

## **CHAPTER V: PUBLIC SAFETY**

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**CHAPTER V: PUBLIC SAFETY**  
**ARTICLE 1: STATES OF EMERGENCY**

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**' 5-1.1 STATE OF EMERGENCY; RESTRICTION AUTHORIZED.**

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

(B) In the event of an existing or threatened state of emergency endangering the lives, safety, health and welfare of the people within the town or any part thereof, or threatening damages to or destruction of property, the Mayor of the town is hereby authorized and empowered under G.S. ' 14-288.12 and G.S. ' 166A-8 to issue a public proclamation declaring to all persons the existence of a state of emergency, and, in order to more effectively protect the lives and property of people within the town, to place in effect any or all of the restrictions hereinafter authorized.

(C) The Mayor is hereby authorized and empowered to limit by the proclamation of the application

of all or any part of the restrictions to any area specifically designated or described within the town and to specific hours of the day or night; and to exempt from all or any part of the restrictions, while acting in the line of and within the scope of their respective duties, law enforcement officers, firefighters and other public employees, rescue squad members, doctors, nurses, employees of hospitals and other medical facilities; on-duty military personnel, whether state or federal; on-duty employees of public utilities, public transportation companies and newspaper, magazine, radio broadcasting and television broadcasting corporations operated for profit; and other classes of persons as may be essential to the preservation of public order and immediately necessary to serve the safety, health and welfare needs of people within the town.

(2003 Code, ' 5-1.1) (Adopted 2-2-1993)

### **' 5-1.2 PROCLAMATION IMPOSING PROHIBITIONS AND RESTRICTIONS.**

(A) The Mayor of the town, by proclamation, may impose the prohibitions and restrictions specified in ' ' 5-1.3. through 5-1.11. of this article in the manner described in those sections. The Mayor may impose as many of those specified prohibitions and restrictions as he or she finds are necessary, because of an emergency, to maintain an acceptable level of public order and services, and to protect lives, safety and property. The Mayor shall recite his or her findings in the proclamation.

(B) (1) The proclamation shall be in writing.

(2) The Mayor shall take reasonable steps to give notice of the terms of the proclamation to those affected by it and shall post a copy of it in the County Courthouse and in public places within the town. The Mayor shall, as soon as possible, send reports of the substance of the proclamation to the Chairperson of the County Board of Commissioners, or designee; and to the mass communications media which serves the affected area. The Mayor shall retain a text of the proclamation, and furnish upon request, certified copies of it.

(2003 Code, ' 5-1.2) (Adopted 2-2-1993)

### **' 5-1.3 EVACUATION.**

(A) The Mayor may direct and compel the evacuation of all or part of the population of the town, to prescribe routes, modes of transportation and destination in connection with evacuation; and to control ingress and egress of a disaster area, the movement of persons within the area and the occupancy of premises therein.

(B) Details of the evacuation may be set forth or amended in a subsequent proclamation which shall be well publicized.

(2003 Code, ' 5-1.3) (Adopted 2-2-1993)

**' 5-1.4 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 may exempt from some or all of the curfew restrictions classes of people whose exemption the Mayor finds necessary for the preservation of the public health, safety and welfare. The proclamation shall state the exempted classes and the restrictions from which each is exempted.

(B) Unless otherwise specified in the proclamation, the curfew shall apply during the specified period each day until the Mayor by proclamation removes the curfew.  
(2003 Code, ' 5-1.4) (Adopted 2-2-1993)

**' 5-1.5 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 town. The prohibition, if imposed, may apply to transfers of alcoholic beverages by employees of alcoholic beverage control stores as well as by anyone else within the geographical area described.  
(2003 Code, ' 5-1.5) (Adopted 2-2-1993)

**' 5-1.6 RESTRICTION ON POSSESSION, TRANSPORTATION AND TRANSFER OF DANGEROUS WEAPONS AND SUBSTANCES.**

(A) The proclamation may prohibit the transportation or possession off one=s own premises, or the sale or purchase of any dangerous weapon or substance. The Mayor may exempt from some or all of the restrictions classes of people whose possession, transfer or transportation of certain dangerous weapons or substances is necessary to the preservation of the public=s health, safety or welfare. The proclamation shall state the exempted classes and the restrictions from which each is exempted.

(B) ***DANGEROUS WEAPON OR SUBSTANCE*** means:

(1) Any deadly weapon, ammunition, explosive, incendiary device, radioactive material or device, as defined in G.S. ' 14-288.8(C), 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 some probability that the instrument or substance will be so used; and

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(3) Any part or ingredient in any instrument or substance included above when the circumstances indicate a probability that a part or ingredient will be so used.

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

(D) A violation of this section shall be punishable as provided in G.S. ' 14-288.7.  
(2003 Code, ' 5-1.6) (Adopted 2-2-1993)

**' 5-1.7 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) (1) Areas to which access is denied or restricted shall be designated by the Chief of Police and his or her subordinates or other law enforcement officer when directed in the proclamation to do so by the Mayor.

(2) When acting under this authority, law enforcement officers may restrict or deny access to any area, street, highway or location within the town if that restriction or denial of access or use is reasonably necessary to promote efforts being made to overcome the emergency or to prevent further aggravation of the emergency.  
(2003 Code, ' 5-1.7) (Adopted 2-2-1993)

**' 5-1.8 PROHIBITIONS OR RESTRICTIONS.**

The proclamation may prohibit or restrict:

(A) Movements of people in public places;

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

(C) 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.  
(2003 Code, ' 5-1.8) (Adopted 2-2-1993)

**' 5-1.9 REMOVAL OF PROHIBITIONS AND RESTRICTIONS.**

The Mayor shall, by proclamation, terminate the entire declaration of emergency or remove any of the prohibitions and restrictions when the emergency no longer requires them, or when directed to do so by the Town Board.

(2003 Code, ' 5-1.9) (Adopted 2-2-1993)

**' 5-1.10 SUPERSEDING AND AMENDATORY PROCLAMATIONS.**

The Mayor, in his or her discretion, may invoke the restrictions authorized by this article in separate proclamations, and may amend any proclamation by means of a superseding proclamation in accordance with the procedure set forth in ' 5-1.2.

(2003 Code, ' 5-1.10) (Adopted 2-2-1993)

**' 5-1.11 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 procedure set forth in ' 5-1.2. for proclamations.

(2003 Code, ' 5-1.11) (Adopted 2-2-1993)

**' 5-1.12 IN CASE OF ABSENCE OR DISABILITY OF MAYOR.**

In case of the absence or disability of the Mayor, the Mayor pro tem or another person as may be designated by the Town Board shall have and exercise all of the powers herein given the Mayor.

(2003 Code, ' 5-1.12) (Adopted 2-2-1993)

**' 5-1.13 PENALTY FOR VIOLATION.**

Except as provided in ' 5-1.2. any person violating any prohibition or restriction imposed by a proclamation authorized by this article shall be guilty of a misdemeanor, punishable upon conviction by a fine not exceeding \$50 or imprisonment not exceeding 30 days, as provided by G.S. ' 14-4.

(2003 Code, ' 5-1.13) (Adopted 2-2-1993)

**' 5-1.14 REPEAL OF CONFLICTING ORDINANCES.**

All ordinances in conflict with the provisions of this article are hereby repealed.

(2003 Code, ' 5-1.14) (Adopted 2-2-1993)

' **5-1.15 TERRITORIAL APPLICABILITY.**

This article shall apply only within the corporate limits of the municipality or within any area over which the municipality has jurisdiction to enact general police power articles.  
(2003 Code, ' 5-1.15) (Adopted 2-2-1993)

' **5-1.16 VALIDITY.**

If any section, subsection, sentence, clause or phrase of this article is for any reason held to be invalid, the decision shall not affect the validity of the remaining portions of this article. The Town Board hereby declares that it would have passed this article and each section, subsection, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid.  
(2003 Code, ' 5-1.16) (Adopted 2-2-1993)

' **5-1.17 FORM AND CONTENT OF PROCLAMATION.**

The proclamation for the declaration of a state of emergency and the imposition of specific prohibitions and restrictions shall take substantially the following form:

*Section 1.* Pursuant to Chapter 166A and Chapter 14, Article 36A of the General Statutes, I have determined that a state of emergency as defined exists in the Town of Mocksville.

*Section 2.* I, therefore, proclaim the existence of a state of emergency in the Town of Mocksville.

*Section 3.* I hereby order all law enforcement officers and employees, and all other emergency management workers subject to my control to cooperate in the enforcement and implementation of the provisions of the town emergency articles, which are set forth below:

**Evacuation:** I have determined that, in the best interest of public safety and protection, it is necessary to evacuate the civilian population from the \_\_\_\_\_ areas of the Town of Mocksville. Citizens are free to use any type of transportation, but they are to use only (routes) \_\_\_\_\_ in leaving the county. Evacuation is to occur as soon as possible. Further proclamations concerning the evacuation will be issued as needed.

**Curfew:** Unless a member of a law enforcement agency or the emergency management program, every person who is located within the Town of Mocksville is to be inside a house dwelling from the hours of \_\_\_\_\_ to \_\_\_\_\_.

**No Alcoholic Beverages:** There shall be no sale, consumption, transportation or possession of alcoholic beverages during the state of emergency in the Town of Mocksville, except possession or consumption is allowed on a person=s own premises.

**No Firearms, Ammunition or Explosives:** During the state of emergency, there shall be no sale or purchase of any type of firearm or ammunition, or any possession of such items along with any type of explosive off owner=s premises.

**Restrictions on Access to Areas:** During the state of emergency, there shall be no access or attempting to obtain access to any area which has been barricaded, or otherwise clearly posted indicating that access is denied or restricted by law enforcement officers.

**Execution of Emergency Plan:** All civilians and emergency management workers are ordered to comply with the emergency operations plan.

*Section 4.* This proclamation shall become effective immediately. Proclaimed this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_ at \_\_\_\_\_.

\_\_\_\_\_  
Mayor, Town of Mocksville

Seal of the Town

(2003 Code, ' 5-1.17) (Adopted 2-2-1993)

**' 5-1.18 PROCLAMATION TERMINATING A STATE OF EMERGENCY.**

The proclamation for the termination of a state of emergency and the imposition of specific prohibitions and restrictions shall take substantially the following form:

*Section 1.* On \_\_\_\_\_, at \_\_\_\_\_ (a.m./p.m.), I determined and proclaimed a local state of emergency for the Town of Mocksville.

*Section 2.* On \_\_\_\_\_, at \_\_\_\_\_ (a.m./p.m.), I ordered the evacuation of all civilians from the area; imposed a curfew, prohibited the sale, consumption, transportation, or possession of alcoholic beverages; prohibited the sale or purchase of any type of firearm or ammunition, firearms, ammunition and explosives; restricted access to areas and ordered the execution of the emergency operation plan.

*Section 3.* I have determined that a state of emergency no longer exists in the Town of Mocksville.

*Section 4.* I thereby terminate the proclamation of a local state of emergency and all of the restrictions and orders therein.

*Section 5.* This proclamation is effective immediately. Proclaimed this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ at \_\_\_\_\_ (a.m./p.m.).

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Mayor, Town of Mocksville

Seal of the Town

(2003 Code, ' 5-1.18) (Adopted 2-2-1993)

**CHAPTER V: PUBLIC SAFETY**  
**ARTICLE 2: FIRE PROTECTION AND PREVENTION**

Section

- 5-2.1 Definitions
- 5-2.2 SameCenforcement
- 5-2.3 SameCcontrol and prohibition
- 5-2.4 SameCburning purpose for fire training

***Cross-reference:***

*Condemnation of abandoned structures, see ' ' 5-4.7 et seq.*

*Condemnation of unsafe structure, see ' 5-3.10*

*Creation of noise by squibs and the like, see ' 7-5.2(Q)*

*Fire limits, see ' 5-3.12*

*Fireproofing inspection, see ' 5-3.6*

**' 5-2.1 DEFINITIONS.**

As used in this article, the following terms shall have the respective meanings ascribed to them.

***ACQUIRED STRUCTURE.*** A structure requested by the property owner to be used for the purposes of live fire training.

***COMBUSTIBLE MATERIALS.*** Any substance which when ignited will burn in air.

***FIRE OFFICIAL.*** For the purpose of Fire Code enforcement, ***FIRE OFFICIAL*** shall include the County Fire Marshal, when certified and the Town Fire Chief or approved designee.

***GARBAGE.*** Any animal or vegetable waste resulting from the handling, preparation, cooking and serving of food.

***OPEN BURNING.*** Any fire wherein the products of combustion are emitted directly into the outdoor atmosphere and are not directed thereto through a stack or chimney, approved incinerator or other similar device.

***REFUSE.*** Solid or liquid wastes from residences and dwellings, commercial establishments and institutions.

**TRADE WASTE.** All solid, liquid or gaseous waste, waste materials or rubbish resulting from combustion, salvage operations, building operations or the perpetration of any business, trade or industry, including, but not limited to, plastic products, paper, wood, glass, metal, paint, greases, oil and other petroleum products, chemicals and ashes.

(1989 Code, ' 8-1; 2003 Code, ' 5-2.1) (Amended 8-6-1991; Ord. passed 3-1-2011)

#### **' 5-2.2 SAMEcENFORCEMENT.**

The Fire Official is charged with the duty of investigating, preventing and abating causes of air pollution and enforcing the provisions of G.S. ' 143-215 along with the regulations herein. Any person found to be in willful violation of this article may be held financially/civilly responsible for any cost/damage incurred from the results of the violation. Including, but not limited to, cost of extinguishment both labor and equipment. Any fines incurred/charged shall be at the recommendation of the State Division of Air Quality or a result of non-compliance with cleanup after a scheduled training burn. County Development Services will collect and account for other required fees.

(1989 Code, ' 8-2; 2003 Code, ' 5-2.2) (Amended 8-6-1991; Ord. passed 3-1-2011)

#### **' 5-2.3 SAMEcCONTROL AND PROHIBITION.**

(A) This regulation is for the purpose of preventing, abating and controlling air pollution resulting from air contaminants released by the open burning of refuse or other combustible material and to reduce the potential for loss of life or property from a hostile fire event. Cooking of food such as, but not limited to, camp fires or outdoor grilling shall be exempt.

(B) No person shall cause, suffer or permit open burning of refuse or other combustible material, except as covered by a variance issued in accordance with permission granted by the Fire Official, pursuant to the authority granted in G.S. ' 143.215.

(C) Prevailing winds at the time of burning must be away from any city or town or buildup area, the ambient air of which may be significantly affected by smoke, fly ash or other air contaminants from the burning.

(D) The open burning of yard waste shall be prohibited within the town limits with the exception of the burning location being at least 1,000 feet from any dwelling or structure in a predominately residential area.

(E) The amount of dirt on the materials being burned must be minimized.

(F) Heavy oils, asphaltic materials, items containing natural or synthetic rubber or any material other than plant growth may not be burned.

(G) A variance may be granted for the clearing of commercial property; this would apply only to the organic/vegetation that originated on the developed site. A variance will only be considered if the site meets the following:

- (1) In a commercially zoned area;
- (2) Greater than two acres;
- (3) More than 1,000 feet from any dwelling or structure; and
- (4) No other mitigating factors.

