

TITLE IX: GENERAL REGULATIONS

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CHAPTER 90: ABANDONED, NUISANCE AND JUNKED MOTORIZED VEHICLES

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§ 90.01 ADMINISTRATION AND ENFORCEMENT.

The Police Department and Town Building Inspector (or other public official) of the town shall be responsible for the administration and enforcement of this chapter. 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 property owned by the town. The Town Building Inspector (or other public official) shall be responsible for administering the removal and disposition of abandoned, nuisance or junked motor vehicles located on private property. The town may, on an annual basis, contract with private tow truck operators or towing businesses to remove, store and dispose of abandoned vehicles, nuisance vehicles and junked motor vehicles in compliance with this chapter and applicable state laws. Nothing in this chapter shall be construed to limit the legal authority or powers of officers of the Town Police Department and Fire Department in enforcing other laws or in otherwise carrying out their duties.

(1990 Code, §90.01) (Ord. passed - -)

§ 90.02 DEFINITIONS.

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

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

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

AUTHORIZING OFFICIAL. Supervisory employee of the Police Department or the Town Building Inspector (or other public official), respectively, designated to authorize the removal of vehicles under the provisions of this chapter.

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

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

MOTOR VEHICLE or **VEHICLE.** All machines designed or intended to travel over land 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 or other insects or a breeding ground or harbor for rats, snakes or other pests;
- (2) A point of heavy growth of weeds or other noxious vegetation over eight inches in height;
- (3) A point of collection of pools or ponds of water;
- (4) A point of concentration of combustible items such as gasoline, oil or other flammable or explosive materials including but not limited to boxes, paper, old clothes, rags, refuse or any other combustible materials or objects of a like nature;
- (5) One which parts thereof may fall and injure members of the public or one which may have parts which

fall or be closed and become an area of confinement which may not be released for opening from the inside;

(6) One which is so situated and located that there is a danger of the vehicle falling, rolling, turning over or creating an unsafe movement such as unattended, blocked or jacked vehicles;

(7) One which is a point of collection of garbage, food waste, animal waste or any other rotten or putrescible matter of any kind;

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

(9) Any other vehicle specifically declared a health and safety hazard and a public nuisance by the Town Manager.
(1990 Code, §90.02) (Ord. passed - -)

§ 90.03 ABANDONED VEHICLE PROHIBITED; 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 in §90.02.

(B) Upon investigation, proper officials of the town may determine that a vehicle is an abandoned vehicle and order the vehicle removed.
(1990 Code, §90.03) (Ord. passed - -) Penalty, see §10.99

§ 90.04 NUISANCE VEHICLE PROHIBITED; REMOVAL AUTHORIZED.

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

(B) Upon investigation, the Town Building Inspector (or other public official) may determine and declare that a vehicle is a health or safety hazard and a *NUISANCE VEHICLE*, as defined in §90.02, and order the vehicle removed.
(1990 Code, §90.04) (Ord. passed - -) Penalty, see §10.99

§ 90.05 JUNKED MOTOR VEHICLE REGULATED; REMOVAL AUTHORIZED.

(A) *Unlawful to leave junked motor vehicle.* It shall be unlawful for the registered owner or person entitled to the possession of a 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 to be removed.

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(B) *Unlawful to have more than one junked motor vehicle.* It shall be unlawful to have more than one junked motor vehicle, as defined in §90.02, on the premises of public or private property and that single, permitted junked motor vehicle must strictly comply with the location and concealment requirements of this section.

(C) *Location and concealment requirements.* It shall be unlawful for anyone to fail to comply with the location requirements or the concealment requirements of this section.

(D) *Removal of junked motor vehicles.* Subject to the provisions of division (E) below, upon investigation, the Town Building Inspector (or other public official) may order the removal of a junked motor vehicle as defined in §90.02 after finding in writing that the aesthetic benefits of removing the vehicle outweighs the burdens imposed on the private property owner. The finding shall be based on a balancing of the monetary loss of the apparent owner against the corresponding gain to the public by promoting or enhancing community, neighborhood or area appearance. The following among other relevant factors may be considered:

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

(E) *Permitted concealment or enclosure of junked motor vehicle.*

(1) (a) One junked motor vehicle, in its entirety, can be located in the rear yard as defined by Chapter 156 if the junked motor vehicle is entirely concealed from public view from a public street and from abutting premises by an acceptable canvas covering.

(b) The Town Building Inspector (or other public official) has the authority to determine whether any junked motor vehicle is adequately concealed as required by this provision. The canvas covering must remain in good repair and must not be allowed to deteriorate. The canvas covering or enclosure must be compatible with the objectives stated herein.

(2) If there is more than one junked motor vehicle, the following applies. Any other junked motor vehicle must be kept in a garage or building structure that provides a complete enclosure so that the junked motor vehicle cannot be seen from a public street or abutting property. A garage or building structure means either a lawful, nonconforming use or a garage or building structure erected pursuant to the lawful issuance of a building permit and has been constructed in accordance with all zoning and building code regulations.

(1990 Code, §90.05) (Ord. passed - -) Penalty, see §10.99

**§ 90.06 REMOVAL OF ABANDONED, NUISANCE OR JUNKED MOTOR VEHICLES;
PRE-TOWING NOTICE REQUIREMENTS; EXCEPTIONS.**

(A) *Removal of vehicle.* Except as set forth in division (B) below, a vehicle to be removed because it has been abandoned, declared to be a nuisance vehicle or is a junked motor vehicle which has been ordered removed shall be towed only after notice to the registered owner or person entitled to possession of the vehicle.

(1) In the case of a vehicle to be towed or removed because it has been declared to be a nuisance vehicle or it is a junked motor vehicle which has been ordered removed by the Town Building Inspector (or other public official), if the names and mailing addresses of the registered owner or person entitled to the possession of the vehicle, or the owner, lessee or occupant of the real property upon which the vehicle is located can be ascertained in the exercise of reasonable diligence, the notice shall be given by first-class mail. The person who mails the notice shall retain a written record to show the name and address to which mailed, and the date mailed.

(2) 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 affixed or mailed, unless the vehicle is moved by the owner or legal possessor prior to that time.

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

(B) *Exceptions to prior notice requirement.* The requirement that notice be given prior to the removal of an abandoned, nuisance or junked motor vehicle may, as determined by the authorizing official, be omitted in those circumstances where there is 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:

(1) *Vehicles abandoned on the streets.* For vehicles left on the public streets and highways, the circumstances include, and the Town Council hereby determines that immediate removal of the vehicles may be warranted when they are:

- (a) Obstructing traffic;
- (b) Parked in violation of an ordinance prohibiting or restricting parking;
- (c) Parked in a no-stopping or standing zone;
- (d) Parked in loading zones;

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- (e) Parked in bus zones; and
- (f) Parked in violation of temporary parking restrictions imposed under code sections.

(2) *Other abandoned or nuisance vehicles.* With respect to abandoned or nuisance vehicles left on town-owned property, other than the streets and highways, and on private property, the vehicles may be removed without giving prior notice only in those circumstances where the authorizing official finds a special need for prompt action to protect and maintain the public health, safety and welfare. By way of illustration and not of limitation, the circumstances include vehicles blocking or obstructing ingress or egress to businesses and residences, vehicles parked in such a location or manner as to pose a traffic hazard and vehicles causing damage to public or private property. (1990 Code, §90.06) (Ord. passed - -)

§ 90.07 REMOVAL OF VEHICLES; POST-TOWING NOTICE REQUIREMENTS.

