultation with local government.

(e) It is the policy of the Coastal Resources Commission to allow local government the greatest flexibility in coordinating minor development permits with all other local permits and approvals. The Commission requires, however, that the plan eventually submitted state how this coordination will be accomplished.

History Note:

Authority G.S. 113A-124(c)(5);

Eff. November 1, 1984.

15A NCAC 7I .0509 Notice of civil action.

The Secretary of the Department of Environment, Health, and Natural Resources and the Coastal Resources Commission shall be notified of any civil action undertaken by or against the local permit officer under the Coastal Area Management Act.

History Note: Authority G.S. 113A-117;
113A-126(b);

Eff. November 1, 1984;

Amended eff. May 1, 1990.

15A NCAC 7I .0510 Commission review and acceptance of the local plan.

The local management plan adopted by any local permit-letting agency must be submitted to the Commission for review. The Commission will evaluate the proposed local management plan as required in G.S. 113A-117(c) and will assess the plan in terms of the local land use plan, the CAMA Land Use Planning Guidelines described in 15A NCAC 7B .0100, the Coastal Area Management Act and these rules.

History Note: Authority G.S. 113A-117(c);
113A-124;

Eff. November 1, 1984;

Amended eff. October 1, 1988.

15A NCAC 7I .0511 Commitment to adopt local management plan as ordinance.

The local governing body shall enter into a commitment to accept the local management plan as part of the city or county code of ordinances within a three-month period.

History Note: Authority G.S. 113A-117(c);
113A-124(c)(5);

Eff. November 1, 1984.

SECTION .0600 - AMENDMENT OF LOCAL MANAGEMENT PLAN

15A NCAC 7I .0601 Notice and public hearing requirement.

Amendment of the local management plan shall follow the notice and public hearing requirements set forth in the Coastal Area Management Act and these Rules pertaining to the adoption of the original program.

History Note:

Authority G.S. 113A-117(b);

Eff. November 1, 1984;

Amended eff. December 1,
1991.

15A NCAC 71 .0602 Coastal Resources Commission approval.

An amendment of a local plan shall be submitted to the Coastal Resources Commission for approval in the same manner in which the original management plan is submitted.

History Note:

Authority G.S. 113A-124(c)(5);

Eff. November 1, 1984.

SECTION .0700 - FAILURE TO ENFORCE AND ADMINISTER PLAN

15A NCAC 71 .0701 Sanction for violations by the local permit-letting agency.

(a) When the local permit-letting agency fails to administer or enforce the local management plan submitted to the Commission and approved by it, the Commission shall:

(1) Notify the local permit-letting agency in writing that it is in violation of the provisions of its local management plan and specify the grounds for such charges of violations;

(2) Inform the local permit-letting agency of specific deficiencies in administration and enforcement;

(3) Inform the local permit-letting authority of its opportunity to request a hearing before the Commission at which time it may make any presentation or present any arguments relevant to the issue raised in the Commission letter to the local agency. The Commission may at its sole discretion hear from any other affected person at the hearing.

(b) If the conditions are not remedied or corrected within 90 days after receipt of commission notification of such violation, the Commission shall assume the duties of the local permit-letting agency until the local permit-letting agency indicates to the Commission in writing its willingness and/or ability to perform in conformance with its approved local management plan. Any changes in circumstances affecting the agency's

willingness and/or ability to properly administer the local management plan also shall be substantiated in writing to the Commission.

History Note: Authority G.S. 113A-117(d);
113A-124;

Eff. November 1, 1984.

15A NCAC 71 .0702 When an action exceeds the local authority.

When the local permit-letting agency exceeds the scope and extent of its authority, which is limited to consideration of applications proposing minor development as defined in the Coastal Area Management Act, that action shall be null, void and of no effect. The determinations of the Commission shall be binding on the local permit-letting agency as to questions of such jurisdiction.

History Note: Authority G.S. 113A-118(e);
113A-120(c); 113A-124(c)(5);

Eff. November 1, 1984.

CODE COMPARATIVE TABLE

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