(H) It shall be the responsibility of the owner operator of the burning to obtain written approval for burning other than those specified. A variance will require a written description of burn site and amount of burn material submitted to the Fire Official or designee with estimated burn dates/times. Initial burning may be commenced only between the hours of 7:00 a.m and 5:00 p.m. No combustible material shall be added to the burn pile after 5:00 p.m., burning may resume at 7:00 a.m. the following day. The Fire Official reserves the right to review plans and restructure based on mitigating factors such as, but not limited to, weather conditions/site access. Any deviation from the above must have prior written approval from the Fire Official or designee.

(1989 Code, ' 8-3; 2003 Code, ' 5-2.3; Ord. passed 3-1-2011)

***Cross-reference:***

*Burning garbage prohibited, permit to burn refuse, see ' 6-3.8*

**' 5-2.4 SAMECBURNING PURPOSE FOR FIRE TRAINING.**

The Fire Official shall have the authority to authorize and conduct live fire training in acquired structures with written requests and agreement for removal of remaining debris from property owners within the Town Fire District. Documentation of any such event shall be the responsibility of the Fire Official or designee and shall be in accordance with all local and state regulations. Documentation shall be maintained at the town fire station for a period of seven years after the completion of the burn. The property owner shall be responsible for the cleanup of the burn site and must complete same within 90 days of the completion of the training burn unless circumstances approved by the Fire Official require an extension. Failure to do so within the allotted time frame may result in a fine of \$100 per day.

(Ord. passed 3-1-2011)



**CHAPTER V: PUBLIC SAFETY**  
**ARTICLE 3: BUILDING CODES AND INSPECTION**

Section

- 5-3.1 Inspection Department Organization
- 5-3.2 Same general duties
- 5-3.3 Same conflicts of interest
- 5-3.4 Same reports and records
- 5-3.5 Scope of chapter and codes
- 5-3.6 Inspections procedure
- 5-3.7 Same oversight not to legalize violation
- 5-3.8 Same powers of inspection officials
- 5-3.9 Enforcement of Uniform Standards Code for manufactured homes
- 5-3.10 Condemnation, repair and demolition of unsafe buildings
- 5-3.11 Zoning ordinance compliance required
- 5-3.12 Fire limits
- 5-3.13 Contractors registration
- 5-3.14 Same bond
- 5-3.15 House moving
- 5-3.16 Building Code adopted
- 5-3.17 Plumbing Code adopted
- 5-3.18 Mechanical Code adopted
- 5-3.19 Electrical Code adopted
- 5-3.20 Residential Building Code
- 5-3.21 Accessibility Code
- 5-3.22 Administration Code
- 5-3.23 Fire Prevention Code
- 5-3.24 Existing Buildings Code
- 5-3.25 Compliance with codes
- 5-3.26 Copies of codes filed
- 5-3.27 Construction sites
- 5-3.28 Permits required
- 5-3.29 Application
- 5-3.30 Plans and specifications
- 5-3.31 Limitations on issuance
- 5-3.32 Issuance
- 5-3.33 Revocation

5-3.34 Time limitations on validity

5-3.35 Changes in work

5-3.36 Fees

***Cross-reference:***

*Creation of noise in building operation restricted, see ' 7-5.2(I)*

*Removal of scrap building materials, see ' 6-3.6*

***Statutory reference:***

*Establishment of fire limits, see G.S. ' 160A-435*

**' 5-3.1 INSPECTION DEPARTMENT ORGANIZATION.**

The Inspection Department shall consist of a Building Inspector, and may also include a Plumbing Inspector, a Heating-Air Conditioning Inspector, an Electrical Inspector and other Inspectors or deputy or assistant Inspectors as may be authorized by the governing body.

(1989 Code, ' 4-1; 2003 Code, ' 5-3.1)

**' 5-3.2 SAME GENERAL DUTIES.**

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

(1989 Code, ' 4-2; 2003 Code, ' 5-3.2)

***Cross-reference:***

*Abatement of nuisance, see ' 5-5.2*

*Investigation of nuisance caused by weeds and grass, see ' 5-5.8*

**' 5-3.3 SAME CONFLICTS OF INTEREST.**

(A) 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, unless the person is the owner of the building.

(B) No officer or employee of the Inspection Department shall engage in any work which is inconsistent with the person's duties or with the interests of the town.

(1989 Code, ' 4-3; 2003 Code, ' 5-3.3)

***Charter reference:***

*Personal interest, see ' 5.2*

**' 5-3.4 SAMECREPORTS AND RECORDS.**

The Inspection Department and each Inspector shall keep complete, permanent and accurate records in convenient form for all applications received, permits issued, inspections and re-inspections made, and all other work and activities of the Inspection Department. Periodic reports shall be submitted to the Town Manager, and to other agencies, as required.

(1989 Code, ' 4-4; 2003 Code, ' 5-3.4)

**' 5-3.5 SCOPE OF CHAPTER AND CODES.**

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

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

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

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

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

(1989 Code, ' 4-5; 2003 Code, ' 5-3.5)

**' 5-3.6 INSPECTIONS PROCEDURE.**

(A) *General.* The Inspection Department shall inspect all buildings, 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.

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

(2) 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.* To be made after trenches are excavated and the necessary reinforcement and 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.* To be made after all structural framing is in place and all roughing-in of plumbing, 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.* To 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.* To be made after 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 Inspections Department or to the appropriate Inspector. The Inspection Department shall make inspections as soon as practicable after request is made therefor; provided, the work is ready for inspection at the time the request is made.

(C) *Re-inspections.* Re-inspections 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 the holder=s agent. Failure to call for inspections or proceeding without approval at each stage of construction shall be deemed a violation of this article.

(D) *Street or alley lines.* Where the applicant for a permit proposes to erect any building or structure on the line of any street, alley or other public place, the applicant shall secure a survey of the line of the street, alley or other public place, adjacent to the property upon which the building or structure is to be erected before proceeding with construction of the building or structure. It shall be the duty of the Building Inspector to see that the building does not encroach upon the street, alley or other public place.

(E) *Certificate of occupancy.* No new building or part thereof shall be occupied, no addition or enlargement of any existing building shall be occupied, 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 or portions of a building which may safely be occupied prior to final completion and occupancy of the entire building.

(F) *Application for a certificate of occupancy.* Application for a certificate of occupancy may be made by the owner or the owner=s 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 zoning article 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 the zoning ordinance for the occupancy intended.

(1989 Code, ' 4-6; 2003 Code, ' 5-3.6)

**' 5-3.7 SAMECOVERSIGHT 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 code herein adopted.

(1989 Code, ' 4-7; 2003 Code, ' 5-3.7)

**' 5-3.8 SAMECPOWERS OF INSPECTION OFFICIALS.**

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

(B) *Right of entry.* With an appropriate warrant or permission from the owner or occupant, Inspectors shall have the right of entry on any premises within the jurisdiction of the regulatory codes herein adopted 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 article, or in violation of any provision of any regulatory code herein adopted, or in violation of the terms of the permit issued therefor, or in a manner as to endanger life or property, the appropriate Inspector may order the work to be immediately stopped. The order shall be in writing to the owner of the property or to the owner's agent, or the person doing the work, and shall state the reasons therefor and the conditions under which the work may be resumed.

(1989 Code, ' 4-8; 2003 Code, ' 5-3.8)

**' 5-3.9 ENFORCEMENT OF UNIFORM STANDARDS CODE FOR MANUFACTURED HOMES.**

The Inspection Department shall be responsible for enforcing the *North Carolina Uniform Standards Code for Manufactured Homes* (G.S. Ch. 143, Art. 9B), including any design and construction standards incorporated therein by reference.

(1989 Code, ' 4-9; 2003 Code, ' 5-3.9)

**' 5-3.10 CONDEMNATION, REPAIR AND DEMOLITION OF UNSAFE BUILDINGS.**

The Inspection Department shall be charged with enforcing the provisions of G.S. ' ' 160A-426 through 160A-434, relating to the condemnation, repair and demolition of unsafe buildings.

(1989 Code, ' 4-10; 2003 Code, ' 5-3.10)

*Cross-reference:*

*Abandoned structures, see ' ' 5-4.1 et seq.*

**' 5-3.11 ZONING ORDINANCE COMPLIANCE REQUIRED.**

(A) No permit for alteration, repair or construction of any building or structure shall be issued unless the plans and specifications show that the building or structure, and its proposed use, will be in compliance with the applicable provisions of the zoning ordinance.

(B) No permit for alteration, repair or construction of any building or structure shall be issued until a zoning permit has first been issued by the appropriate official charged with enforcement of the zoning ordinance.

(1989 Code, ' 4-11; 2003 Code, ' 5-3.11)

**' 5-3.12 FIRE LIMITS.**

A true and accurate description of the town fire limits shall be maintained on file and open to public inspection in the office of the Town Clerk.

(1989 Code, ' 4-12; 2003 Code, ' 5-3.12)

***Statutory reference:***

*Restrictions within primary and secondary fire limits, see G.S. ' ' 160A-436 through 160A-438*

**' 5-3.13 CONTRACTORS REGISTRATION.**

Every person carrying on the business of building contractor, plumbing contractor, heating-air conditioning contractor or electrical contractor within the town shall register at the office of the Inspection Department, giving name and place of business.

(1989 Code, ' 4-13; 2003 Code, ' 5-3.13)

**' 5-3.14 SAMECBOND.**

Every person required to register at the office of the Inspection Department, under ' 5-3.13, may be required to give a good and sufficient bond to be approved by the town conditioned upon faithful performance of duty in doing any work which the contractor may have contracted to do, and to indemnify the town against loss in any manner whatsoever for any unskillful or negligent work or conduct in the performance of the duties imposed by the provisions of this article or any regulatory code herein adopted, or any damage to any utility lines, streets or sidewalks in the town, or for the use of defective or improper material in the work or for the payment of any inspection or other fees required by this article.

(1989 Code, ' 4-14; 2003 Code, ' 5-3.14)

**' 5-3.15 HOUSE MOVING.**

No person shall move any building upon or across the public streets or sidewalks without the written consent of the Board and the deposit of a good and sufficient bond to cover damage done to any street or sidewalk or to any property of any person.  
(1989 Code, ' 4-15; 2003 Code, ' 5-3.15)

**' 5-3.16 BUILDING CODE ADOPTED.**

The *North Carolina Building Code*, 2002 Edition, as adopted and amended by the State Building Code Council, is hereby adopted by reference as fully as though set forth herein in its entirety.  
(1989 Code, ' 4-20; 2003 Code, ' 5-3.16)

**' 5-3.17 PLUMBING CODE ADOPTED.**

The *North Carolina Plumbing Code*, 2002 Edition, as adopted and amended by the State Building Code Council, is hereby adopted by reference as fully as though set forth herein in its entirety.  
(1989 Code, ' 4-21; 2003 Code, ' 5-3.17)

**' 5-3.18 MECHANICAL CODE ADOPTED.**

The *North Carolina Mechanical Code*, 2002 Edition, as adopted and amended by the State Building Code Council, is hereby adopted by reference as fully as though set forth herein in its entirety.  
(1989 Code, ' 4-22; 2003 Code, ' 5-3.18)

**' 5-3.19 ELECTRICAL CODE ADOPTED.**

The *North Carolina Electrical Code*, 2002 Edition, as adopted and amended by the State Building Code Council, is hereby adopted by reference as fully as though set forth herein in its entirety.  
(1989 Code, ' 4-23; 2003 Code, ' 5-3.19)

**' 5-3.20 RESIDENTIAL BUILDING CODE.**

The *North Carolina Residential Code*, 2002 Edition, as adopted and amended by the State Building Code Council, is hereby adopted by reference as fully as though set forth herein in its entirety.  
(1989 Code, ' 4-24; 2003 Code, ' 5-3.20)

**' 5-3.21 ACCESSIBILITY CODE.**

The *North Carolina Accessibility Code*, 1999 Edition, as adopted and amended by the State Building Code Council, is hereby adopted by reference as fully as though set forth herein in its entirety.  
(2003 Code, ' 5-3.21)

**' 5-3.22 ADMINISTRATION CODE.**

The *North Carolina Administration Code*, 2002 Edition, as adopted and amended by the State Building Code Council, is hereby adopted by reference as fully as though set forth herein in its entirety. (2003 Code, ' 5-3.21)

**' 5-3.23 FIRE PREVENTION CODE.**

The *North Carolina Fire Prevention Code*, 2002 Edition, as adopted and amended by the State Building Code Council, is hereby adopted by reference as fully as though set forth herein in its entirety. (2003 Code, ' 5-3.22)

**' 5-3.24 EXISTING BUILDINGS CODE.**

The *North Carolina Existing Buildings Code*, 1995 Edition, as adopted and amended by the State Building Code Council, is hereby adopted by reference as fully as though set forth herein in its entirety. (2003 Code, ' 5-3.24)

**' 5-3.25 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 *North Carolina State Building Code*, General Construction, Volume I, or the *North Carolina State Building Code*, Volume I-B, Residential, whichever is applicable, or both if applicable.

(B) Every building or structure intended for human habitation, occupancy or use shall have plumbing, plumbing systems or plumbing fixtures installed, constructed, altered, extended, repaired or reconstructed in accordance with the minimum standards, requirements and other provisions of the *North Carolina Plumbing Code* (*North Carolina State Building Code*, Volume II, Plumbing).

(C) All mechanical systems consisting of heating, ventilating, air conditioning and refrigeration systems, fuel burning equipment, and appurtenances shall be installed, erected, altered, repaired, used and maintained in accordance with the minimum standards, requirements and other provisions of the *North Carolina Heating Code* (*North Carolina State Building Code*, Volume III, Heating).

(D) All electrical wiring, installations and appurtenances shall be erected, altered, repaired, used and maintained in accordance with the minimum standards, requirements and other provisions of the *North Carolina Electrical Code* (*North Carolina State Building Code*, Volume IV, Electrical). (1989 Code, ' 4-25; 2003 Code, ' 5-3.25)

**' 5-3.26 COPIES OF CODES FILED.**

An official copy of each regulatory code adopted herein, and official copies of all amendments thereto, shall be kept on file in the office of the Town Clerk or Building Inspector. Those copies shall be the official copies of the codes and the amendments.

(1989 Code, ' 4-26; 2003 Code, ' 5-3.26)

**' 5-3.27 CONSTRUCTION SITES.**

(A) All construction contractors shall provide on-site refuse receptacles, bulk containers or detachable containers for construction debris and other trash which is capable of being moved or blown about by the wind, and which is produced by those working on the site. All materials shall be containerized by the end of each day, and shall be kept in a reasonably clean and litter free condition. Construction debris and refuse deposited upon any public or private property as a result of construction or demolition shall be immediately removed by the contractor. Construction sites shall be kept clean and orderly at all times.

(B) Any person, firm or corporation violating the provisions of this article shall, upon conviction, be guilty of a misdemeanor and shall be punished in accordance with the provisions of G.S. ' 14-4.