(A) Any vehicle which has been determined to be an abandoned vehicle or a nuisance vehicle or is a junked motor vehicle which has been ordered removed may, as directed by the town, be removed to a storage garage or area by the tow truck operator or towing business contracting to perform the services for the town. Whenever a vehicle is removed, the authorizing town official shall immediately notify the last known registered owner of the vehicle, 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 probable cause hearing on the removal.

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

(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 removal of the vehicle.

(D) Whenever an abandoned, nuisance vehicle or junked motor vehicle is removed, and the vehicle has no valid registration or registration plates, the authorizing town official shall make reasonable efforts, including checking the vehicle identification number, to determine the last known registered owner of the vehicle and to notify him or her of the information as set forth in divisions (A)(1) through (5) above.

(1990 Code, §90.07) (Ord. passed - -)

§ 90.08 RIGHT TO PROBABLE CAUSE HEARING BEFORE SALE OR FINAL DISPOSITION OF VEHICLE.

(A) After the removal of an abandoned vehicle, nuisance vehicle or a junked motor vehicle, the owner or any other person entitled to possession is entitled to hearing for the purpose of determining if probable cause existed for removing the vehicle, unless the person requested and received a hearing under §90.06(A)(3).

(B) 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.

(C) 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. Chapter 20, as amended.
(1990 Code, §90.08) (Ord. passed - -)

§ 90.09 REDEMPTION OF VEHICLE DURING PROCEEDINGS.

At any stage in the proceedings, including before the probable cause hearing, the owner may obtain possession of the removed vehicle by paying the towing fee, including any storage charges, or by posting a bond for double the amount of the fees and charges to the tow truck operator or towing business having custody of the removed vehicle.
(1990 Code, §90.09) (Ord. passed - -)

§ 90.10 SALE AND DISPOSITION OF UNCLAIMED VEHICLE.

Any vehicle declared to be an abandoned vehicle, a nuisance vehicle or is a junked motor vehicle which has been ordered removed under this chapter which is not claimed by the owner or other party entitled to possession, will be disposed of by the tow truck operator or towing business having custody of the vehicle. Disposition of such a vehicle shall be carried out in coordination with the town and in accordance with G.S. Chapter 44A, Article 1.
(1990 Code, §90.10) (Ord. passed - -)

§ 90.11 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 a vehicle is declared a nuisance vehicle or is a junked motor vehicle which has been ordered removed by the Town Building Inspector (or other public official). 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.
(1990 Code, §90.11) (Ord. passed - -)

§ 90.12 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 or nuisance vehicle, for disposing of the vehicle as provided in this chapter.

(1990 Code, §90.12) (Ord. passed - -)

§ 90.13 EXCEPTIONS.

Nothing in this chapter 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 an enclosed building;

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

(D) Which is an appropriate storage place or depository maintained in a lawful place and manner by the town.
(1990 Code, §90.13) (Ord. passed - -)

§ 90.14 PROHIBITED REMOVAL OF IMPOUNDED VEHICLE.

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

(1990 Code, §90.14) (Ord. passed - -) Penalty, see §10.99

CHAPTER 91: ANIMALS

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GENERAL PROVISIONS**§ 91.01 RUNNING-AT-LARGE.**

It shall be unlawful for any person to turn out or cause to be turned out any chicken, duck, turkey or guinea fowl, or for any person to allow his or her chicken, duck, turkey or guinea fowl to run-at-large within the town.
(1990 Code, §91.01) Penalty, see §91.99

§ 91.02 KEEPING OF HOGS PROHIBITED.

It shall be unlawful for any entity to keep, maintain, house, board, or otherwise cause to remain, permissibly or otherwise, upon any tract or parcel of land owned by said entity, any species of hog, pig, swine, or similar animal within the corporate limits of the town of Benson.
(1990 Code, §91.02) Penalty, see §91.99

§ 91.03 LIVESTOCK.

(A) *Livestock defined.* For the purpose of this section, LIVESTOCK shall include: any species of cattle or other bovines, sheep, horses or other equines, ponies, donkeys, mules or any other animal weighing more than 200 pounds. Livestock shall not include any species of hog, pig, swine, or similar animal, nor shall Livestock include any species of domesticated canine or feline..

(B) *Keeping certain livestock prohibited.* It shall be unlawful to maintain or keep livestock, as defined hereinabove, on any tract or parcel of land, or within any pen, stable, or other enclosure or structure situated thereon, within the corporate limits of the Town of Benson.

(1) *Exception for tracts of one acre or more.* An entity owning or leasing any tract or parcel of land containing one acre or more gross total contiguous area may accommodate, maintain, and keep one animal, deemed LIVESTOCK herein, per acre,. Provided, however, that no animal shall be maintained, housed, kept, boarded, or otherwise allowed to remain within one hundred (100) feet of any dwelling or other structure used for human habitation by any entity other than the owner and immediate family of the owner of the animal, deemed livestock herein. Any animal deemed livestock herein shall be housed, kept, and maintained in a structure approved by the Zoning and Planning Administrator. This approval must be granted prior to the keeping, housing, or maintaining of any animal deemed livestock herein within said structure,

(2) *Exception for Mule Days Celebration.* Wednesday through Saturday of the Annual Benson Mule Days Celebration Week in September, horses and other equine species, and only horses and other equine species, shall be exempt from section (B)(1) of this ordinance.

(3) *Effect upon existing livestock.* Any person, firm or corporation keeping livestock within the corporate limits of the town that does not conform to this section shall remove said livestock within 120 days of the effective date of this section. (Ordinance revision passed 6-24-2010)

(C) *Unlawful to ride or walk livestock on or along the streets.*

(1) It shall be unlawful for any person to ride or walk livestock or permit livestock to walk or be ridden on or along public streets or street right-of-ways between the hours of 5:00 p.m. and 7:00 a.m. Eastern Standard Time and 8:00 p.m. and 7:00 a.m. daylight savings time, within the corporate limits of the town.

(2) It shall be unlawful for any person to ride or walk livestock or permit livestock to walk or be ridden on or along either Main Street or Wall Street within the town, except as follows:

(a) It shall not be unlawful for any person to ride or walk livestock or permit livestock to walk or be ridden on streets that cross either Main Street or Wall Street in the town;

(b) It shall not be unlawful for any person to ride or walk livestock or permit livestock to walk or be ridden on Main Street or Wall Street in the town during the hours of the annual Mule Days Celebration Parade in the town. However, the use of Main Street and Wall Street in the town shall be in accordance with the parade permit for the Mule Days Celebration; and

(c) It shall not be unlawful for any person to ride or walk livestock or permit livestock to walk or be ridden on South Wall Street between its intersection with West Brocklyn and the southern town limits of the town during the Mule Days Celebration.

(D) It shall be unlawful at all times for any person to ride or walk livestock, or to permit livestock to walk or to be ridden upon private property within the corporate limits of the town without the express written consent of the owner of the property.

(E) It shall be unlawful at all times for any person having control or ownership of livestock to permit the livestock to run-at-large within the corporate limits. For purposes of this provision, the phrase ***TORUN-AT-LARGE*** shall mean to walk or roam without restraint or confinement, either by a rider or through some rope, chain, fence, pen or other enclosure.