(2003 Code, ' 5-3.27) (Adopted 8-5-1997)

**' 5-3.28 PERMITS REQUIRED.**

(A) *Building permit.* 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; provided, however, that, no building permit shall be required for work, the total cost of which does not exceed \$100 and which does not involve any change of the structural parts or the stairways, elevators, fire escapes or other means of egress of the building or the structure in question. County Board of Health approval of a septic tank is required. 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 by the 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 the contractor to completely demolish, remove and clear the premises, after 30 days= notice by the Building Inspector, shall be cause for forfeiture of the 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, that, no permit shall be required for minor repairs or replacements on the house side of a trap to an installed system of plumbing if the repairs or replacements do not disrupt the original water supply or the waste or ventilating systems.

(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, that, 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, that, 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 that, 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 the corporation in the generation, transmission, distribution or metering of electrical energy.

(1989 Code, ' 4-30; 2003 Code, ' 5-3.28)

#### **' 5-3.29 APPLICATION.**

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

(A) Name, residence and business address of owner;

(B) Name, residence and business address and business of authorized representative or agent, if any; and

(C) Name and address of the contractor, if any, together with evidence that the contractor has obtained a certificate from the appropriate state licensing board for the contractors, if it be required for the work involved in the permit for which application is made.

(1989 Code, ' 4-31; 2003 Code, ' 5-3.29)

#### ***Cross-reference:***

*Contents of application, see ' ' 8-3.9.3 et seq.*

#### **' 5-3.30 PLANS AND SPECIFICATIONS.**

(A) 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 and for any other building or structure where plans and specifications are deemed necessary by the appropriate Inspector in order for the Inspector 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.

(B) Where plans and specifications are required, a copy of the same shall be kept at the work site

until all authorized operations have been completed and approved by the appropriate Inspector.  
(1989 Code, ' 4-32; 2003 Code, ' 5-3.30)

**' 5-3.31 LIMITATIONS ON ISSUANCE.**

(A) No building permit shall be issued for any building or structure, the estimated total cost of which is more than \$30,000, unless the work is to be performed by a licensed general contractor.

(B) No building permit shall be issued for any building or structure, other than a one- or two-family dwelling, the estimated total cost of which is more than \$45,000, unless the plans bear the state seal of a registered architect or a registered engineer.

(C) Where any provisions of the general statutes of the state or of any article requires that work be done by a licensed specialty contractor of any kind, no permit for the work shall be issued unless it is to be performed by the licensed specialty contractor.

(D) Where detailed plans and specifications are required under this article, no building permit shall be issued unless the plans and specifications have been provided.  
(1989 Code, ' 4-33; 2003 Code, ' 5-3.31)

**' 5-3.32 ISSUANCE.**

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, the Inspector shall issue the permit, upon payment of the proper fee or fees as set out in ' 5-3.36.  
(1989 Code, ' 4-34; 2003 Code, ' 5-3.32)

**' 5-3.33 REVOCATION.**

The appropriate Inspector may revoke and require the return of any permit by notifying the permit holder in writing stating the reason for the 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 the permit.  
(1989 Code, ' 4-35; 2003 Code, ' 5-3.33)

**' 5-3.34 TIME LIMITATIONS ON VALIDITY.**

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 12 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.

(1989 Code, ' 4-36; 2003 Code, ' 5-3.34)

**' 5-3.35 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 herein, shall not be made until specific written approval of those changes or deviations have been obtained from the appropriate Inspector.

(1989 Code, ' 4-37; 2003 Code, ' 5-3.35)

**' 5-3.36 FEES.**

(A) Fees for permits shall be based upon the total estimated cost of the proposed work, including all subcontracts if any, but in no case shall the total estimated cost be less than the market value of similar completed work in the town as determined by the appropriate Inspector or Inspectors.

(B) Permit fees shall be as follows:

(1) Building permit fees: see schedule of fees in office of Building Inspector;

(2) Plumbing permit fees: see schedule of fees in office of Building Inspector;

(3) Heating-air conditioning permit fees: see schedule of fees in office of Building Inspector;

and

(4) Electrical permit fees: see schedule of fees in office of Building Inspector.

(1989 Code, ' 4-38; 2003 Code, ' 5-3.36)



**CHAPTER V: PUBLIC SAFETY**  
**ARTICLE 4: MINIMUM HOUSING**

Section

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5-4.26	Validity

**' 5-4.1 HOUSING FINDINGS; PURPOSE; AUTHORITY.**

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

(B) In order to protect the health, safety and welfare of the residents of the town, as authorized by G.S. Ch. 160A, Art. 19, Part 6, it is the purpose of this article to establish minimum standards of fitness for the initial and continued occupancy of all buildings used for human habitation, as expressly authorized by G.S. ' 160A-444.

(C) In addition, it is hereby found and declared under the authority of G.S. ' 160A-174, that there exist in the town dwellings which, although not meeting the classification as unfit for human habitation, fail to fully comply with all the minimum standards for housing fitness as established herein and therefor have present one or more conditions which are inimical to the public health, safety and general welfare. The conditions, if not corrected, can lead to deterioration and dilapidation of dwellings which render them unfit for human habitation.  
(2003 Code, ' 5-4.1) (Adopted 3-6-2001)

**' 5-4.2 SCOPE.**

(A) This article is hereby declared to be remedial and shall be construed to secure the beneficial interests and purposes thereof, which are public safety, health and general welfare through structural strength, stability, sanitation, adequate light and ventilation and safety to life and property from fire and other hazards incident to the construction, alteration, repair, removal, demolition, use and occupancy of dwellings, apartment houses, rooming houses or buildings, structures or premises used or intended for use as such.

(B) (1) The provisions of this article shall apply to all existing housing and to all housing hereafter constructed within the town and its ETJ. Portable, mobile or demountable buildings or structures, including trailers, manufactured homes and mobile homes when used or intended for use for housing within the jurisdiction, shall be subject to the applicable provisions of this article.

(2) This article establishes minimum requirements for the initial and continued occupancy of all buildings used for human habitation and does not replace or modify requirements otherwise established for the construction, repair, alteration or use of buildings, equipment or facilities except as provided in this article.

(C) The provisions of this article shall also apply to abandoned structures which are found by the Board of Commissioners to be a health or safety hazard as a result of the attraction of insects or rodents, conditions creating a fire hazard, dangerous conditions constituting a threat to children or frequent use by vagrants as living quarters in the absence of sanitary conditions.  
(2003 Code, ' 5-4.2) (Adopted 3-6-2001)

**5-4.3 DEFINITIONS.**

(A) As used in this article, the following terms shall have the respective meanings ascribed to them.

**ABANDONED STRUCTURE.** Any structure, whether designed and intended for residential or other uses, which has been vacant or not in active use, regardless of purpose or reason, for the past two-year period and which is determined by the Housing Inspector to be unfit for human habitation or occupancy based upon the standards as set forth in this article.

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

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

**DETERIORATED DWELLING.** A dwelling that is unfit for human habitation and can be repaired, altered or improved to comply with all of the minimum standards established by this article, at a cost not in excess of 50% of its value, as determined by finding of the Housing Inspector.

**DILAPIDATED DWELLING.** A dwelling that is unfit for human habitation and cannot be repaired, altered or improved to comply with all of the minimum standards established by this article, at a cost not in excess of 50% of its value, as determined by finding of the Housing Inspector.

**DWELLING.** Any building, structure, manufactured home or mobile home, or part thereof, used and occupied for human habitation or intended to be so used and includes any accessory buildings and structures and appurtenances belonging thereto or usually enjoyed therewith; except that, it does not include any manufactured home or mobile home, which is used solely for a seasonal vacation purpose.

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

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

**GARBAGE.** The animal and vegetable waste resulting from the handling, preparation, cooking and consumption of food.

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

**HOUSING INSPECTOR.** The person appointed by the Town Manager to carry out the administration and the enforcement of this article.

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

**MANUFACTURED HOME (MOBILE HOME).** A structure, as defined in G.S. ' 143-145(7).

**MULTIPLE DWELLING.** Any dwelling containing more than two dwelling units.

**OCCUPANT.** Any person over one year of age living, sleeping, cooking or eating in, or having actual possession of, a dwelling unit or rooming unit.

**OPERATOR.** Any person who has charge, care or control of a building or part thereof, in which dwelling units or rooming units are let.

**OWNER.** The holder of the title in fee simple and every mortgagee of record.

**PARTIES IN INTEREST.** All individuals, associations and corporations who have interests of record in a dwelling and any who are in possession thereof.

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

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

**ROOMING UNIT.** Any room or group or rooms forming a single habitable unit used or intended to be used for living and sleeping, but not for cooking or eating purposes.

**RUBBISH.** Combustible and non-combustible waste materials except garbage and ashes, including, but not limited to, paper, rags, cartons, boxes, wood, excelsior, rubber, leather, tree branches, yard trimmings, tin cans, metals, mineral matter, glass crockery and dust.

**SUPPLIED.** Paid for, furnished or provided by, or under the control of, the owner or operator.

(B) Whenever the words Adwelling@, Adwelling unit@, Arooming house@, Arooming unit@ or Apremises@ are used in this article, they shall be construed as though they were followed by the words Aor any part thereof@.

(2003 Code, ' 5-4.3) (Adopted 3-6-2001)

**' 5-4.4 OFFICE OF HOUSING INSPECTOR CREATED; POWERS AND DUTIES.**

For the purpose of administering and enforcing the provisions of this article, the Office of Housing Inspector is hereby created. The Housing Inspector shall be appointed by the Town Manager and shall have the powers as may be necessary or convenient to carry out and effectuate the purpose and provisions of this article, including, without limiting the generality of the foregoing, in addition to others herein granted, the following powers:

(A) *Investigations.* To investigate the dwelling and building conditions in the town in order to determine which dwellings therein are unfit for human habitation and dangerous, being guided in the examinations of dwellings and buildings by the requirements set forth in this article;

(B) *Oaths, witnesses and the like.* To administer oaths and affirmations and to examine witnesses and receive evidence;

(C) *Right of entry.* To enter upon and within premises and dwellings for the purpose of making examinations and investigations; provided, however, that, the entries shall be made in a manner as to cause the least possible inconvenience to the persons in possession;

(D) *Warrants, citations and the like.* To swear criminal warrants, issue civil citations and to take other actions as may be necessary to carry out the enforcement procedure of this article; and

(E) *Delegation of functions and the like.* To delegate any of his or her functions and powers under this article to officers and agents as he or she may designate.  
(2003 Code, ' 5-4.4) (Adopted 3-6-2001)

#### **' 5-4.5 INSPECTIONS.**

(A) For the purpose of carrying out the intent of this article, the Housing Inspector, upon proper identification, is hereby authorized to enter, examine and survey at all reasonable times, all dwellings, dwelling units, rooming houses, rooming units on premises, including abandoned structures. The owners or occupants of every dwelling, dwelling unit, rooming units or rooming house, or the person in charge thereof, shall give the Housing Inspector free access to the dwelling, dwelling unit, rooming house or rooming unit, and its premises, at all reasonable times, for the purposes of the inspections, examination and surveys.

(B) Every occupant of a dwelling or dwelling unit shall give the owner thereof, or his or her agent or employee, access to any part of the dwelling or dwelling unit, and its premises, at all reasonable times for the purpose of making the repairs or alterations as are necessary to effect compliance with the provisions of this article or with any lawful order issued pursuant to the provisions of this article.  
(2003 Code, ' 5-4.5) (Adopted 3-6-2001)

**' 5-4.6 PRELIMINARY INVESTIGATIONS; NOTICES; HEARINGS.**

(A) Whenever a petition is filed with the Housing Inspector by a public authority or by at least five residents of the town charging that any dwelling is unfit for human habitation, or whenever it appears to the Housing Inspector (on his or her own motion) that any dwelling is unfit for human habitation, the Housing Inspector shall, if his or her preliminary investigation discloses a basis for the charges, issue and cause to be served upon the owner and parties in interest in the dwellings a complaint stating the charges in that respect and containing a notice that a hearing will be held before the Housing Inspector (or his or her designated agent) at a place within the town therein fixed not less than ten days, nor more than 30 days, after the serving of the complaint; that the owner and parties in interest shall be given the right to file an answer to the complaint and to appear in person, or otherwise, and give testimony at the place and time fixed in the complaint; and that the rules of evidence prevailing in courts of law or equity shall not be controlling in hearings before the Housing Inspector.

(B) Upon the issuance of a complaint and notice of hearing pursuant to this article, the Inspector may cause the filing of a notice of lis pendens, with a copy of the complaint and notice of hearing attached thereto, in the Office of the Clerk of Superior Court of the county, to be indexed and cross-indexed in accordance with the indexing procedures of the state=s general statutes. The Inspector shall cause a copy of the notice of lis pendens to be served upon the owners and parties in interest in the dwelling at the time of filing in accordance with G.S. ' 160A-445, as applicable. Upon compliance with the requirements of any order issued based upon the complaint and hearing, the Housing Inspector shall direct the Clerk of Superior Court to cancel the notice of lis pendens.  
(2003 Code, ' 5-4.6) (Adopted 3-6-2001)

**' 5-4.7 DWELLING UNFIT FOR HUMAN HABITATION.**

(A) The Housing Inspector shall determine that a dwelling is unfit for human habitation if he or she finds that any one of the following conditions exist in the dwelling:

(1) Interior walls or vertical studs, which seriously list, lean or buckle to an extent as to render the dwelling unsafe;

(2) Supporting member or members which show 33% or more damage or deterioration, or non-supporting, enclosing or outside walls or coverings which show 50% or more of damage or deterioration;

(3) Floors or roofs which have improperly distributed loads, which are overloaded or which have insufficient strength to be reasonably safe for the purpose used;

(4) Damage by fire, wind or other causes as to render the dwelling unsafe;

(5) Dilapidation, decay, unsanitary conditions or disrepair, which is dangerous to the health, safety or welfare of the occupants or other people in town;

(6) Inadequate facilities for egress in case of fire or panic;

(7) Defects significantly increasing the hazards of fire, accident or other calamities;

(8) Lack of adequate ventilation, light, heating or sanitary facilities to an extent as to endanger the health, safety or general welfare of the occupants or other residents of the town;

(9) Lack of proper electrical, heating or plumbing facilities required by this article, which constitutes a definite health or safety hazard; and/or

(10) Lack of connection to a potable water supply and/or to the public sewer or other approved sewage disposal system, the lack of either one of which renders a dwelling unfit for human habitation. For the purposes of this standard, a dwelling is not connected to a potable water supply if the water has been Acut off@ because of non-payment of the water bill or otherwise or if the system for any reason is not receiving a flow of potable water to the tap.

(B) In addition to the ten conditions stated above, any one of which renders a dwelling unfit for human habitation, the Housing Inspector shall determine that a dwelling is unfit for human habitation if he or she finds that a dwelling fails to fully comply within seven or more of the following enumerated standards of dwelling fitness.

(2003 Code, ' 5-4.7) (Adopted 3-6-2001)

#### ' 5-4.8 STRUCTURAL STANDARDS.

(A) *Integrity.* Walls, partitions, supporting members, sills, joists, rafters or other structural members shall not list, lean or buckle, shall not be rotted, deteriorated or damaged, and shall not have holes or cracks which might admit rodents.

(B) *Support.* Floors or roofs shall have adequate supporting members and strength to be reasonably safe for the purpose used.

(C) *Foundation.* Floors or roofs shall have adequate supporting members and strength to be reasonably safe for the purpose used.

(D) *Steps.* Steps, stairs landings, porches or other parts or appurtenances shall be maintained in a condition that they will not fail or collapse.

(E) *Egress.* Adequate facilities for egress in case of fire or panic shall be provided.

(F) *Interior materials.* Interior walls and ceilings of all rooms, closets and hallways shall be furnished of suitable materials which will, by use of reasonable household methods, promote sanitation and cleanliness, and shall be maintained in such a manner so as to enable the occupants to maintain reasonable privacy between various spaces.

(G) *Weatherization.* The roof, flashings, exterior walls, basement walls, floors and all doors and windows exposed to the weather shall be constructed and maintained so as to be weather-proof and

water-tight.

(H) *Chimneys*. There shall be no chimneys, or parts thereof, which are defective, deteriorated or in danger of falling or in a condition or location as to constitute a fire hazard.

(I) *Floors*. There shall be no use of the ground for floors or wood floors resting directly on the ground.  
(2003 Code, ' 5-4.8) (Adopted 3-6-2001)

#### **' 5-4.9 PLUMBING STANDARDS.**

(A) *Facilities*. Each dwelling unit shall contain not less than a kitchen sink, lavatory, tub or shower, water closet, and an adequate supply of both cold water and hot water. All water shall be supplied through an approved pipe distribution system connected to a potable water supply. For the purposes of this standard, a dwelling is not connected to a potable water supply if the water supply has been Acut off@ because of non-payment of the water bill or otherwise or if the system for any reason is not receiving a flow of potable water to the tap.

(B) *Maintenance*. All plumbing fixtures shall meet the standards of the *North Carolina Plumbing Code*, 2002 Edition, and shall be maintained in a state of good repair and in good working order.

(C) *Accessible*. All required plumbing fixtures should be located within the dwelling and be accessible to the occupants of the same. The water closet and tub or shower shall be located in a room or rooms affording privacy to the user.  
(2003 Code, ' 5-4.9) (Adopted 3-6-2001)

#### **' 5-4.10 HEATING STANDARDS.**

Every dwelling shall have facilities for providing heat in accordance with either subsections (A) or (B) below. The facilities shall be maintained in a state of good repair and good working order.

(A) *Central and electrical heating systems*. Every central or electric heating system shall be of sufficient capacity so as to heat all habitable rooms, bathrooms and water closet compartments in every dwelling to which it is connected with a minimum temperature of 70°F measured at a point three feet above the floor during average winter conditions.

(B) *Other heating facilities*. Where a central or electric heating system is not provided, each dwelling shall be provided with sufficient electrical receptacles, fireplaces, chimneys, flues or gas vents whereby heating appliances may be connected so as to heat all habitable rooms, bathrooms and water closet compartments with a minimum temperature of 70°F measured three feet above the floor during average winter conditions.  
(2003 Code, ' 5-4.10) (Adopted 3-6-2001)

**' 5-4.11 ELECTRICAL STANDARDS.**

(A) *Wiring.* Every dwelling shall be wired for electric lights and convenience receptacles. Every habitable room shall contain at least two floor or wall type electrical convenience receptacles, connected in a manner as determined by the *North Carolina Electrical Code*, 2002 Edition, as amended. There shall be installed in every bathroom, water closet room, laundry room and furnace room at least one supplied ceiling or wall type electric light fixture. In the event wall or ceiling light fixtures are not provided in any habitable room, then each habitable room shall contain at least three floor or wall type electric convenience receptacles.

(B) *Hall lights.* Every public hall and stairway in every multiple dwelling shall be adequately lighted by electric lights at all times when natural light is not sufficient.

(C) *Maintenance.* All fixtures, receptacles, equipment and wiring shall be maintained in a state of good repair, safe, capable of being used, and installed in accordance with the *North Carolina Electrical Code*, 2002 Edition, as amended.

(2003 Code, ' 5-4.11) (Adopted 3-6-2001)

**' 5-4.12 VENTILATION STANDARDS.**

(A) *Generally.* Every habitable room shall have at least one window or skylight facing directly to the outdoors. The minimum total window area, measured between stops, for every habitable room shall be 10% of the floor area of the room. Whenever walls or other portions of a structure face a window of any room and the light obstructions are located less than five feet from the window and extend to a level above that of the ceiling of the room, such a window shall not be deemed to face directly to the outdoors and shall not be included as contributing to the required minimum total window area. Whenever the only window in a room is a skylight type window in the top of the room, the total window area of the skylight shall equal at least 15% of the total floor area of the room.

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

(C) *Bathroom and water closet room.* Every bathroom equipped with more than one water closet compartment shall comply with the light and ventilation requirements for habitable rooms.

(2003 Code, ' 5-4.12) (Adopted 3-6-2001)

**' 5-4.13 SPACE, USE AND LOCATION STANDARDS.**

(A) *Room sizes.* Every dwelling unit shall contain at least the minimum room size in each habitable room as required by the town=s Residential Building Code. (Floor area shall be calculated on the basis of habitable room area. However, closet area and wall area within the dwelling may count for not more than 10% of the required habitable floor area. The floor area of any part of any room where the ceiling height

is less than four and one-half feet shall not be considered as part of the floor area in computing the total area of the room to determine maximum permissible occupancy.) Every dwelling unit shall contain at least 150 square feet of habitable floor area for the first occupant, at least 100 square feet of additional habitable area for each of the next three occupants, and at least 75 square feet of additional habitable floor area for each additional occupant. In every dwelling unit and in every rooming unit, every room occupied for sleeping purposes by one occupant shall contain at least 70 square feet of floor area, and every room occupied for sleeping purposes by more than one occupant shall contain at least 50 square feet of floor area for each occupant 12 years of age and over, and at least 35 square feet of floor area for each occupant under 12 years of age.

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

(C) *Cellar.* No cellar shall be used for living purposes, unless:

(1) The floor and walls are substantially watertight;

(2) The total window area, total openable window area and ceiling height are equal to those required for a habitable room; and

(3) The required minimum window area of every habitable room is entirely above the grade adjoining the window area, except where the windows face a stairwell, window well or access way.  
(2003 Code, ' 5-4.13) (Adopted 3-6-2001)

#### **' 5-4.14 SAFE AND SANITARY MAINTENANCE STANDARDS.**

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

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

(C) *Windows and doors.* Every window, exterior door, basement or cellar door and hatchway shall be substantially weather-proof, water-tight and rodent-proof; and shall be kept in sound working condition and good repair.

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

(E) *Bathroom and kitchen floors.* Every bathroom and kitchen floor surface and water closet

compartment floor surface shall be constructed and maintained so as to be reasonably impervious to water and so as to permit the floor to be easily kept in sound condition and good repair.

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

(G) *Drainage.* Every yard shall be properly graded so as to obtain thorough drainage and so as to prevent the accumulation of stagnant water.

(H) *Smoke detector system.* Every dwelling unit shall be provided with an approved listed smoke detector installed in accordance with the manufacturer's recommendations and listing. When activated, the detector shall provide an audible alarm. The detector shall be tested in accordance with and meet the requirements of UL 217, single- and multiple-station smoke detectors.  
(2003 Code, ' 5-4.14) (Adopted 3-6-2001)

#### ' 5-4.15 INSECT, RODENT AND INFESTATION CONTROL STANDARDS.

(A) *Screens.* For protection against mosquitoes, flies and other insects, every dwelling shall have:

(1) Supplied and installed screens on every door opening leading directly from the dwelling to outdoor space; except that, sliding doors, doors with self-closing devices, doors on mobile homes with self-closing devices and doors that open into rooms of living spaces that are artificially ventilated or air-conditioned are exempt from this provision; and

(2) Supplied and installed screens on every window or other device with an opening to outdoor space; except that, this requirement shall not apply to any room or rooms of a dwelling that are ventilated year round with an operable and installed heating and air-conditioning system.

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

(C) *Infestation.* Every dwelling shall be maintained in a manner to be free of any infestation of insects, rodents or other pests. Every occupant of a dwelling containing a single dwelling unit shall be responsible for the extermination of any insects, rodents or other pests therein or on the premises; and every occupant of a dwelling unit in a dwelling containing more than one dwelling unit shall be responsible for the extermination whenever the dwelling unit is the only one infested. Whenever infestation exists in two or more of the dwelling units in any dwelling, or in the shared or public parts of any dwelling containing two or more dwelling units, extermination shall be the responsibility of the owner.

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

(E) *Garbage storage and disposal.* Every dwelling shall be supplied with an approved garbage disposal facility, which may be an adequate mechanical garbage disposal unit (mechanical sink grinder) in each dwelling unit or an incinerator unit, to be approved by the Inspector, in the structure for the use of the occupants of each dwelling unit, or an approved outside garbage container as required by town ordinances.

(2003 Code, ' 5-4.15) (Adopted 3-6-2001)

#### ' 5-4.16 ROOMING HOUSE STANDARDS.

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

(1) *Water closet, hand lavatory and bath facilities.* At least one water closet, lavatory basin and bathtub or shower, properly connected to an approved water and sewer system and in good working condition, shall be supplied for each four rooms within a rooming house wherever the facilities are shared. All such facilities shall be located within the residence building served, shall be directly accessible from a common hall or passageway and shall not be more than one story removed from any of the persons sharing the facilities. Every lavatory basin and bathtub or shower shall be supplied with hot and cold water at all times. The required facilities shall not be located in a cellar.

(2) *Minimum floor area for sleeping purposes.* Every room occupied for sleeping purposes by one occupant shall contain at least 70 square feet of floor area, and every room occupied for sleeping purposes by more than one occupant shall contain at least 50 square feet of floor area for each occupant 12 years of age and over and at least 35 square feet of floor area for each occupant under 12 years of age.

(3) *Sanitary conditions.* The operator of every rooming house shall be responsible for the sanitary maintenance of all walls, floors and ceilings, and for the sanitary maintenance of every other part of the rooming house; and shall be further responsible for the sanitary maintenance of the entire premises where the entire structure or building within which the rooming house is contained is leased or occupied by the operator.

(4) *Sanitary facilities.* Every water closet, flush urinal, lavatory basin and bathtub or shower required by subsection (A)(1) above shall be located within the rooming house and within a room or rooms which afford privacy and are separate from the habitable rooms, and which are accessible from a common hall and without going outside the rooming house or through any other rooms therein.

(B) Full compliance with a standard means that if any part of the stated standard is not complied with by a particular dwelling then that dwelling has failed to fully comply with the enumerated standard. For example, in regards to ' 5-4.7, if all standards are met in a dwelling; except that, a supply of hot water is not provided, then the dwelling fails to fully comply with ' 5-4.7.

(2003 Code, ' 5-4.16) (Adopted 3-6-2001)

**' 5-4.17 DWELLINGS NOT IN COMPLIANCE, BUT NOT UNFIT FOR HUMAN HABITATION.**

In any case where the Housing Inspector determines that a dwelling fails to fully comply with one or more but less than seven of the above enumerated standards of dwelling fitness, the dwelling shall not be found to be unfit for human habitation and shall not be subject to the procedures and remedies as provided for in this article for dwellings unfit for human habitation. Each failure of non-compliance, however, shall constitute a violation of the terms of this article and shall subject the violator to the penalties and enforcement procedures, civil or criminal or both, of ' 1.8. of this code. In making the determination as described in this section, the Housing Inspector shall not be required to make notice and hold the hearing as called for in ' 5-4.6, but the Housing Inspector may do so if the determination of the severity and classification of the dwelling fitness is not clear to the Housing Inspector upon preliminary investigation.

(2003 Code, ' 5-4.17) (Adopted 3-6-2001)

**' 5-4.18 PROCEDURE AFTER HEARING; ORDER.**

(A) If, after notice and hearing, the Housing Inspector determines that the dwelling under consideration is unfit for human habitation in accordance with the standards set forth above, he or she shall state in writing his or her findings of fact in support of that determination and shall issue and cause to be served upon the owner thereof an order:

(1) If the repair, alteration or improvement of the dwelling can be made at a cost of less than 50% of the value of the dwelling, requiring the owner, within the time specified, to repair, alter or improve the dwelling in order to render it fit for human habitation, or to vacate and close the dwelling as a human habitation, based upon the Housing Inspector=s standards for closing dwellings; or

(2) If the repair, alteration or improvement of the dwelling cannot be made at a cost of less than 50% of the value of the dwelling, requiring the owner, within the time specified in the order, to remove or demolish the dwelling.

(B) If after notice and hearing, the Housing Inspector determines that the dwelling under consideration is not unfit for human habitation, but is not in full compliance with one or more standards of dwelling fitness as set forth above, he or she may proceed with the enforcement procedures of ' 1.8. of this code, civil or criminal, or both.

(C) Whenever a determination is made pursuant to subsections (A)(1) or (A)(2) above that a dwelling must be vacated or closed, or removed or demolished, under the provisions of this section, notice of the order shall be given by first-class mail to any organization involved in providing or restoring dwellings for affordable housing which has filed a written request for the notices. A minimum period of 45 days from the mailing of the notice shall be given before removal or demolition by action of the Inspector, to allow the opportunity for any organization to negotiate with the owner to make repairs, lease or purchase the property for the purpose of providing affordable housing. The Inspector shall certify the mailing of the notices and the certifications shall be conclusive in the absence of fraud. Only

an organization that has filed a written request for the notices may raise the issue of failure to mail the notices, and the sole remedy shall be an order requiring the Inspector to wait 45 days before causing removal or demolition.

(2003 Code, ' 5-4.18) (Adopted 3-6-2001)

**' 5-4.19 FAILURE TO COMPLY WITH ORDER.**

(A) If the owner fails to comply with an order to repair, alter or improve or to vacate and close the dwelling, the Housing Inspector may:

(1) Cause the dwelling to be repaired, altered or improved or to be vacated and closed; or

(2) Cause to be posted on the main entrance of any dwelling a placard with the following words: "This building is unfit for human habitation; the use or occupation of this building for human habitation is prohibited and unlawful". Occupation of a building so posted shall constitute a violation of this article.

(B) If the owner fails to comply with an order to repair, alter or improve or to remove or demolish the dwelling, the Housing Inspector may:

(1) Cause the dwelling to be vacated and removed or demolished; and

(2) Cause to be posted on the main entrance of any dwelling a placard with the following words: "This building is unfit for human habitation; the use or occupation of this building for human habitation is prohibited and unlawful". Occupation of a building so posted shall constitute a violation of this article.

(C) The duties of the Housing Inspector set forth in subsection (A) above shall not be exercised until the Board of Commissioners shall have by article ordered the Housing Inspector to proceed to effectuate the purpose of this article with respect to the particular property or properties which the Housing Inspector shall have found to be unfit for human habitation and which property or properties shall be described in the article. No such article shall be adopted to require demolition of a dwelling until the owner has first been given a reasonable opportunity to bring it into conformity with the Housing Code. For the purposes of this subsection, a period of 90 days following the date of the Housing Inspector's order shall constitute a reasonable opportunity. This article shall be recorded in the office of the Register of Deeds in the county wherein the property or properties are located and shall be indexed in the name of the property owner in the grantor index.