(F) It shall be unlawful at all times for any person to ride or walk livestock, or permit livestock to walk or to be ridden on the sidewalks within the corporate limits of the town.

(G) All cow lots and stables, all horse and mule lots and stables shall be well drained and littered by those in possession of them. Every period of two days the failure and neglect to comply with this regulation in the interest of sanitary conditions shall continue after notice from the Town Manager or a police officer shall be a separate offense. (1990 Code, §91.03) (Ord. passed 5-14-2002; Ord. passed 12-28-2006) Penalty, see §91.99

§ 91.04 FOWL.

(A) It shall be unlawful for any person, firm or corporation to keep or maintain any fowl within the corporate limits of the Town, except as provided in this section.

(B) *Keeping of certain fowl permitted.* No more than ten (10) chickens, hens only, shall be permitted to be kept or maintained within the corporate limits of the Town. An enclosure approved by the Building Inspector shall be provided to prohibit running-at-large. Enclosures shall be located in the rear yard only, not closer than 25 feet to any property line nor closer than 50 feet from another residence or structure used for human habitation by any person other than the owner and immediate family of the owner of the fowl.

(Ordinance revised 6-24-2010)

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DOGS AND CATS

§ 91.15 DEFINITIONS.

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

AT-LARGE. Off the premises of the owner, and not under control either by leash, cord, chain or otherwise; or without the immediate and effective control of the owner or other responsible person.

CAT. Both male and female, more than four months old.

DOG. Both male and female, more than four months old.

OWNER. Any person, firm or corporation owning, keeping or harboring a dog or cat, and for the purpose hereof, the head of a household shall be deemed to be the owner in respect to any dog or cat or dogs or cats, owned, kept or harbored by any person residing in the household and kept on the premises.

VICIOUS ANIMALS. Any animal that has made an unprovoked attack on a human by biting or in any manner causing abrasions or cuts on the skin or one which attacks more than one time on humans, farm stock or other pets. (1990 Code, §91.15) (Ord. passed 2-11-1975; Ord. passed 11-14-1989)

§ 91.16 LICENSE TAX REQUIRED; TERM OF LICENSE.

The dog license tax levied by this chapter shall be for the privilege of keeping, harboring and maintaining the dog as referred to in §91.15 within the town, and the dog license shall expire at the end of the ensuing tax listing period. (1990 Code, §91.16) (Ord. passed 2-11-1975)

§ 91.17 LICENSING, LISTING AND REGISTRATION REQUIRED; COLLECTION OF TAX.

(A) All dogs four months or more of age on January 1 of any year which shall be kept, harbored or maintained by the owner within the town, shall be listed and registered by the owner, or by his or her duly authorized agent, with the tax lister, each and every year during the tax listing period. The owner, or his or her agent, shall inform the tax lister of the sex of any dog, and if any dog shall be a female, whether it has been spayed or not. The owner of any dog shall pay an annual license tax to the town on each dog listed and registered in accordance with the provisions of this chapter, and the tax shall be charged and collected in the same manner as ad valorem taxes on personal property are collected.

(B) In addition, dog owners will register their dogs with the Town Manager annually. The Manager will be provided with information concerning the size, age, breed, color, sex and legal residence of the animal and its owner and the like. A service charge will be made by the Town Manager who in return will provide the owner with a suitable dog license tax tag. The license period shall extend from January 1 to December 31 of every calendar year. Grace period for annual registration will extend through February 15. It shall be unlawful for any dog owner to:

(1) Permit any dog over four months old to appear or be on any street, park or public way of the town or in any public place therein unless the dog is wearing a collar or harness to which is attached a current rabies vaccination tag and a current town dog license tax tag which have been issued for that dog; and

(2) Fail to provide any dog over four months old with a current town license as provided herein.

(C) The provisions of this section shall not apply to dogs whose owners are nonresidents within the town for a period of less than 30 days, nor to dogs brought into the town for the purpose of participating in any dog show.

(1990 Code, §91.17) (Ord. passed 2-11-1975) Penalty, see §91.99

§91.18 AMOUNT OF LICENSE TAX.

(A) The dog license tax required to be paid for a dog license issued under this chapter shall be \$1 for each male or spayed female, and \$2 for each un-spayed female.

(B) Service charge for providing a suitable dog license tax tag in the amount of \$1 will be collected by the Town Manager at the time the animal is registered and license tag is issued.

(1990 Code, §91.18) (Ord. passed 2-11-1975)

§91.19 LICENSE AND VACCINATION TAGS; REPLACEMENT; COSTS.

Replacement license tax tags can be obtained from the Tax Collector upon payment of \$1. If any dog owner, as defined in §91.15, has paid for and procured the dog license tax tag and/or the rabies vaccination tag, and the dog has been taken to the animal shelter by reason of the loss of either of the tags, the owner of the dog shall have the privilege of identifying his or her dog and providing the payment for and procurement of the tags prior to the date the dog was taken up, and, in that event, the dog shall be returned to the rightful owner upon the payment of \$10 as the cost of taking the dog to the animal shelter.

(1990 Code, §91.19) (Ord. passed 2-11-1975; Ord. passed 11-14-1989)

§91.20 NO REFUNDS PERMITTED.

No refund shall be made on any dog license tax issued under the provision of this chapter because of death of the dog or the owner's leaving the town before the expiration of the license period or otherwise.

(1990 Code, §91.20) (Ord. passed 2-11-1975)

§ 91.21 DOGS AND CATS RUNNING-AT-LARGE.

It shall be unlawful for a dog or cat owner to permit a dog or cat to run-at-large.

(1990 Code, §91.21) (Ord. passed 2-11-1975) Penalty, see §91.99

§91.22 KEEPING STRAY DOGS OR CATS; FAILURE TO SURRENDER.

(A) It shall be unlawful for any person in the town knowingly and intentionally to harbor, feed, keep in possession by confinement, or otherwise, any dog or cat, which does not belong to him or her, unless he or she has, within 24 hours from the time the dog or cat came into his or her possession, notified the Police Department. Upon receiving the notice, the Police Department shall take the dog or cat and place it in the animal shelter and shall deal with it, as provided in §91.23

(B) It shall be unlawful for any person to refuse to surrender any stray dog or cat to an authorized representative of the Police Department upon demand of the representative.

(1990 Code, §91.22) (Ord. passed 2-11-1975) Penalty, see §91.99

§ 91.23 IMPOUNDMENT PROCEDURE.

(A) Any dog or cat within the town without an owner, as defined in ' §91.17 through 91.20, or any dog or cat running-at-large, or any dog within the town whose owner fails to pay for and procure a dog license tax tag, and fails to have the dog or cat vaccinated by a licensed veterinarian in accordance with the state laws or any dog appearing

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within the town without either of the tags, shall be taken by the Police Department and confined in the animal shelter for a period of one day for redemption by the owner. If the dog or cat is not redeemed by the owner within the period of one day, it shall be turned over to the County Dog Warden.

(B) In order for the owner to redeem a dog or cat, the owner must pay for and procure a town dog license tax tag, if he or she does not have one for the dog, and have the dog or cat duly vaccinated for rabies by an authorized veterinarian, if it has not been currently vaccinated before the redemption date, and shall pay a penalty of \$10 and likewise, shall pay the cost to the Police Department for taking and caring for the dog or cat, as follows: \$10 for capture and \$2 a day for feeding.

(1990 Code, §91.23) (Ord. passed 2-11-1975; Ord. passed 11-14-1989)

§ 91.24 VACCINATIONS.