(D) The amount of the cost of repairs, alterations or improvements, or vacating and closing, or removal or demolition by the Housing Inspector shall be a lien against the real property upon which the cost was incurred, which lien shall be filed, have the same priority and be collected as the lien for special assessment provided in G.S. Ch. 160A, Art. 10. If the dwelling is removed or demolished by the Housing Inspector, he or she shall sell the materials of the dwelling, and any personal property, fixture or appurtenances found in or attached to the dwelling, and shall credit the proceeds of the sale against the cost of the removal or demolition, and any balance remaining shall be deposited in the Superior Court by

the Housing Inspector, shall be secured in a manner directed by the court, and shall be disbursed by the court to the persons found to be entitled thereto by final order of the decree of the Court.

(E) If any occupant fails to comply with an order to vacate a dwelling, the Housing Inspector may file a civil action in the name of the town to remove the occupant. The action to vacate the dwelling shall be in the nature of summary ejectment and shall be commenced by filing a complaint naming as parties-defendant any persons occupying the dwelling. The Clerk of Superior Court shall issue a summons requiring the defendant to appear before a magistrate at a certain time, date and place not to exceed ten days from the issuance of the summons to answer the complaint. The summons and complaint shall be served as provided in G.S. ' 42-29. The summons shall be returned according to its tenor, and if on its return it appears to have been duly served, and if at the hearing the Housing Inspector produces a certified copy of an article adopted by the Board of Commissioners pursuant to subsection (C) above authorizing the Housing Inspector to proceed to vacate the occupied dwelling, the magistrate shall enter judgment ordering that the premises be vacated and that all persons be removed. The judgment ordering that the dwelling be vacated shall be enforced in the same manner as the judgment for summary ejectment entered under G.S. ' 42-30. An appeal from any judgment entered hereunder by the magistrate may be taken as provided in G.S. ' 7A-228, and the execution of the judgment may be stayed as provided in G.S. ' 7A-227. An action to remove an occupant of a dwelling who is a tenant of the owner may not be in the same nature of a summary ejectment proceeding pursuant to this subsection unless the occupant was served with notice at least 30 days before the filing of the summary ejectment proceeding that the Board of Commissioners has ordered the Housing Inspector to proceed to exercise his or her duties under subsections (A), (B) or (C) above to vacate and close or remove and demolish the dwelling. (2003 Code, ' 5-4.19) (Adopted 3-6-2001)

#### **' 5-4.20 SERVICE OF COMPLAINTS AND ORDERS.**

(A) Complaints or orders issued by the Housing Inspector shall be served upon persons either personally or by registered or certified mail. When service is made by registered or certified mail, a copy of the complaint or order may also be sent by regular mail. Service shall be deemed sufficient if the registered or certified mail is unclaimed or refused, but the regular mail is not returned by the post office within ten days after the mailing. If regular mail is used, a notice of the pending proceedings shall be posted in a conspicuous place on the premises affected.

(B) If the identities of any owners or the whereabouts of persons are unknown and cannot be ascertained by the Inspector in the exercise of reasonable diligence, or, if the owners are known but have refused to accept service by registered or certified mail, and the Inspector makes an affidavit to that effect, then the serving of the complaint or order upon the owners or other persons may be made by publication in a newspaper having general circulation in the town at least not later than the time at which personal service would be required under the provisions of this article. When service is made by publication, a notice of the pending proceedings shall be posted in a conspicuous place on the premises thereby affected.

(2003 Code, ' 5-4.20) (Adopted 3-6-2001)

#### **' 5-4.21 APPEALS.**

(A) The Board of Adjustment is hereby appointed as the Housing Appeals Board to which appeals from any decision or order of the Housing Inspector may be taken. Except where this article provides for different rules or procedures, the Board of Adjustment, acting as the Housing Appeals Board, shall follow its rules of procedure, which may be amended to provide specifically for this function.

(B) An appeal from any decision or order of the Housing Inspector may be taken by any person aggrieved thereby or by any officer, board or commission of the town. Any appeal from the Housing Inspector shall be taken within ten days from the rendering of the decision or service of the order by filing with the Housing Inspector and with the Housing Appeals Board a notice of appeal which shall specify the grounds upon which the appeal is based. Upon the filing of any notice of appeal, the Housing Inspector shall forthwith transmit to the Housing Appeals Board all the papers constituting the record upon which the decision appealed from was made. When an appeal is from a decision of the Housing Inspector refusing to allow the person aggrieved thereby to do an act, his or her decision shall remain in force until modified or reversed. When any appeal is from a decision of the Housing Inspector requiring the person aggrieved to do any act, the appeal shall have the effect of suspending the requirement until the hearing by the Housing Appeals Board unless the Housing Inspector certifies to the Housing Appeals Board after the notice of appeal is filed with him or her, that because of facts stated in the certificate (a copy of which shall be furnished the appellant), a suspension of his or her requirement would cause imminent peril to life or property. In that case the requirement shall not be suspended except by a restraining order, which may be granted for due cause shown upon not less than one day=s written notice to the Housing Inspector by the Housing Appeals Board or by a court of record upon petition made pursuant to subsection (E) below.

(C) The Housing Appeals Board shall fix a reasonable time for hearing appeals, shall give due notice to the parties, and shall render its decision within a reasonable time. Any party may appear in person or by agent or attorney. The Housing Appeals Board may reverse or affirm, wholly or partly, or may modify the decision or order appealed from, and may make any decision and order that in its opinion ought to be made in the matter, and to that end it shall have all the powers of the Housing Inspector, but the concurring vote of four-fifths of the members of the Board shall be necessary to reverse or modify any decision or order of the Housing Inspector. The Housing Appeals Board shall have power also in passing upon appeals, when practical difficulties or unnecessary hardships would result from carrying out the strict letter of the article, to adapt the application of the article to the necessities of the case to the end that the spirit of the article shall be observed, public safety and welfare secured and substantial justice done.

(D) Every decision of the Housing Appeals Board shall be subject to review by proceedings in the nature of certiorari instituted within 15 days of the decision of the Board, but not otherwise.

(E) Any person aggrieved by an order issued by the Housing Inspector or a decision rendered by the board may petition the Superior Court for an injunction restraining the Housing Inspector from carrying out the order or decision, and the Court may, upon the petition, issue a temporary injunction restraining the Housing Inspector pending a final disposition of the cause. The petition shall be filed within 30 days after issuance of the order or rendering of the decision. Hearings shall be held by the court on a petition within 20 days and shall be given preference over other matters on the Court=s calendar. The court shall hear and determine the issues raised and shall enter a final order or decree as law and justice may require.

It shall not be necessary to file bond in any amount before obtaining a temporary injunction under this subsection.

(2003 Code, ' 5-4.21) (Adopted 3-6-2001)

#### **' 5-4.22 ALTERNATIVE REMEDIES.**

(A) Nothing in this article nor any of its provisions shall be construed to impair or limit, in any way, the power of the town to define and declare nuisances and to cause their removal or abatement by summary proceedings or otherwise, nor shall enforcement of one remedy provided herein prevent the enforcement of any other remedy or remedies provided herein or in other articles or laws. In addition to the remedies provided for herein, any violation of the terms of this article shall subject the violator to the penalties and remedies, either criminal or civil or both, as set forth in ' 1.8. of the code of the town.

(B) No dwelling shall be hereafter erected, altered, moved or changed in occupancy without a certificate of occupancy. In any case, where the Housing Inspector, after notice and hearing as required herein, finds that a dwelling or dwelling unit is unfit for human habitation, he or she shall withhold the issuance of a certificate of occupancy for the dwelling or dwelling unit until the time that he or she determines that it is fit for human habitation. In addition, in any case where the Housing Inspector, after preliminary investigation as provided for herein, concludes, based upon that investigation, that a dwelling or dwelling unit is unfit for human habitation and believes that the occupancy of the dwelling or dwelling unit could cause imminent peril to life or property from fire or other hazards, he or she shall withhold issuance of a certificate of occupancy for the dwelling or dwelling unit until the time that he or she determines that it is fit for human habitation.

(C) If any dwelling is erected, constructed, altered, repaired, converted, maintained or used in violation of this article, or of any valid order or decision of the Housing Inspector or Board made pursuant to any article or code adopted under authority of this article, the Housing Inspector may institute any appropriate action or proceedings to prevent the unlawful erection, construction, reconstruction, alteration or occupancy, to restrain, correct or abate the violation, to prevent the occupancy of the dwellings, or to prevent any illegal act, conduct or use in or about the premises of the dwelling.

(2003 Code, ' 5-4.22) (Adopted 3-6-2001)

#### **' 5-4.23 CONFLICT WITH OTHER PROVISIONS.**

In the event any provision, standard or requirement of this article is found to be in conflict with any provision of any other article or code of the town, the provision which establishes the higher standard or more stringent requirement for the promotion and protection of the health and safety of the residents of the town=s jurisdiction shall prevail. The *North Carolina Building Code*, 2002 Edition, as adopted and amended by the State Building Code Council, shall serve as the standard for all alterations, repairs, additions, removals, demolitions and other acts of building made or required pursuant to this article.

(2003 Code, ' 5-4.23) (Adopted 3-6-2001)

#### **' 5-4.24 VIOLATIONS.**

In addition to the conditions, acts or failures to act that constitute violations specified in this article, it shall be unlawful for the owner of any dwelling or dwelling unit to fail, neglect or refuse to repair, alter or improve the same, or to vacate and close, or vacate and remove, or demolish the same, upon order of the Housing Inspector duly made and served as herein provided within the time specified in the order. It shall be unlawful for the owner of any dwelling, with respect to which an order has been issued pursuant to ' 5-4.18, to occupy or permit the occupancy of the same after the time prescribed in the order for its repair, alteration or improvement or its vacation and closing, or vacation and removal or demolition. (2003 Code, ' 5-4.24) (Adopted 3-6-2001)

#### **' 5-4.25 REPEAL AND REENACTMENT OF EXISTING HOUSING CODE.**

The rewriting of this article in part carries forth by reenactment some of the provisions of the existing Housing Code of the town, and it is not intended to repeal, but rather to reenact and continue in force the existing provisions so that all rights and liabilities that have been accrued are preserved and may be enforced. All provisions of the Housing Code, which are not reenacted herein, are hereby repealed. All suits at law or in equity and/or all prosecutions resulting from the violations of the housing code in effect, which are now pending in any of the courts of the state or of the United States, shall not be abated or abandoned by reason of the adoption of this article, but shall be prosecuted to their finality the same as if this article had not been adopted; and any and all violations of the existing article, prosecutions for which have not been instituted, may be filed and prosecuted; and nothing in this article shall be so construed as to abandon, abate or dismiss any litigation or prosecution now pending and/or which may have been instituted or prosecuted. (2003 Code, ' 5-4.25) (Adopted 3-6-2001)

#### **' 5-4.26 VALIDITY.**

(A) If any section, subsection, sentence, clause or phrase of this article is for any reason held to be invalid, the decision shall not affect the validity of the remaining portions of this article. The Board of Commissioners hereby declares that it would have passed this article and each section, subsection, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid.

(B) All articles in conflict with the provisions of this article are hereby repealed to the extent of the conflict. (2003 Code, ' 5-4.26) (Adopted 3-6-2001)



**CHAPTER V: PUBLIC SAFETY**  
**ARTICLE 5: PUBLIC HEALTH NUISANCES**

Section

5-5.1	Definitions
5-5.2	Abatement of nuisanceCnotice
5-5.3	SameCprocedure
5-5.4	LitteringCgenerally
5-5.5	SameCfrom vehicles
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5-5.8	Declaration of public nuisance
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5-5.10	Abatement procedure
5-5.11	Procedure is alternative
5-5.12	Unsafe structures
5-5.13	Annual notice to chronic violators of overgrown vegetation

**' 5-5.1 DEFINITIONS.**

As used in this article, the following terms shall have the respective meanings ascribed to them.

***BUILDING MATERIAL*** (also called ***CONSTRUCTION AND DEMOLITION MATERIAL***).  
Brick, stone, carpet, plumbing materials, plaster, concrete, asphalt, roofing, floor coverings, gutters or other material or substances accumulated as a result of construction, repairs or additions to existing structures or accessory structures or demolition of such.

***GARBAGE***. A by-product of animal or vegetable foodstuffs resulting from the handling, preparation, cooking and consumption of food or other matter which is subject to decomposition, decay, and/or the generation of noxious or offensive gases or odors, or which during and/or after decay may serve as breeding or feeding material for flies, insects and/or animals.

***HAZARDOUS WASTE***.

(1) Potentially dangerous by-products which cannot be handled, treated or disposed of without special precautions.

(2) **HAZARDOUS WASTE** includes ignitable, corrosive, reactive and toxic wastes such as acetone, gasoline, industrial metal, alkaline cleaners, acids, cyanide, chlorine, arsenic, pesticide wastes, paint, caustics, infected materials, offal, fecal matter (human and animal) and explosives.

**JUNK.** Any item creating a littered condition including, but not limited to, household or office furnishings, household appliances, mattress, box springs, lawn equipment, machinery or other similar items which are either in a wholly or partially rusted, wrecked, junked, dismantled or inoperative condition.

**YARD WASTE.**

(1) Grass, weeds, leaves, tree trimmings, plants, shrubbery pruning and other similar materials which are generated in the maintenance of yards and gardens, which are separate from other solid waste materials and placed in a designated recycling collection area.

(2) **YARD WASTE** shall not include trees, tree limbs, brush or other material resulting from commercial tree trimmers and/or commercial lawn-care services.  
(2003 Code, ' 5-5.1)

**' 5-5.2 ABATEMENT OF NUISANCEcNOTICE.**

Upon a determination that conditions constitute a public nuisance, the Building Inspector shall notify, in writing, the owner, occupant or person in possession of the premises in question, of the conditions constituting a public nuisance and shall order the prompt abatement thereof.  
(1989 Code, ' 9-1; 2003 Code, ' 5-5.2)

**' 5-5.3 SAMEcPROCEDURE.**

(A) Any person, having been ordered to abate a public nuisance may, within ten days from receipt of the order, request the town, in writing, to remove the conditions constituting the nuisance.

(B) If no request is received within ten days, the Building Inspector may cause the removal.

(C) In either event, the costs of the removal shall be paid by the person who received the order of abatement and, if not paid, shall be a lien upon the land or premises where the trouble arose, and shall be collected as unpaid taxes as provided in G.S. ' 160A-193.  
(1989 Code, ' 9-2; 2003 Code, ' 5-5.3)

**Statutory reference:**

*Abatement of public health nuisances, see G.S. ' 130A-19*

*Authority of city to abate, see G.S. ' 160A-193*

*By local director, see G.S. ' 130A-19*

**' 5-5.4 LITTERINGcGENERALLY.**

It shall be unlawful for any person to throw or deposit upon any street or sidewalk, or upon any private property, except with written permission of the owner or occupant of the private property, any trash, refuse, garbage, building material, cans, bottles, broken glass, paper or any type of litter.

(1989 Code, ' 9-3; 2003 Code, ' 5-5.4)

***Cross-reference:***

*Use of containers required, see ' 6-4.2*

***Statutory reference:***

*Littering, see G.S. ' ' 14-399, 14-399.1, 160A-303*

**' 5-5.5 SAMEcFROM VEHICLES.**

It shall be unlawful for any person while a driver or a passenger in a vehicle to throw or deposit litter upon any street or other public place or upon private property.

(1989 Code, ' 9-4; 2003 Code, ' 5-5.5)

**' 5-5.6 MAINTENANCE OF PUBLIC AREAS OF CERTAIN COMMERCIAL ESTABLISHMENTScGENERALLY.**

Every owner, lessee, tenant, occupant or person in charge of any commercial establishment or premises which maintains any paved or unpaved areas for the use of the public, either for parking or as access area incident to the carrying on of the principal business of any commercial establishment or premises and which parking or access areas abut or lie within ten feet of any public street or other public way, shall keep and maintain the areas clean and free from trash, litter, rubbish and any materials liable to be blown, deposited or cast upon the street or other public way.

(1989 Code, ' 9-5; 2003 Code, ' 5-5.6)

**' 5-5.7 SAMEcRECEPTACLES.**

Suitable receptacles shall be provided in all parking or access areas within the meaning of ' 5-5.6. The receptacles shall be plainly marked and constructed to prevent scattering of any trash, litter, rubbish or other material deposited therein.

(1989 Code, ' 9-6; 2003 Code, ' 5-5.7)

**' 5-5.8 DECLARATION OF PUBLIC NUISANCE.**

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The following enumerated and described conditions, or any combination thereof, are hereby found, deemed and declared to constitute a detriment, danger and hazard to the health, safety, morals and general welfare of the inhabitants of the town and the ETJ and are hereby found, deemed and declared to be public nuisances wherever the conditions may exist and the creation, maintenance or failure to abate any nuisances is hereby declared unlawful:

(A) Any weeds or other vegetation having an overall height of more than 18 inches above the surrounding ground provided that the following shall not be considered to be a part of this condition: trees and ornamental shrubs; cultured plants; natural vegetation on undeveloped property that is not a threat to the character of surrounding properties; and flowers and growing and producing vegetable plants. The Town Manager or his or her designee shall determine these qualifications;

(B) Any accumulation of trash and/or garbage which is the result of the absence or of overflowing or improperly closed trash or garbage containers;

(C) Accumulation in an open place of hazardous or toxic materials and chemicals;

(D) An open place of concentration of combustible items such as mattresses, boxes, paper, automobile tires and tubes, garbage, trash, refuse, brush, old clothes, rags or any other combustible materials or objects of like nature;

(E) Any accumulation of garbage, rubbish, trash or junk causing or threatening to cause a fire hazard, or causing or threatening to cause the accumulation of stagnant water, or causing or threatening to cause the inhabitation therein of rats, mice, snakes, mosquitoes or vermin prejudicial to the public health;

(F) Any accumulation of animal or vegetable matter that is offensive by virtue of odors or vapors or by the inhabitation therein of rats, mice, snakes or vermin of any kind which is or may be dangerous or prejudicial to the public health;

(G) The open storage of any discarded ice box, refrigerator, stove, washer, dryer, other Awhite goods@, glass, building materials, building rubbish or similar items;

(H) Any building or other structure which has been burned, partially burned or otherwise partially destroyed and which is unsightly or hazardous to the safety of any person, is a continuing fire hazard or which is structurally unsound to the extent that the Town Manager or his or her designee can reasonably determine that there is a likelihood of personal or property injury to any person or property entering the premises;

(I) Any condition which blocks, hinders or obstructs in any way the natural flow of branches, streams, creeks, surface waters, ditches or drains, to the extent that the premises is not free from standing water;

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

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

(K) Neglect of property. It shall be unlawful for any person to endanger the public health, safety and welfare through the neglect of property by causing or allowing the accumulation of solid waste or unsightly litter, waste products causing the existence of foul odors, dead animals, unsecured appliances, building material, hazardous waste or potentially dangerous devices to be discarded, abandoned or remain on or emanate from any property, or to cause or allow the accumulation of solid waste or unsightly litter, waste products causing the existence of foul odors, dead animals, unsecured appliances, building material, construction and demolition material, hazardous waste or potentially dangerous devices to be discarded, abandoned or remain on or emanate from public property or other private property, vacant lots, ponds, streams or bodies of water or banks thereof;

(L) Dilapidated condition on premises. It shall be unlawful for any person to have on his or her premises material that creates a littered condition, such as, but not limited to, lawn furniture, appliances, machinery, equipment, building materials, automotive parts, tires, fencing or any other items which are in a wholly or partially rusted, wrecked, junked, dismantled or inoperative condition and which are not completely enclosed within a building or dwelling;

(M) Storage or use of upholstered furniture outdoors. It shall be unlawful for any person to keep, store or use any upholstered furniture in any outdoor location on any property unless it is totally enclosed in a weather-tight building; and

(N) Any condition detrimental to the public health which violates the rules and regulations of the County Health Department.

(1989 Code, ' 9-7; 2003 Code, ' 5-5.8) (Amended 3-6-2001; Amended 6-1-2010)

**' 5-5.9 COMPLAINT; INVESTIGATION OF PUBLIC NUISANCE.**

When any condition in violation of this article is found to exist, the Building Inspector or persons as may be designated by the Town Manager or the Town Manager, himself or herself, shall give notice to the owner of the premises to abate or remove the conditions within ten days. The notice shall be in writing, shall include a description of the premises sufficient for identification and shall set forth the violation and state that, if the violation is not corrected within ten days, the town may proceed to correct the same as authorized by this article. Service of the notice shall be by any one of the following methods:

(A) By delivery to any owner personally or by leaving the notice at the usual place of abode of the owner with a person who is over the age of 16 years and a member of the family of the owner;

(B) By depositing the notice in the United States Post Office addressed to the owner at his or her last known address with postage prepaid thereon; or

(C) By posting and keeping posted for ten days, a copy of the notice, in placard form, in a conspicuous place on the premises on which the violation exists, when notice cannot be served by subsections (A) and (B) above.

(1989 Code, ' 9-8; 2003 Code, ' 5-5.9) (Amended 3-6-2001)

#### **' 5-5.10 ABATEMENT PROCEDURE.**

If the owner of any property fails to comply with a notice given pursuant to this article, within ten days after the service of the notice, he or she shall be subject to prosecution for violation of this article in accordance with law and each day that the failure continues shall be a separate offense. In addition, the Town Manager may have the condition described in the notice abated, removed or otherwise corrected and all expenses incurred thereby shall be chargeable to and paid by the owner of the property and shall be collected as taxes and levies are collected. All expenses shall constitute a lien against the property on which the work was done.

(1989 Code, ' 9-9; 2003 Code, ' 5-5.10) (Amended 3-6-2001)

#### **' 5-5.11 PROCEDURE IS ALTERNATIVE.**

Nothing in this article nor any of its provisions shall be construed to impair or limit, in any way, the power of the town to define and declare nuisances and to cause their removal or abatement by summary proceedings or otherwise, nor shall enforcement of one remedy provided herein prevent the enforcement of any other remedy or remedies provided herein or in other articles or laws. In addition to the remedies provided for herein, any violation of the terms of this article shall subject the violator to the penalties and remedies, either criminal or civil or both, as set forth in ' 1.8. of the code of the town.

(1989 Code, ' 9-10; 2003 Code, ' 5-5.11) (Amended 3-6-2001)

#### **' 5-5.12 UNSAFE STRUCTURES.**

(A) *Intent and specific authorization.* Within the town, occupied and unoccupied structures,

including buildings that are a fire and safety hazard or are dangerous to the public health and safety will be abated. Unsafe structures will be secured and closed, repaired or demolished in accordance with G.S. ' 160A-426 and G.S. ' 160A-193. Structures and any associated nuisance will be repaired, closed or removed by the property owner or by the town if the property owner fails to do so.

(B) *Conditions requiring repair or removal.* Unsafe structures as defined herein or their associated uses will be repaired, closed or removed. Standards used to determine whether or not a structure is unsafe include, but are not limited to, the following.

(1) The condition of the walls, floor or roof is in such a state of decay or disrepair that the structure constitutes a serious fire or safety hazard;

(2) The collection of garbage in or near the structure might attract rodents or insects or constitutes a fire hazard;

(3) Violations of *North Carolina Building, Electrical or Fire Prevention Codes*, which constitute a fire hazard;

(4) Violations of *North Carolina State Building Code(s)*, which might result in danger to children playing in nearby areas;

(5) Repeated use of the structure by transients and vagrants, in the absence of sanitary facilities, for living, sleeping, cooking or eating; and

(6) Substantial deterioration that would cost the owner more than eighty percent of current value to bring it up to minimum building code(s). The Code Enforcement Officer may use his or her own opinion to find that the cost of repair of the structure would be 80% of the value of the structure.

(C) *Inspections.* The Code Enforcement Officer will make periodic inspections, subject to the Town Manager=s and/or Town Board=s direction, for conditions which are unsafe, unsanitary or otherwise hazardous and unlawful in or relating to structures within the jurisdiction of the town. In addition, the Code Enforcement Officer will inspect a structure when specifically requested by any public authority or by petition of five or more residents of the town. In exercising this power, the Code Enforcement Officer will have the right to enter any premises at any reasonable hour to inspect a structure upon the presentation of proper credentials.

(D) *Notice and hearing.* When the Code Enforcement Officer finds an unsafe structure or finds a public nuisance associated with the structure, he or she will notify the owner and any occupants of the violation and order the owner to remedy the defects, hazardous condition or violations of the law. In the case of a structure that is especially dangerous, he or she will affix a notice identifying the danger in a conspicuous place on the exterior of the structure. Any unauthorized person removing this notice may be guilty of a Class 1 misdemeanor. The order will also contain a notice informing the owner and parties in interest that a hearing will be held before the Code Enforcement Officer and that the owner and parties in interest will be given a right to file a written response to the order, appear in person, with or without legal counsel, and give testimony at the place and time fixed in the order. Rules of evidence prevailing in courts of law or equity will not be controlling in hearings before the Code Enforcement Officer. If the owner of the property cannot be located, a copy of the order will be posted on the property at least ten working days before the date of the hearing.

(E) *Order to take corrective action.* If the Code Enforcement Officer, after hearing from all concerned parties, determines that the structure is a danger to public health and safety as specified in subsection (B) above, he or she will order the owner, in writing, to remedy the defective condition(s) by repairing, closing, vacating or demolishing the structure, or by taking any other step deemed necessary. The owner will have not less than 60 days or more than 90 days to comply with the order unless the Code Enforcement Officer finds that there is imminent danger to life or property and orders remedy sooner.

(F) *Appeal of order to take corrective action.* Any owner who has received an order pursuant to this article may appeal the order to the Town Board by giving notice of appeal in writing, mailed first class mail, to the Town Clerk. Absent written appeal, the order of the Code Enforcement Officer will be final. The Town Board will hear an appeal within a reasonable time and may affirm, modify or revoke the order of the Code Enforcement Officer.

(G) *Action by the town.*

(1) If the owner fails to repair, close or demolish the structure as required in the order, then the Code Enforcement Officer may direct the repair, closure or demolition of the structure.

(2) The Code Enforcement Officer will not close and secure any structure until the Town Board has, by resolution, ordered the Code Enforcement Officer to do so. In addition, no structure will be demolished by the Code Enforcement Officer until the Town Board passes a resolution to proceed. Resolutions passed by the Board must describe the location of the property.

(H) *Demolition lien.* Upon the completion of the abatement, the Code Enforcement Officer will deliver to the Town Clerk a statement of the actual cost of abatement. The Clerk will mail to the owner of the property, by return receipt, a bill covering the total cost of the abatement including additional fees associated with notice and collection procedures. The bill will become a lien upon the property if not paid within 30 days. It will be collected in the same way as delinquent taxes. In addition, a penalty of \$100 will be assessed for all bills not paid within days from receipt and will become a lien upon the property. The bill and the penalty will accrue interest at the legal rate. The Town Clerk will file a notice of lien in the office of Superior Court of the county and/or the Register of Deeds of the county.

(I) *Failure to receive notice.* Failure on the part of any owner or party in interest to receive or have served upon him or her any notice or order provided for in this article will not affect or invalidate the proceedings with respect to any other owner or party in interest or any other person.  
(2003 Code, ' 5-5.12) (Adopted 5-6-1997)

**' 5-5.13 ANNUAL NOTICE TO CHRONIC VIOLATORS OF OVERGROWN VEGETATION.**

A municipality may notify a chronic violator of the municipality=s overgrown vegetation ordinance that, if the violator's property is found to be in violation of the ordinance, the municipality shall, without further notice in the calendar year in which notice is given, take action to remedy the violation and the expense of the action shall become a lien upon the property and shall be collected as unpaid taxes. The initial annual notice shall be served by registered or certified mail. A **CHRONIC VIOLATOR** is a person who owns property whereupon, in the previous calendar year, the municipality took remedial action at least three times under the overgrown vegetation ordinance.  
(Ord. passed 4-30-2009)



**CHAPTER V: PUBLIC SAFETY**  
**ARTICLE 6: ABANDONED, JUNKED AND NUISANCE VEHICLES**

Section

- 5-6.1 Administration
- 5-6.2 Definitions
- 5-6.3 Abandoned vehicle unlawful; removal authorized
- 5-6.4 Nuisance vehicle unlawful; removal authorized
- 5-6.5 Junked motor vehicle regulated; removal authorized
- 5-6.6 Permitted concealment or enclosure of junked motor vehicles
- 5-6.7 Removal of abandoned, nuisance or junked motor vehicles; pre-towing notice requirements
- 5-6.8 Exceptions to prior notice requirement
- 5-6.9 Removal of vehicles; post-towing requirements
- 5-6.10 Rights to probable cause hearing before sale or final disposition of vehicle
- 5-6.11 Redemption of vehicle during proceedings
- 5-6.12 Sale and disposition of unclaimed vehicle
- 5-6.13 Conditions on removal of vehicles from private property
- 5-6.14 Protection against criminal or civil liability
- 5-6.15 Exceptions
- 5-6.16 Unlawful removal of impounded vehicle

**' 5-6.1 ADMINISTRATION.**

The Police Department and the Code Administrator of the town shall be responsible for the administration and enforcement of this article. The Police Department shall be responsible for administering the removal and disposition of vehicles determined to be *Abandoned* on the public streets and highways within the town, and on property owned by the town. The Code Administrator shall be responsible for administering the removal and disposal of *Abandoned*, *Nuisance* and *Junked* motor vehicles located on private property. The town may, on an annual basis, contract with private tow truck operators or towing businesses to remove, store and dispose of abandoned vehicles, nuisance vehicles and junked motor vehicles in compliance with this chapter and applicable state laws. Nothing in this article shall be construed to limit the legal authority or powers of the officers of the Town Police Department and Fire Department in enforcing other laws or in otherwise carrying out their duties. (2003 Code, ' 5-6.1) (Adopted 3-6-2001)

**' 5-6.2 DEFINITIONS.**

As used in this article, the following terms shall have the respective meanings ascribed to them.

**ABANDONED VEHICLE.** As authorized and defined in G.S. ' 160A-303, an **ABANDONED VEHICLE** is one that:

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

**AUTHORIZED OFFICIAL.** The supervisory employee of the Police Department or the Town Code Administrator, respectively, are designated to order the removal of vehicles under the provisions of this article.

**JUNKED MOTOR VEHICLE.** As authorized and defined in G.S. ' 160A-303.2, the term **JUNKED MOTOR VEHICLE** means a vehicle that does not display a current license plate lawfully upon that vehicle and that:

- (1) Is partially dismantled or wrecked;
- (2) Cannot be self-propelled or move in the manner in which it originally was intended to move; or
- (3) Is more than five years old and appears to be worth less than \$100.