It shall be unlawful for the owner of any dog or cat more than four months of age to keep, harbor or maintain the dog or cat unless it shall have been vaccinated with anti-rabies vaccine within one year preceding the date on which the dog or cat is kept, maintained or harbored.

(1990 Code, §91.24) (Ord. passed 2-11-1975) Penalty, see §91.99

§91.25 RABIES PROCEDURE.

If any dog or cat is believed to have rabies, or to have been exposed to rabies, or if any person has been bitten by a dog or cat suspected of having rabies, or if any dog or cat has bitten any person so as to break the skin, the dog or cat, by the authority of the Police Department, shall be removed from the owner's premises and placed under observation of a veterinarian at the expense of the owner of the dog or cat for a period of ten days. In lieu of the foregoing provisions of this section, the dog or cat may be destroyed with the written consent of the owner.

(1990 Code, §91.25) (Ord. passed 2-11-1975; Ord. passed 12- -1994)

§91.26 BARKING DOGS.

Acts deemed public nuisances. Any dog which habitually or repeatedly chases, snaps at, attacks or barks at pedestrians, bicyclists or vehicles and the like, or turns over garbage cans, damages gardens, vegetable or flower, damages plant beds, damages livestock or conducts itself so as to be a public nuisance.

(1990 Code, §91.26) (Ord. passed 2-11-1975; Ord. passed 11-14-1989) Penalty, see §91.99

§91.27 DUTY OF OWNER: DOG BITES AND ANIMAL WASTE.

(A) Any dog which has ever bitten any person without provocation so as to break the skin, to the knowledge of the person owning, keeping, having charge of, sheltering, feeding, harboring or taking care of the dog, must be securely muzzled or must be chained in a secure enclosure (enclosure must have concrete floor, must have top or cover over entire closure and enclosure must be securely locked), or be accompanied by a person who, by means of a leash, has the dog firmly under control at all times. Violation of this provision will result in the dog being destroyed by animal control officers.

(B) (1) *Public property.* It shall be unlawful for the owner of any animal to fail or refuse to remove feces deposited by the animal on any street, sidewalk, park, or other publicly owned area.

(2) *Private property.* It shall be unlawful for the owner of any animal to fail or refuse to remove feces deposited by the animal on any private property.

(3) *Removal mandatory, duty of owner.* It shall be unlawful for any owner, accompanied by their animal, to leave their personal property without being equipped to remove animal feces. The owner must have in their possession

a plastic bag, gloves, or some other means to remove deposited animal waste, while they are away from their personal property.

(1990 Code, §91.27) (Ord. passed 2-11-1975; Ord. passed 12- -1994; Ord. passed 6-8-2008) Penalty, see §91.99

§91.28 VICIOUS DOGS.

It shall be unlawful for any person to keep any vicious, fierce or dangerous animal within the town, unless it is securely muzzled or confined within a secure building or enclosure (enclosure must have concrete floor, must have top or cover over entire enclosure and enclosure must be securely locked).

(1990 Code, §91.28) (Ord. passed 2-11-1975; Ord. passed 11-14-1989; Ord. passed 12 - -1994) Penalty, see §91.99

§91.29 TEASING AND MOLESTING DOGS OR CATS.

It shall be unlawful for any person to tease, molest, bait or in any way bother any dog or cat not belonging to him or her or legally under his or her control.

(1990 Code, §91.29) (Ord. passed 2-11-1975) Penalty, see §91.99

§91.30 HUMANE TREATMENT; RESPONSIBILITY OF OWNERS.

(A) Owners of licensed dogs or cats are responsible for the acts of their dogs or cats. The owner of any dog or cat who commits a nuisance upon the property of another person, or who damages another person's property or person, is fully responsible and accountable for these acts.

(B) The owners of animals shall provide humane shelter from heat, cold, rain, wind and snow and shall provide food and water adequate to keep the animals in good health and comfort. All animals must be given opportunity for vigorous daily exercise. All animals must be provided by their owners with veterinary care when needed to prevent suffering. No person shall poison or maim any animal, nor may any animal be abandoned. Unwanted animals may be given to the Dog Warden or Police Department.

(C) Whenever the Dog Warden or police officer encounters a stray animal suffering pain, he or she shall take the animal to a veterinarian where the cost of any care or treatment shall be borne by the owner. If ownership of the animal cannot be determined, the Warden shall act in accordance with instructions from the Town Manager.

(1990 Code, §91.30) (Ord. passed 2-11-1975) Penalty, see §91.99

§91.31 INJURING DOGS OR CATS WITH VEHICLE; NOTICE REQUIRED.

It shall be unlawful for any person injuring a dog or cat by running over, or into same or coming into contact with same, with an automobile, motorcycle, bicycle or other vehicle, to fail to notify immediately the owner of the dog or cat, or the Police Department.

(1990 Code, §91.31) (Ord. passed 2-11-1975) Penalty, see §91.99

§ 91.32 DOGS IN HEAT.

No person owning or having any bitch shall knowingly permit her to run-at-large during the erotic stage of copulation.

(1990 Code, §91.32) (Ord. passed 2-11-1975) Penalty, see §91.99

§91.33 NUMBER OF DOGS AND CATS RESTRICTED.

It shall be unlawful for any person, firm or corporation in the town to keep or to allow more than four dogs or cats to be kept on any premises under their control within the Town of Benson.

(1990 Code, §91.33) (Ord. passed 2-11-1975) Penalty, see §91.99

§ 91.34 NOTICE OF VIOLATIONS; PROCEDURE.

(A) *Delivering notice.* The Town Humane Officer is authorized to deliver or mail to any violator of §91.17 a notice directing the violator to answer the charge against him or her on or before a day and hour to be named in the notice, which shall be not less than 72 hours after delivery or mailing of the same, before the Chief of Police at the Police Department, and he or she shall, at the same time, send a copy of the notice to the Police Department and shall retain a copy for himself or herself.

(B) *Warning notice.* If a violator of §91.17 does not appear in response to the notice in division (A) above at or before the day and hour named in the notice, the Police Department shall send to the violator a notice informing him or her of the violation and warning him or her that he or she will be held responsible to appear in answer to the notice, and that in the event the notice is disregarded for a period of five days, a complaint will be filed and warrant of arrest issued. Warning notices will be delivered by the police and a receipt required.

(C) *Arrest on default.* In the event any person fails to comply with a warning notice as provided in division (B) above, the Police Department shall forthwith have a complaint entered against the person and secure and issue a warrant for his or her arrest.

(D) *Dog must wear rabies tag.*

(1) It shall be unlawful for any dog owner to fail to comply with the state laws relating to the control of rabies, and it shall be unlawful for any dog owner to fail to provide any dog he or she owns with a suitable collar or harness for the wearing of the rabies tag to be issued upon compliance with state law, and to take the action as is necessary to see that the tag is worn by the dog at all times except as otherwise, provided in this chapter. It is the purpose of this chapter to supplement the state law by providing a procedure for the enforcement of state laws relating to rabies control.

(2) In addition to all other penalties prescribed by law, a dog is subject to the impoundment in accordance with the provisions of this chapter if the dog is found not to be wearing a currently valid rabies tag.

(3) It shall be unlawful for any person to use for any dog or cat a vaccination tag issued for a dog or cat other than the one using the tag.

(4) It shall be unlawful for an owner to fail to show proof of current inoculation against rabies (Hydrophobia) with an approved vaccine for his or her dog and cat.
(1990 Code, §91.34) (Ord. passed 2-11-1975; Ord. passed 11-14-1989) Penalty, see §91.99

§ 91.99 PENALTY.

(A) Whoever violates any of the provisions of this chapter for which another penalty has not been provided, shall be fined \$50 per violation.

(B) (1) Violation of any provision of § 91.03 shall subject the offender to a civil penalty in the amount of \$50 to be recovered by the town. Violators shall be issued a written citation which must be paid within 72 hours.

(2) Each day's continuing violation of § 91.03 shall be a separate and distinct offense.

(3) Notwithstanding division (B)(1) above, § 91.03 may also be enforced by appropriate equitable remedies in issuing from a court of competent jurisdiction, or by criminal penalties as provided in G.S. § 14-4. (1990 Code, § 91.99) (Ord. passed 5-9-1978; Ord. passed 6-26-1986; Ord. passed 12- -1994)

CHAPTER 92: CEMETERIES

Section

General Provisions

92.01 Maintenance of town cemetery

Rules and Regulation

92.15 Conveyances and contractual restrictions

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92.26 Special instructions

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GENERAL PROVISIONS

§92.01 MAINTENANCE OF TOWN CEMETERY.

The town maintenance crew shall maintain the old town cemetery.
(1990 Code, § 92.01)

RULES AND REGULATION**§ 92.15 CONVEYANCES AND CONTRACTUAL RESTRICTIONS.**

(A) For the purpose of this document, a plat is made up of several grave plots.

(B) (TOBC), or the Town of Benson Cemetery.

(C) Owners of grave plots in the cemetery are only granted an easement for burial purposes and this easement is subject to the rules and regulations of the Town of Benson Cemetery TOBC, now or hereafter adopted, and every person acquiring an interest in a grave plot, or who permits an interment in TOBC shall have the interest subject to the restrictions and reservations herein made including the right reserved to the Town of Benson to amend at any time without notice its rules and regulations.

(D) No certificate of ownership will be issued for any grave plot until the purchase price for the grave plot has been paid in full. No partial payments will be allowed. No interment will be made until the purchase price has been paid in full. Price of grave plots: \$500 per grave plots for residents living within the corporate limits of the Town of Benson. Six hundred dollars per grave plot for residents living outside the corporate limits of the Town of Benson. Baby grave plots (up to five years in age) will be \$250 for residents living inside the corporate limits of the Town of Benson and \$300 for residents living outside the corporate limits of Benson. If receiving public assistance and living inside the corporate limits of the Town of Benson and having a caseworker, then an individual may be buried at a reduced rate not less than \$250. This is not allowable to residents living outside the corporate limits of the Town of Benson. A \$250 permanent marker deposit (except as modified by § 92.26(G)), which is refundable if a stone is erected within six months of date of death. (This fee is payable by both inside and outside residents of Benson in addition to the price of the grave plots.) Note: the Town of Benson may allow interment in the Town of Benson Cemetery at no cost, providing it has been determined by the Johnston County Social Service that the deceased person is an unclaimed body and that the Town of Benson has determined that the deceased person was considered a resident of the Town of Benson at time of death. To be considered a resident, a person must have been currently residing inside the town limits at the time of death, or must have lived within the Town of Benson limits for three years prior to death, but was currently living in a rest home, nursing home or the home of a family member who was caring for the person at the time of death.

(E) All prices are subject to change without notice. The Town of Benson will not be liable for any costs in the opening or closing of any burial sites, erecting of stones and markers, or any injury that may occur on its property.

(F) The Town of Benson reserves the right to refuse to sell or transfer any grave plot to any person to whom they do not desire to sell or transfer provided that the same refusal to sell or transfer is not due to the race, color, religion, sex, handicapped status, familial status or national origin of the proposed purchaser.

(G) The purchase price and terms of sale for all grave plots or any services furnished by TOBC, shall be established by the Board of Commission of the Town of Benson.

(H) All sales of grave plots are sold for the sole purpose of interment of human remains and the purchase or sale thereof for speculative purposes is expressly prohibited. The Town of Benson expressly reserves the right to use any grave plot for an interment service or erection of a memorial on an adjacent grave plot, including the right of passing over and standing on any grave plot and the transportation of necessary burial and maintenance equipment by funeral directors and their employees or Town of Benson employees.

(I) No person will be recognized by the Town of Benson as owner or part owner of any grave plot unless that person's name appears on the records of the Town of Benson as owner or part owner thereof.

(J) Any purchaser desiring to surrender his or her rights may do so by delivering his or her certificate for the transfer or re-sale to the Town of Benson and not to another individual. Surrendered plots may only be sold for the original purchase price with no accrued interest and the Board of Commissioners must approve this. The Town of Benson will recognize no reservation for future sale of a grave plot. Grave plots will not be sold for the purpose of resale.

(K) The Town of Benson will not be responsible for any loss or damage done to any memorial, plant, vase or any property within TOBC of a grave plot owner brought about by the elements, thieves, trespassers, operation of automobiles by visitors in TOBC, Act of God, common enemy, vandals, strikers, malicious mischief makers, children, explosions, unavoidable accidents, invasions, riots or civil authorities or persons within TOBC, whether the damage be direct or collateral, and in no event will the Town of Benson be responsible for loss, destruction or removal of anything brought into or allowed to remain in TOBC in violation of any rule of TOBC.

(L) The town shall not have any responsibility or liability for accidents or damage to headstones, vases, monuments or mausoleums resulting from the ordinary hazards of cemetery work nor shall the town have any liability for accident or damage to person or property due to defects of machinery, implements, tool and equipment used in its work or due to the falling in of graves.

(Ord. passed 2-14-2006; Ord. passed 4-11-2006)

§ 92.16 GENERAL RULES.

(A) All persons when within TOBC are reminded that the grounds thereof are sacredly dedicated to the interment and repose of the dead and strict observance of the decorum due to the place will be expected and required of all.

(B) No burials will be allowed on Easter Sunday or Christmas Day without prior approval of the Town Manager and the payment of any or additional fees that may be required by authorized persons responsible for opening and closing graves.

(C) The Town of Benson reserves the right to determine, establish, modify, alter or change the grade of each and every grave plot, road, driveway, pathway or part thereof, and it shall not be liable to anyone for the action.

(D) No grave plot owner shall make any change or alteration in or on any grave plot including the removal or change in position of any memorial of any kind without the written consent of the Town Manager, or his or her authorized agent. If the change or alteration is made, the Town of Benson will restore the grave plot to its former condition without notice and at the expense of the owner of the grave plot.

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(E) No one, except an employee of the Town of Benson, shall be allowed in TOBC between dusk and dawn.