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

**NUISANCE VEHICLE.** A vehicle on public or private property that is determined and declared to be a health or safety hazard, a public nuisance and unlawful, including a vehicle found to be:

- (1) A breeding ground or harbor for mosquitoes, other insects, rats or other pests;
- (2) A point of heavy growth of weeds or other noxious vegetation which exceeds eight inches in height;
- (3) In a condition allowing the collection of pools or ponds of water;

(4) A concentration of quantities of gasoline, oil or other flammable or explosive materials as evidenced by odor;

(5) An area of confinement which cannot be operated from the inside, such as, but not limited to, trunks or hoods;

(6) So situated or located that there is a danger of it falling or turning over;

(7) A collection of garbage, food waste, animal waste or any other rotten or putrescent matter of any kind; or

(8) One which has sharp parts thereof which are jagged or contain sharp edges of metal or glass.

(2003 Code, ' 5-6.2) (Adopted 3-6-2001)

**' 5-6.3 ABANDONED VEHICLE UNLAWFUL; REMOVAL AUTHORIZED.**

(A) It shall be unlawful for the registered owner or person entitled to possession of a vehicle to cause or allow the vehicle to be abandoned, as the term is defined herein.

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

(2003 Code, ' 5-6.3) (Adopted 3-6-2001)

**' 5-6.4 NUISANCE VEHICLE UNLAWFUL; REMOVAL AUTHORIZED.**

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

(B) Upon investigation, the Town Code Administrator may determine and declare that a vehicle is a health or safety hazard, and a nuisance vehicle, as defined above, and order the vehicle removed.

(2003 Code, ' 5-6.4) (Adopted 3-6-2001)

**' 5-6.5 JUNKED MOTOR VEHICLE REGULATED; REMOVAL AUTHORIZED.**

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

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

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

(D) Subject to the provisions of ' 5-6.7, the Town Code Administrator may order the removal of a junked motor vehicle found in violation of this article to a storage garage or area. No vehicle shall be removed from private property without the written request of the owner, lessee or occupant of the premises unless the Town Code Administrator finds in writing that the aesthetic benefits of removing the vehicle outweigh the burdens imposed on the private property owner. The 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, neighborhood or area appearance. The following, among other relevant factors, may be considered:

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

(2003 Code, ' 5-6.5) (Adopted 3-6-2001)

#### **' 5-6.6 PERMITTED CONCEALMENT OR ENCLOSURE OF JUNKED MOTOR VEHICLES.**

(A) One junked motor vehicle, in its entirety, may be located in the rear yard, as defined in the town zoning article, provided the junked motor vehicle is entirely concealed from public view, from a public street and/or abutting premises by an acceptable covering for not more than 60 calendar days. Junked motor vehicles kept on the premises more than 60 calendar days shall be kept inside a completely enclosed building. The Town Code Administrator has the authority to determine whether any junked motor vehicle is adequately concealed as required by this provision. The covering must remain in good repair and must not be allowed to deteriorate.

(B) Any one or more junked motor vehicles kept for a period exceeding 60 calendar days shall be kept within a completely enclosed building, as defined in the town zoning ordinance.

(2003 Code, ' 5-6.6) (Adopted 3-6-2001)

**' 5-6.7 REMOVAL OF ABANDONED, NUISANCE OR JUNKED MOTOR VEHICLES; PRE-TOWING NOTICE REQUIREMENTS.**

(A) Except as set forth in ' 5-6.8. below, an abandoned, nuisance or junked motor vehicle which is to be removed shall be towed only after notice to the registered owner or person entitled to possession of the vehicle. In the case of a nuisance vehicle or a junked motor vehicle, if the name(s) and address(es) of the registered owner or person entitled to possession of the vehicle, or the owner, lessee or occupant of the real property upon which the vehicle is located can be ascertained in the exercise of reasonable diligence, the notice shall be given by first class mail.

(B) The person who mails the notice(s) shall retain a written record to show the name(s) and address(es) to whom and to which mailed, and the date mailed. If the names and addresses cannot be ascertained or if the vehicle to be removed is an abandoned motor vehicle, notice shall be given by affixing on the windshield or some other conspicuous place on the vehicle a notice indicating that the vehicle will be removed by the town on a specified date (no sooner than seven days after the notice is affixed). The notice shall state that the vehicle will be removed by the town on a specified date, no sooner than seven days after the notice is mailed or affixed, unless the vehicle is moved by the owner or legal possessor prior to that time.

(C) With respect to abandoned vehicles on private property, nuisance vehicles and junked vehicles to which notice is required to be given, if the registered owner or person entitled to possession does not remove the vehicle, but chooses to appeal the determination that the vehicle is abandoned, a nuisance vehicle or in the case of a junked motor vehicle, that the aesthetic benefits of removing the vehicle outweigh the burdens, the appeal shall be made to the Board of Adjustments in writing, heard at the next regularly scheduled meeting of the Board of Adjustments, and further proceedings to remove the vehicle shall be stayed until the appeal is heard and decided.

(2003 Code, ' 5-6.7) (Adopted 3-6-2001)

**' 5-6.8 EXCEPTIONS TO PRIOR NOTICE REQUIREMENT.**

The requirement that notice be given prior to the removal of an abandoned, nuisance or junked motor vehicle may, as determined by the authorized official, be omitted in those circumstances where there is a special need for prompt action to eliminate traffic obstructions or to otherwise maintain and protect the public safety and welfare. The findings shall, in all cases, be entered by the authorized official in the appropriate daily records. Circumstances justifying the removal of vehicles without prior notice include.

(A) *Vehicles abandoned on the streets.* For vehicles left on the public streets and highways, the Board of Commissioners hereby determines that the immediate removal of the vehicles may be warranted when they are:

- (1) Obstructing traffic;

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- (2) Parked in violation of an article prohibiting or restricting parking;
- (3) Parked in a no-stopping or standing zone;
- (4) Parked in loading zones;
- (5) Parked in bus zones; or
- (6) Parked in violation of temporary parking restrictions.

(B) *Other abandoned or nuisance vehicles.* With respect to abandoned or nuisance vehicle left on town-owned property other than the streets or highways, and on private property, the vehicles may be removed without giving prior notice only in those circumstances where the authorized official finds a special need for prompt action to protect and maintain the public health, safety and welfare. By way of illustration and not of limitation, the circumstances include vehicles blocking or obstructing ingress or egress to businesses and residences, vehicles parked in a location or manner as to pose a traffic hazard, and vehicles causing damage to public or private property.

(2003 Code, ' 5-6.8) (Adopted 3-6-2001)

**' 5-6.9 REMOVAL OF VEHICLES; POST-TOWING REQUIREMENTS.**

(A) Any abandoned, nuisance or junked motor vehicle which has been ordered removed may, as directed by the town, be removed to a storage garage or area by a tow truck operator or towing business contracted to perform the services for the town. Whenever a vehicle is removed, the authorized town official shall immediately notify the last known registered owner of the vehicle with the notice to include the following:

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

(B) The town shall attempt to give notice to the vehicle owner by telephone; however, whether or not the owner is reached by telephone, written notice indicating the information set forth in subsections (A)(1) through (A)(5) above shall also be mailed to the registered owner=s last known address, unless this notice is waived in writing by the vehicle owner or his or her agent.

(C) If the vehicle is registered in the state, notice shall be given within 24 hours. If the vehicle is not registered in the state, notice shall be given to the registered owner within 72 hours from the date of the removal of the vehicle.

(D) Whenever an abandoned, nuisance or junked motor vehicle is removed and the vehicle has no valid registration or registration plates, the authorized town official shall make reasonable efforts, including checking the vehicle identification number to determine the last known registered owner of the vehicle and to notify him or her of the information set forth in subsections (A)(1) through (A)(5) above. (2003 Code, ' 5-6.9) (Adopted 3-6-2001)

**' 5-6.10 RIGHTS TO PROBABLE CAUSE HEARING BEFORE SALE OR FINAL DISPOSITION OF VEHICLE.**

After the removal of an abandoned vehicle, nuisance vehicle or junked motor vehicle, the owner or any person entitled to possession is entitled to a hearing for the purpose of determining if probable cause existed for removing the vehicle. A request for hearing must be filed in writing with the County Magistrate designated by the Chief District Court Judge to receive the hearing requests. The Magistrate will set the hearing within 72 hours of receipt of the request and the hearing will be conducted in accordance with the provisions of G.S. ' 20-219.11, as amended. (2003 Code, ' 5-6.10) (Adopted 3-6-2001)

**' 5-6.11 REDEMPTION OF VEHICLE DURING PROCEEDINGS.**

At any stage in the proceedings, including before the probable cause hearing, the owner may obtain possession of the removed vehicle by paying the towing fees, including any storage charges, or by posting a bond for double the amount of the fees and charges to the tow truck operator or towing business having custody of the removed vehicle. Upon regaining possession of a vehicle, the owner or person entitled to the possession of the vehicle shall not allow or engage in further violations of this article. (2003 Code, ' 5-6.11) (Adopted 3-6-2001)

**' 5-6.12 SALE AND DISPOSITION OF UNCLAIMED VEHICLE.**

Any abandoned, nuisance or junked motor vehicle which is not claimed by the owner or other party entitled to possession will be disposed of by the tow truck operator or towing business having custody of the vehicle. Disposition of a vehicle shall be carried out in coordination with the town and in accordance with G.S. Ch. 44A, Art. 1. (2003 Code, ' 5-6.12) (Adopted 3-6-2001)

**' 5-6.13 CONDITIONS ON REMOVAL OF VEHICLES FROM PRIVATE PROPERTY.**

As a general policy, the town will not remove a vehicle from private property if the owner, occupant or lessee of the property could have the vehicle removed under applicable state law procedures. In no case will a vehicle be removed by the town from private property without a written request of the owner, occupant or lessee, except in those cases where the vehicle is a nuisance vehicle or is a junked motor vehicle which has been ordered removed by the Town Code Administrator. The town may require any person requesting the removal of an abandoned, nuisance or junked motor vehicle from private property to indemnify the town against any loss, expense or liability incurred because of the removal, storage or sale thereof.

(2003 Code, ' 5-6.13) (Adopted 3-6-2001)

**' 5-6.14 PROTECTION AGAINST CRIMINAL OR CIVIL LIABILITY.**

No person shall be held to answer in any civil or criminal action to any owner or other person legally entitled to the possession of an abandoned, nuisance or junked motor vehicle for disposing of the vehicle as provided in this article.

(2003 Code, ' 5-6.14) (Adopted 3-6-2001)

**' 5-6.15 EXCEPTIONS.**

Nothing in this article shall apply to any vehicle:

(A) Which is located in a bona fide Automobile graveyard@ or Junkyard@ as defined in G.S. ' 136-143 in accordance with the Junkyard Control Act, G.S. ' ' 136-141 et seq.;

(B) Which is in an enclosed building;

(C) Which is on the premises of a business enterprise being operated in a lawful place and manner;  
or

(D) Which is in an appropriate storage place or depository maintained in a lawful place and manner by the town.

(2003 Code, ' 5-6.15) (Adopted 3-6-2001)

**' 5-6.16 UNLAWFUL REMOVAL OF IMPOUNDED VEHICLE.**

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

(B) All articles in conflict with the provisions of this article are hereby repealed to the extent of the

conflict.  
(2003 Code, ' 5-6.16) (Adopted 3-6-2001)



**CHAPTER V: PUBLIC SAFETY  
ARTICLE 7: CRIMINAL NUISANCES**

Section

- 5-7.1 Jurisdiction
- 5-7.2 Declaration of a criminal nuisance
- 5-7.3 Administration and enforcement responsibility
- 5-7.4 Complaints and investigations
- 5-7.5 Abatement of a criminal nuisance
- 5-7.6 Failure to abate a criminal nuisance as ordered by Town Board
- 5-7.7 Charges become lien on property
- 5-7.8 Enforcement remedies

**' 5-7.1 JURISDICTION.**

The provisions of this article shall apply within the corporate limits of the town.  
(2003 Code, ' 5-7.1)

**' 5-7.2 DECLARATION OF A CRIMINAL NUISANCE.**

(A) Any condition defined in G.S. Ch. 19 as a nuisance shall be defined herein as a criminal nuisance and shall be prohibited within the jurisdiction of the town.

(B) In addition, any condition the Town Board declares, after holding a public hearing, to be a criminal nuisance shall be prohibited within the jurisdiction of the town.  
(2003 Code, ' 5-7.2)

**' 5-7.3 ADMINISTRATION AND ENFORCEMENT RESPONSIBILITY.**

The Town Police Department is hereby charged with the administration and enforcement of this article of the town code.  
(2003 Code, ' 5-7.3)

**' 5-7.4 COMPLAINTS AND INVESTIGATIONS.**

The town shall, upon notice from any citizen or public official, investigate to determine whether or not a nuisance, as defined in this article, exists.

(2003 Code, ' 5-7.4)

**' 5-7.5 ABATEMENT OF A CRIMINAL NUISANCE.**

(A) Upon a determination that a nuisance, as herein defined, exists, the town may proceed with an action to abate or enjoin any person, property or thing adjudged to be a nuisance as set forth in G.S. ' 19-2.1.

(B) In addition, at the petition of the Chief of Police, the Town Board may, after holding a public hearing, declare that a nuisance exists and order its abatement or removal.

(2003 Code, ' 5-7.5)

**' 5-7.6 FAILURE TO ABATE A CRIMINAL NUISANCE AS ORDERED BY TOWN BOARD.**

If an owner, after being duly notified by certified mail return receipt requested, fails to abate a nuisance as ordered by the Town Board, the Board may direct staff to proceed with the abatement. The cost of abatement, including administrative costs, shall be due and payable to the town within 30 days of notification. Notification shall be deemed given when written notice is sent by first class mail to the property owner at the address shown on the most recent property tax records.

(2003 Code, ' 5-7.6)

**' 5-7.7 CHARGES BECOME LIEN ON PROPERTY.**

In the event charges for the abatement of a nuisance are not paid, as specified in ' 5-7.6, the charges shall become a lien upon the land or premises where the nuisance existed and shall be subject to collection as unpaid taxes.

(2003 Code, ' 5-7.7)

**' 5-7.8 ENFORCEMENT REMEDIES.**

The violation of the provisions of this article shall subject the offender to criminal prosecution, injunctive relief or orders of abatement as afforded to the town under G.S. ' 160A-175 for the enforcement of articles.

(2003 Code, ' 5-7.8)

**CHAPTER V: PUBLIC SAFETY**  
**ARTICLE 8: ADULT ESTABLISHMENTS**

Section

5-8.1	Purpose
5-8.2	Severability
5-8.3	Definitions
5-8.4	Licensing of adult establishment operators
5-8.5	Licensing of persons engaged in the performance of adult live entertainment
5-8.6	Employer to use licensed employees
5-8.7	Posting of license
5-8.8	Notice and hearing as to revocation of license
5-8.9	Hours of operation
5-8.10	Privilege license annual
5-8.11	Prohibited practices
5-8.12	EnforcementCgenerally
5-8.13	SameCinspections

**' 5-8.1 PURPOSE.**

(A) It is the purpose of this article to regulate sexually oriented businesses, to promote the health, safety and general welfare of the citizens of the town and to establish reasonable and uniform regulations to prevent the deleterious effects of sexually oriented businesses.