(F) The following persons and/or things are forbidden in and/or on TOBC property and are subject to be removed or rejected there from (except for the express purpose of attending a funeral):

(1) Children will be excluded at any time, unless accompanied by an adult who will be responsible for their conduct. Children shall not be permitted to play on the lots or lawn, nor climb on headstones, monuments or mausoleums;

(2) Delivery trucks and vehicles or any conveyance generally used for hauling goods or chattels, except vehicles delivering to TOBC flowers, trucks delivering flowers for an interment or to be placed upon a grave, trucks of licensed memorialist and vehicles delivering a body;

(3) Persons passing through TOBC, except for the bona fide purpose of visiting a grave or to attend to TOBC matters with an authorized agent of the Town of Benson;

(4) Persons carrying firearms, except officers of the law or members of a military detail in attendance upon an interment;

(5) Bicycles, motorcycles, sleds, coasters, toy wagons, roller skates, roller blades, skateboards or other similar devices unless a special permit is first issued therefore by the Town Manager or his or her authorized agent. This rule shall not apply to motorcycle police officers;

(6) Any controlled substance or alcohol of any type;

(7) Domesticated animals unless leashed;

(8) Loud, boisterous or obscene language and improper conduct such as, but not limited to: picnicking, lurching, hunting, gathering berries, nuts and fruit, camping, running, romping, playing, loitering or lounging;

(9) Putting or depositing paper, rubbish, dead or wilted flowers, shrubs, plants, branches or any unsightly or unseemly thing on any grave plot, walk, drive or other part of TOBC, except in receptacles provided for that purpose;

(10) Peddling, begging, soliciting or collecting;

(11) The display or distribution of signs, cards, handbills, circulars or anything relating to any business, profession, office or other matter;

(12) Casual visitors to the cemetery who are not members of a funeral procession or party are forbidden to intrude on a funeral party or to loiter about an open grave;

(13) All persons are forbidden to sit on monuments, headstones or mausoleums; and

(14) No fences or walls of concrete, brick, stone or any other material, hedges, wooden or iron trellises, posts and chains for the purpose of enclosure, railing, steps, boxing or borders will be allowed within the cemetery. (Ord. passed 2-14-2006; Ord. passed 4-11-2006) Penalty, see § 10.99

§ 92.17 AUTOMOBILES AND OTHER VEHICLES.

(A) Drivers of automobiles hired to attend a funeral must remain quiet and respectful.

(B) The driving of an automobile or other vehicle in TOBC at a speed in excess of five mph is prohibited.

(C) Driving any automobile or vehicle off a designated drive or parking area is prohibited. Automobiles and vehicles must continue forward to the next intersection of the drive before changing direction.

(D) Driving or leaving any automobile or other vehicle on any driveway within TOBC at the location or in the position as to prevent any other vehicle from passing the same. If so parked or left, the Town of Benson will remove it at the expense of the vehicle owner.

(E) The use of roads and paths in the cemetery as thoroughfares or public highways, either in vehicles or on foot, is prohibited.

(F) No person will be allowed to enter the cemetery except through regular entrance maintained for the public for the purpose and there shall be no driving allowed over the lots or on the lawns under any pretense whatsoever. (Ord. passed 2-14-2006; Ord. passed 4-11-2006) Penalty, see § 10.99

§ 92.18 TREES, SHRUBS, PALMS AND PLANTINGS.

(A) No person, except employees of the Town of Benson, monument dealers or persons having a contract with the Town of Benson, will be allowed to do any work within TOBC.

(B) No grave plot owner shall plant any tree, flower or shrub or sow seed of any kind or have the same planted or sown on his or her grave plot. The Town of Benson has exclusive right and privilege of doing this. Any planting or sowing done within TOBC in violation of this rule will be immediately removed, without notice.

(C) It shall be unlawful for any person to trim, prune or remove any branch from any tree or remove any plant in TOBC, whether on his or her grave plot or not. The Town of Benson will do any needed pruning.

(D) The Town of Benson reserves the right to remove at any time any tree, shrub, flower or plant growing on any grave plot when, in its opinion the same or its roots, branches or any part thereof, is injurious or detrimental to any adjacent grave plot, road, alley, walk or TOBC as a whole, or is dangerous or renders access to any grave plot inconvenient.

(E) Sod, seed, soil, fertilizer, spades, shovels, saws or tools must not be brought into or removed from TOBC except by an employee of the Town of Benson.

(F) It shall be unlawful to break branches from any shrub or tree for the intent to scratch, mar, deface, injure or disturb any monument, head stone, foot stone, building or any other thing being a part of, placed or used in connection with TOBC, or any grave plot, pathway, street or roadway therein.

(Ord. passed 2-14-2006; Ord. passed 4-11-2006) Penalty, see § 10.99

§ 92.19 FLOWERS, FLAGS, ARRANGEMENTS AND THE LIKE.

(A) The placing of flowers, floral or other designs and things in alcohol or other preservatives is prohibited.

(B) No glass vases of any type or wire hangers (except approved hangers which will be located at a central location in TOBC) are allowed on any grave plot and shall be removed without notice and the Town of Benson shall not be responsible for the loss or destruction of the same.

(C) When flags, flowers or wreaths become wilted or unsightly, the same shall be immediately removed. (Ord. passed 2-14-2006; Ord. passed 4-11-2006) Penalty, see § 10.99

§ 92.20 INTERMENTS.

(A) No interment shall be made except in the presence of an authorized agent of the Town of Benson. No interment of any body, or the cremated remains of a body, other than that of a human body, shall be permitted and interment shall be made only during daylight hours.

(B) Licensed funeral directors are required to have outside box/vault on the grave plot not less than three hours before the hour set for the funeral.

(C) The Town of Benson shall exercise supervision and control of the interment and the actual work to be done in connection therewith, in location of all graves in order that the grave plot owner may get the maximum use of the grave plot. No person except the Town of Benson or licensed funeral director may open or close a grave. The Town of Benson reserves the right to furnish all interment equipment. From the time a funeral party enters TOBC, the entire management of the procession, interment and retirement from TOBC shall be under the Town of Benson and/or funeral director, and no one else.

(D) No more than one person shall be interred in a single grave, except mother and infant or two children (ages five and under), and then only when interred at the same time, with the exception of cremated remains. No more than two interments of cremated human remains shall be allowed in one grave plot.

(E) A concrete, steel or PVC permanent outer enclosure for a casket is required for all interments.

(F) All interment charges and fees are payable in advance. All prices are subject to change without notice. The Town of Benson will not be liable for any costs in the opening or closing of any burial sites, erecting of stones and markers or any injury that may occur on its property.

(G) No grave plot owner shall have the right to have a body interred within the bounds of his or her grave plot for any remuneration, sale or hire of space. The Town of Benson may require an affidavit verifying the facts, as stated.

(H) The Town of Benson expressly reserves the right to require that certain interments be held only in the presence of the immediate family or some member of the family of the deceased, licensed funeral director and employees of the Town of Benson. At the time, TOBC shall be closed at the time directed by the Town Manager or his or her authorized agent.

(Ord. passed 2-14-2006; Ord. passed 4-11-2006) Penalty, see § 10.99

§ 92.21 DISINTERMENTS.

(A) The Town of Benson requires written notice of not less than 24 hours daylight time to open a vault or grave for disinterment. Verbal or telephone orders for disinterment will not be accepted.

(B) No grave shall be opened nor any body shall be disinterred without the written permission of the owner of the grave plot or the nearest relative or an order for disinterring is made by a court or competent jurisdiction. The Town of Benson shall not be liable for any action taken by it in compliance with an order signed by a court or competent jurisdiction.

(C) No disinterment shall be done without the express written permission of the Town of Benson at the cost of the persons having the body disinterred, which must be paid for in advance. Permission will be given to the funeral home to pursue the disinterment.

(Ord. passed 2-14-2006; Ord. passed 4-11-2006) Penalty, see § 10.99

§ 92.22 MOUNDS AND GRAVES.

(A) In all instances, the Town of Benson shall determine the location and directions in which graves are placed.

(B) Mounds are not permitted on any grave in TOBC.

(Ord. passed 2-14-2006; Ord. passed 4-11-2006)

§ 92.23 MEMORIALS.

(A) A marker is a small individual memorial placed at either the head or foot of the grave, made of one piece, sometimes referred to as a head-stone, a foot-stone or a tablet.

(B) Markers must be placed at the end of the grave plot furthest from a monument or place assigned for a monument.

(C) Markers on children's graves must be in proportion to the dimensions of the grave.

(D) All lettering must be cut true and regular in form and must conform to the highest grade of workmanship.

(E) No cement product of any kind will be permitted above the ground on any grave plot. The Town Manager, or his or her authorized agent, is authorized and directed to remove it without notification to anyone.

(F) No coping, curbing, fencing, hedging, borders, corner posts or enclosure of any kind will be allowed around any grave plot. The Town of Benson reserves the right to remove the same if erected, planted or placed.

(G) Permanent markers are required. A deposit of \$250 will be paid at the time the grave plot is used. When a suitable marker is erected, this deposit will be refunded. If no marker is erected within six months of burial, the Town of Benson will erect a marker (cost not to exceed deposit) and deposit will be forfeited. Exception: the time for erecting a permanent marker may be extended beyond the six-month period due to unusual circumstances to be determined, approved and documented by the Town Manager.

(H) If a marker is already erected, a deposit of \$150 will be paid at the time the grave plot is used. When proper lettering on the marker has been completed, this deposit will be refunded. If lettering is not completed within six months of burial, the Town of Benson will engrave the marker (cost not to exceed deposit) and deposit will be forfeited.

(Ord. passed 2-14-2006; Ord. passed 4-11-2006) Penalty, see § 10.99

§ 92.24 MONUMENTS.

(A) A monument is a memorial placed either on a family or society plat, but not erected to indicate an individual grave plot.

(B) Any type of monument in good taste and in consistence with existing markers/monuments in TOBC will be acceptable. Monuments will be placed in line with concrete base four inches thick and two inches wide around the entire base at ground level. Foot markers, if desired, will be placed at ground level. No base wider than 18 inches will be allowed.

(Ord. passed 2-14-2006; Ord. passed 4-11-2006) Penalty, see §10.99

§ 92.25 MAUSOLEUMS.

(A) A **MAUSOLEUM** is an over, ground building or tomb containing individual catacombs for the reception of dead human bodies, sometimes called a vault.

(B) No mausoleum shall be erected until plans and the Town of Benson, upon advice of its engineer, has approved specifications.

(C) Two grave sites will be required for a single mausoleum and four grave sites will be required for a double mausoleum.

(D) No mausoleum may be erected on a plat less than 1,500 square feet in area, specifically designated for mausoleums.

(E) No mausoleum may be allowed to cover more than 15% of the total area of the plat.
(Ord. passed 2-14-2006; Ord. passed 4-11-2006) Penalty, see § 10.99

§ 92.26 SPECIAL INSTRUCTIONS.

(A) No monument, marker, bench, sundial, urn or mausoleum can be set or moved in TOBC except by a person, firm or corporation obtaining permission from the Town of Benson to do the work. No permission will be given until satisfactory evidence is furnished that the applicant has complied with the laws with reference to monument dealers and is qualified to perform the work for which employed. Any permission given will be revoked at any time for violation of TOBC rules or other reasons satisfactory to the Town of Benson. The Town of Benson will require of any licensed monument dealer, a bond or liability insurance indemnifying the Town of Benson and the public from any negligence or guaranteeing faithful performance of contracts for construction, which bond or liability insurance contract shall be exhibited to the Town of Benson upon its request.

(B) Only one marker is allowed on a grave plot. This rule applies to the grave plot as originally platted and does not allow monuments on a fraction of a grave plot, or combination of more than one grave plot.

(C) On any plat (where a monument is permitted) having an area of less than 400 square feet, the monument shall not exceed 3-1/2% of the area of the plat and the construction must be within the following limitations: length five feet, width one foot, six inches, height 42 inches.

(D) Where the area is 400 square feet, the monument shall not exceed 4-1/2% of the area and construction must be within the following limitations: length seven feet, width two feet, six inches, height six feet; but the foregoing are maximum dimensions and do not vary the requirements that all designs and sizes must be approved by the Town of Benson. The express reservation is made that on any plat, the Town of Benson may require a smaller size memorial. On plats larger than 400 square feet, a differential as to size of monument in proportion to the size of the plat may be granted. No monument is permitted on any plat having an area less than 200 square feet (usually designated as six

grave plots).

(E) No marker, monument, mausoleum or other memorial shall be erected of any other material, except monumental granite or marble of recognized highest grade, containing no discoloration, flaws or weak spots, and before being set must be examined and approved by the Town of Benson after consultation with an authorized agent. No granite, except gray, white or colors similar to Barre or Winsboro, is permitted. Markers must be hammered down, not less than six inches wash at each end of die and not less than four inches wash on the front and rear die. The top of the base of a monument must be beveled, thus permitting drainage.

(F) The use of stone not of monumental quality to mark a grave plot is expressly prohibited, and the use of monumental stone unless cut or dressed as a monument or marker is prohibited.

(G) No plat or grave plot may be marked except with a monument or marker according to these rules.

(H) The Town of Benson reserves the right to refuse or prohibit the erection of and to remove any marker, monument, mausoleum, urns, benches, sundials or other material, if in the opinion of the town, it is objectionable, whether as regards to size, material design, location or structure, if faulty constructed, if made of inferior materials, if not true to specifications or if not in compliance with the rules of TOBC. Grave plot owners are invited to consult the Town Manager, or his or her authorized agent, upon the subject of memorials and their locations.

(I) No monument for a single grave plot is allowed, only a marker.
(Ord. passed 2-14-2006; Ord. passed 4-11-2006) Penalty, see § 10.99

§ 92.27 CONTRACTUAL SERVICES.

(A) No monument or markers shall be erected without first notifying the Town Manager, or his or her authorized agent, and it shall be done under his or her supervision.

(B) No monument shall be delivered or set any time when the ground is soft, on Saturdays, Sundays or legal holidays, nor on any day when the drives are wet or in soft condition.

(C) Work on monumental construction must cease if an interment service is about to begin until direction is given by the Town Manager or licensed funeral director to resume work.

(D) Ropes or other guys must not be tied to any tree or other object, except by permission from the Town Manager or his or her authorized agent. No post or anchors shall be sunk in the ground except in spots designated. No material shall be hauled over any route nor material placed on any spot except those designated.

(E) The Town of Benson reserves the right to stop all work of any nature, whenever in its opinion:

- (1) Proper preparation therefore has not been made;
- (2) Tools and machinery are insufficient or defective;
- (3) If work is being executed in such manner on the part of TOBC is disregarded; or
- (4) The work is not being executed according to specifications.

(F) Workers must be careful not to injure the turf or planting. When work is completed, the grave plot and surroundings must be left in a clean and acceptable condition. All waste, litter, trash, lumber or other foundation work materials must be immediately removed by the party in charge of the work.

(G) Damage to grave plots, walks, drives, trees or other TOBC property by a monument dealer, or their employees, will be repaired by the Town of Benson and the costs of same charged to the dealer. Failure to pay same immediately, the dealer's permit to do monumental work in TOBC will be revoked.