(B) The provisions of this article have neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative materials or other expressive activities, including sexually oriented materials or activities.

(C) Similarly, it is not the intent nor effect of this article to restrict or deny access by adults to sexually oriented materials protected by the first amendment, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market. Neither is it the intent nor effect of this article to in any way condone or legitimize the distribution of obscene material or material harmful to minors.

(D) The authority for this regulation is G.S. ' ' 160A-174, 160A-194 and 160A-181.1. (2003 Code, ' 5-8.1)

**' 5-8.2 SEVERABILITY.**

If any part of this article, or the application thereof, to any person or condition is held invalid the invalidity shall not affect other parts of this article or their application to any other person or condition, and to the end, the provisions of this article are hereby declared to be severable.  
(2003 Code, ' 5-8.2)

### ' 5-8.3 DEFINITIONS.

As used in this article, the following terms shall have the respective meanings ascribed to them.

#### ***ADULT BOOKSTORE.***

(1) A bookstore which receives a majority of its gross income during any calendar month from the sale or rental of publications (including books, magazines, other periodicals, videotapes, compact discs, other photographic, electronic, magnetic, digital or other imaging medium) which are distinguished or characterized by their emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas, as defined in this section; or

(2) A bookstore having as a preponderance (either in terms of the weight and importance of the material or in terms of greater volume of materials) of its publications (including books, magazines, other periodicals, videotapes, compact discs, other photographic, electronic, magnetic, digital or other imaging medium) which are distinguished or characterized by their emphasis on matter depicting, describing, or relating to specified sexual activities or specified anatomical areas, as defined in this section.

***ADULT ESTABLISHMENT.*** An adult bookstore, adult motion picture theater, adult mini-motion picture theater or adult live entertainment business, as defined in this article.

***ADULT LIVE ENTERTAINMENT.*** Any performance of or involving the actual presence of real people which exhibits specified sexual activities or specified anatomical areas, as defined in this article.

***ADULT LIVE ENTERTAINMENT BUSINESS.*** Any establishment or business wherein adult live entertainment is shown for observation by patrons.

***ADULT MOTION PICTURE THEATER.*** An enclosed building or premises used for presenting motion pictures, a preponderance of which are distinguished or characterized by an emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas, as defined in this article, for observation by patrons therein. ***ADULT MOTION PICTURE THEATER*** does not include any mini-motion picture theater, as defined in this article.

**ADULT MINI-MOTION PICTURE THEATER.** An enclosed building with viewing booths designed to hold patrons which is used for presenting motion pictures, a preponderance of which are distinguished or characterized by an emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas as defined in this article, for observation by patrons therein.

**MASSAGE.** The manipulation of body muscle or tissue by rubbing, stroking, kneading or tapping, by hand or mechanical device.

**MASSAGE AND BODYWORK THERAPY.** Any massage or bodywork therapy as defined by the State Massage and Bodywork Therapy Practice Act, G.S. ' ' 90-621 et seq., provided by a person licensed as provided therein to perform the therapy.

**MASSAGE BUSINESS.** Any establishment or business wherein massage is practiced, including establishments commonly known as massage studios or massage parlors, but not including, massage and bodywork therapy, as defined herein.

**SEXUALLY ORIENTED DEVICES.** Without limitation, any artificial or simulated specified anatomical area or other device or paraphernalia that is designed principally for specified sexual activities, but shall not mean any contraceptive device.

**SPECIFIED ANATOMICAL AREA.**

(1) Less than completely and opaquely covered human genitals, pubic region, buttock or female breast below a point immediately above the top of the areola; or

(2) Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

**SPECIFIED SEXUAL ACTIVITIES.**

(1) Human genitals in a state of sexual stimulation or arousal;

(2) Acts of human masturbation, sexual intercourse or sodomy; or

(3) Fondling or other erotic touching of human genitals, pubic regions, buttocks or female breasts.

(2003 Code, ' 5-8.3)

**' 5-8.4 LICENSING OF ADULT ESTABLISHMENT OPERATORS.**

(A) No person shall operate an adult establishment, either as a principal or accessory use, as herein defined, unless the person shall have first applied for and received the privilege license provided by this article.

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(B) Every application for the privilege license prescribed herein shall be upon a form approved by the Town Manager and shall be filed with the Town Clerk. Every application shall be made under oath and shall contain the following information:

(1) If the applicant is a person, the name and residence address of the person. If the applicant is a partnership, corporation or association, the registered name of the agent and the address of the registered office and the name and residence address of all persons having any legal or beneficial interest in the applicant;

(2) The address of the premises where the adult establishment business shall be located;

(3) A complete statement of all convictions of any person whose name is required to be given in subsection (B)(1) above for any felony, or prostitution or any violation of the law relative to prostitution;

(4) A complete statement of any revocation by any governmental unit, of any license to operate an adult establishment held by any person whose name is required to be given in subsection (B)(1) above;

(5) A complete statement of any conviction of any person whose name is required to be given in subsection (B)(1) above for violation of any statute, law, article or regulation of any government concerning the operation of an adult establishment;

(6) The name and address of any adult establishment or other establishment owned or operated by any person whose name is required to be given in subsection (B)(1) above wherein the business of adult establishment is carried on; and

(7) A description of any other business to be operated on the same premises or on adjoining premises owned or controlled by the applicant.

(C) The Town Clerk shall transmit a copy of the application to the Police Department for an investigative report and to determine compliance with any law relating to fire protection; and to the Inspections Division to determine compliance with all zoning and building regulations and articles. The Police Department shall, within a reasonable time, not to exceed 45 days, report the results of its examination to the Town Clerk.

(D) An application in proper form, accompanied by all reports required by this article, shall be submitted to the Town Board, which shall approve the application, if the Town Board determines that:

(1) The application contains no misstatement of fact;

(2) The applicant, or any person having any legal or beneficial ownership interest in the applicant, has not been convicted of any crime involving sexual misconduct, including, but not limited to, G.S. Art. 26, ' ' 14-177 through 14-202.1, (Offenses Against Public Morality And Decency), and G.S. Art. 27, ' ' 14-203 through 14-208, (Prostitution), or of any violation of any federal statute relating to prostitution, or of any violation of any law or article of any governmental unit concerning or related to the business of adult establishment;

(3) The applicant conforms to all requirements of applicable Zoning, Building and Fire Prevention Codes; and

(4) The applicant or any person having a legal or beneficial ownership interest in the applicant has not, for the three-year period preceding the application had a previously issued license for engaging in the business of adult establishment revoked.

(E) Upon approval of the application by the Town Board, and upon receipt of a \$300 license fee, the Tax Collector shall issue a privilege license to applicant.

(F) A license issued pursuant to this article shall be revoked by action of the Town Board if the Town Board determines that:

(1) The licensee has violated any provisions of this article;

(2) The licensee, or any agent of the licensee, employs or permits to be on the premises of the applicant=s business, any person practicing the business or profession of adult live entertainment who has not been issued the privilege license required by this article, or whose license under the article has been revoked;

(3) The licensee, or the legal or beneficial owner of any interest in the licensee, is convicted of any crime involving sexual misconduct, including but not limited to G.S. Art. 26, ' ' 14-177 through 14-202.1, (Offenses Against Public Morality And Decency), and G.S. Art. 27, ' ' 14-203 through 14-208, (Prostitution); or

(4) The licensee violates any Zoning, Building or Fire Prevention Code article.

(G) A license issued pursuant to this article is void if the licensee moves or ceases operating an adult establishment at the location required to be stated in the application for license pursuant to subsection (B)(2) of this article.  
(2003 Code, ' 5-8.4)

**' 5-8.5 LICENSING OF PERSONS ENGAGED IN THE PERFORMANCE OF ADULT LIVE ENTERTAINMENT.**

(A) No person shall engage in the business or profession of adult live entertainment unless the person shall have first applied for and received the privilege license provided by this section.

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(B) The application for the license required by this article shall be upon a form approved by the Town Manager and shall be filed with the Town Clerk. The application shall be given under oath and shall contain the following information:

- (1) The name, age and residence address of the applicant;
- (2) A complete statement of the previous business or occupation of the applicant for the two years immediately preceding the date of application, including any adult live entertainment experience;
- (3) A complete statement of all convictions of the applicant for any felony or misdemeanor or violation of a local article;
- (4) A complete statement of any revocation of any license granted by any governmental unit to the applicant to engage in the business or profession of adult live entertainment; and
- (5) The date and place of the applicant=s birth, the name of the applicant=s parents and the residence address or addresses of the applicant for the five years immediately preceding the date of application.

(C) The applicant shall submit, as part of the application required in subsection (B) above, the following:

- (1) Fingerprints of the applicant taken by the Police Department;
- (2) Two recent photographs of the applicant=s head and shoulders, of a size and quality prescribed by the Town Manager; and
- (3) A medical certificate signed by a physician, licensed to practice in the state, within seven days of the date of the application. The certificate shall state that the applicant was examined by the certifying physician and that the applicant is free from communicable disease. The additional information required by this subsection shall be provided at the applicant=s expense.

(D) The Town Clerk shall transmit a copy of the application to the Police Department for an investigative report. The Police Department shall, within a reasonable time, not to exceed 45 days, report the results of its investigation to the Town Clerk.

(E) An application in proper form shall be submitted to a review panel consisting of the Town Manager, the Town Attorney and the Chief of Police with all reports required by this section. The review panel shall approve the application if it determines:

- (1) The applicant is at least 18 years of age;
- (2) The application contains no misstatement of fact;

(3) The applicant has not been convicted of any crime involving sexual misconduct, including but not limited to G.S. Art. 26 ' ' 14-177 through 14-202.1, (Offenses Against Public Morality And Decency), and G.S. Art. 27 ' ' 14-203 through 14-208, (Prostitution), or of any violation of any federal statute relating to prostitution, or for violation of any law or article of any governmental unit concerning or related to the business or profession of adult live entertainment;

(4) The applicant has not, for the three-year period preceding the application, had a previously issued license for engaging in the business or profession of adult live entertainment revoked;

(5) The applicant is free from communicable disease as evidenced by the medical certificate required herein; and

(6) The applicant has not been previously convicted of any violation of any provision of this chapter.

(F) Upon approval of the application by the Town Board and upon receipt of a two \$200 license fee, the Tax Collector shall issue a privilege license to the applicant.

(G) The Town Board shall have authority to direct that any person licensed under this article submit to a medical examination by a licensed physician approved by the Town Board. This authority shall be exercised only when the Council has reason to believe that any person has contracted a communicable disease. Refusal to submit to the examination shall be grounds for revocation of the license as provided in subsection (H) below. Notwithstanding the provision of this subsection, every person licensed under this article shall file and continue to file with the Town Clerk a new medical certificate with each application for renewal of the license prescribed by this article. Failure to file the updated certificates shall be grounds for revocation of the license as provided in subsection (H) below.

(H) A license issued pursuant to this section shall be revoked by action of the Town Board if the Town Board determines that:

(1) The licensee has violated any provision of this article;

(2) The licensee is afflicted with a communicable disease;

(3) The licensee has failed to be examined by a licensed physician when required by the Town Board pursuant to subsection (G) above, or has failed to file any medical certificate required by subsection (G) above; or

(4) The licensee has been convicted of a felony or any crime involving sexual misconduct, including, but not limited to G.S. Art.26, ' ' 14-177 through 14-202.1, (Offenses Against Public Morality And Decency), and G.S. Art. 27, ' ' 14-203 through 14-208, (Prostitution), or under any federal statute relating to prostitution, or for violation of any law or article of any governmental unit related to the business or profession of adult live entertainment.

(2003 Code, ' 5-8.5)

**' 5-8.6 EMPLOYER TO USE LICENSED EMPLOYEES.**

No person licensed under this article shall allow or permit any person to perform adult live entertainment upon the premises operated by the licensee unless the person so performing has complied with all requirements of licensing, including periodic medical examinations by a licensed physician. Violation of this section shall be grounds for revocation of the license issued to the violator pursuant to this article.

(2003 Code, ' 5-8.6)

**' 5-8.7 POSTING OF LICENSE.**

(A) Every person engaged in adult live entertainment shall post the license required by this article in his or her work area.

(B) Every person licensed under this article shall display the license in a prominent place.  
(2003 Code, ' 5-8.7)

**' 5-8.8 NOTICE AND HEARING AS TO REVOCATION OF LICENSE.**

Before the Town Board revokes a license issued pursuant to this article, or if the Town Board determines reasonable grounds exist to deny an application for a license pursuant to this article, the Town Board shall cause a written notice to be sent by certified mail to the licensee affected or applicant affected, at the address stated in the license or application. This notice shall advise the affected party of a right to appear before the Town Board, with or without legal counsel, at a stated time and place, for the purpose of presenting any evidence relevant to the revocation or denial, and for the purpose of hearing all evidence submitted and examining or cross-examining any person providing the evidence.

(2003 Code, ' 5-8.8)

**' 5-8.9 HOURS OF OPERATION.**

(A) No person licensed hereunder shall engage in the business or profession of adult entertainment before 8:00 a.m. or after 12:00 midnight.

(B) No person licensed hereunder shall admit customers or prospective customers, or remain open for business, before 8:00 a.m. or after midnight.

(C) No person in charge of managing an adult establishment upon the premises shall allow, permit or condone the violation of subsections (A) or (B) of this section.

(2003 Code, ' 5-8.9)

**' 5-8.10 PRIVILEGE LICENSE ANNUAL.**

The licenses required under this article are privilege licenses. The licenses shall be due and payable in the same manner as prescribed for other privilege licenses issued by the town pursuant to the license and privilege tax ordinance of the town. The licenses required under this article are in addition to all other privilege licenses that an applicant is required to obtain pursuant to the license and privilege tax ordinance of the town.

(2003 Code, ' 5-8.10)

**' 5-8.11 PROHIBITED PRACTICES.**

(A) It shall be unlawful to touch any individual customer in a manner as to result in sexual orgasm by the individual being touched or massaged.

(B) It shall be unlawful for any employee to touch any individual customer in a manner which is reasonably calculated to sexually stimulate or arouse the person being touched or massaged. Intentionally touching of the genitals of a person constitutes prima facie evidence of an attempt to sexually arouse or stimulate.

(C) Massage businesses shall be prohibited as primary uses and as accessory uses to any licensed adult establishment.

(2003 Code, ' 5-8.11)

**' 5-8.12 ENFORCEMENTcGENERALLY.**

It shall be the duty of the Chief of Police to periodically inspect the premises of any permittee under this article, to determine any violations of its provisions, and to otherwise enforce this article.

(1989 Code, ' 11-57; 2003 Code, ' 5-8.12)

**' 5-8.13 SAMEcINSPECTIONS.**

Officials of the Police Department and other authorized municipal officials shall, from time to time, make an inspection of each adult establishment for the purpose of determining that the provisions of this article any applicable state laws are complied with. Authorized officials shall have access to the premises of each establishment during hours of operation for inspection purposes.

(1989 Code, ' 11-58; 2003 Code, ' 5-8.13)