(H) Materials of any kind must be used or placed immediately and the leaving of any monument or marker in TOBC until erected, or any foundation material, is absolutely prohibited. In order to protect grave plots and paths over which materials are to be moved, workers are required to lay planks. The moving of stones or materials except where the Town Manager or his or her authorized agent directs, and the driving of trucks off the highway or driveway is expressly prohibited.

(I) All work must be done between the hours of dawn and dusk, and must cease at the latter hour.

(J) All bases of monuments must be of sufficient height that when erected shall show a level exposure regardless of the contour of the land.

(Ord. passed 2-14-2006; Ord. passed 4-11-2006) Penalty, see § 10.99

CHAPTER 93: FIRE PREVENTION; FIREWORKS AND EXPLOSIVES

Section

General Provisions

- 93.1 Encumbrances before or on fire exit
- 93.2 Lots to be kept free from fire hazards
- 93.3 Self-service gasoline dispensing devices

Explosives and Firearms

- 93.15 Explosive, corrosive, inflammable or radioactive substances
- 93.16 Firearms

GENERAL PROVISIONS

§ 93.01 ENCUMBRANCES BEFORE OR ON FIRE EXIT.

(A) No person shall, at any time, place any encumbrances of any kind whatsoever before or upon any fire escape, balcony or ladder intended as a means of escape from fire.

(B) It shall be the duty of every member of the Police and Fire Departments who shall discover any fire escape encumbered in any manner to forthwith report the same through his or her Department channels to the Chief of the Fire Department, who shall immediately notify the owners, their agents or tenants, to remove the encumbrance.

(C) The encumbrance shall thereupon be immediately removed.
(1990 Code, § 93.01) Penalty, see § 10.99

§ 93.02 LOTS TO BE KEPT FREE FROM FIRE HAZARDS.

It shall be unlawful for any person to permit or suffer rubbish, refuse or articles of combustibles or inflammable nature to accumulate or remain on any lot or premises.

(1990 Code, § 93.02) Penalty, see § 10.99

§ 93.03 SELF-SERVICE GASOLINE DISPENSING DEVICES.

(A) It shall be lawful to install or use within the town limits within appropriately zoned areas, any self-service attended dispensing devices for the dispensing of gasoline or other fluids of a combustible nature; provided all the devices are designed and operated so as not to require or allow money to be placed in them in payment for the gasoline or other combustible fluids dispensed from them.

(B) It shall be unlawful to install or use within the town limits any self-service unattended dispensing devices for the dispensing of gasoline or any other fluids of a combustible nature.

(1990 Code, § 93.03) (Ord. passed 11-8-1972; Ord. passed 9-25-1978) Penalty, see § 10.99

EXPLOSIVES AND FIREARMS**§ 93.15 EXPLOSIVE, CORROSIVE, INFLAMMABLE OR RADIOACTIVE SUBSTANCES.**

The town may, by ordinance, restrict, regulate or prohibit the sale, possession, storage, use or conveyance of any explosive, corrosive, inflammable or radioactive substances, or any weapons or instrumentalities of mass death and destruction within the town.

(G.S. §160A-183) (1990 Code, §93.15)

§ 93.16 FIREARMS.

The town may, by ordinance, regulate, restrict or prohibit the discharge of firearms at any time or place within the town except when used in defense of person or property or pursuant to lawful directions of law enforcement officers, and may regulate the display of firearms on the streets, sidewalks, alleys or other public property. Nothing in this section shall be construed to limit a town's authority to take action under G.S. Chapter 14, Article 36A.

(G.S. § 160A-189) (1990 Code, § 93.16) Penalty, see § 10.99

CHAPTER 94: HEALTH AND SANITATION

Section

General Provisions

- 94.1 Slaughterhouses or other offensive businesses
- 94.2 Leaving dead animals or other offensive matter within town
- 94.3 Mosquito and fly control
- 94.4 Ditches and drains; maintenance
- 94.5 Unused or abandoned wells
- 94.6 Expectorating

Enforcement; County Health Regulations

- 94.20 Violation of regulations; enforcement
- 94.21 Interference with Health Officer prohibited
- 94.22 Right of entry upon inspection

GENERAL PROVISIONS

§94.01 SLAUGHTERHOUSES OR OTHER OFFENSIVE BUSINESSES.

No person shall establish or operate within the town any tan yard, slaughterhouse, slaughter pen or other business offensive in its nature or detrimental to the public health. It shall be the duty of the manager of any business or occupation to immediately close down the business when notified to do so by the Chief of Police. Each day's operation of the business or vocation after the notification has been served shall constitute a separate offense.

(1990 Code, § 94.01) Penalty, see § 10.99

§94.02 LEAVING DEAD ANIMALS OR OTHER OFFENSIVE MATTER WITHIN TOWN.

(A) No person shall deposit or leave the carcass of any dead fowl or animal or other filth or garbage within the town, or without the town, but so near the corporate limits as to be offensive to the citizens of the town.

(B) It shall be unlawful for any person, firm or corporation to place anywhere within the town any foul vegetable matter, excrement or other offensive object or matter.

(1990 Code, § 94.02) Penalty, see § 10.99

§ 94.03 MOSQUITO AND FLY CONTROL.

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(A) No ditch or depression where water may stagnate shall be allowed within the corporate limits of the town. Any and every person, firm or corporation owning, leasing or renting a vacant lot or lots within the town shall keep the same free and clean of all junk, rubbish and growing weeds, and all receptacles which invite and breed mosquitoes. Any person offending against the provisions of this division who shall, after five-days= notice from the Police Department. fail to remove the junk, rubbish, trash or weeds or fails to fill or drain the ditch or depression on the land under his or her control and place the same in a free and clean condition shall be deemed guilty of violating this division and each day after the five-days= notice shall constitute a separate offense within the meaning of this division.

(B) It shall be unlawful for any person, firm or corporation to permit or have upon his or her premises, whether owned or leased by him or her, any one or more of the following fly-producing, disease-causing conditions, to wit:

(1) Animal manure in quantity which is not securely protected from flies;

(2) Garbage in any quantity which is not securely protected from flies; and

(3) Trash, litter or anything whatsoever in which flies may breed or multiply.

(1990 Code, §94.03) Penalty, see §10.99

§ 94.04 DITCHES AND DRAINS; MAINTENANCE.

It shall be the duty of any person, company or corporation that has opened or shall open any ditch or drain for any purpose whatsoever to keep the same in good condition.

(1990 Code, §94.04) Penalty, see §10.99

§ 94.05 UNUSED OR ABANDONED WELLS.

(A) Any owner of an unused or abandoned well shall fill up the same with earth, brickbats, stone or some like solid substance.

(B) Any person failing to comply with this section within 24 hours after notice by the police to do so shall be deemed guilty of violating this section.

(1990 Code, §94.05) Penalty, see §10.99

§ 94.06 EXPECTORATING.

It shall be unlawful for any person to spit on any sidewalk or on the floor in any building that is frequented by the public, such as churches, schools, banks, hotels, stores, offices, theaters, public halls or any place of public entertainment.

(1990 Code, §94.06) Penalty, see §10.99

ENFORCEMENT; COUNTY HEALTH REGULATIONS

§ 94.20 VIOLATION OF REGULATIONS; ENFORCEMENT.

It shall be unlawful for any person, firm or corporation to violate any lawfully adopted rule or regulation of the County Board of Health. The enforcement of this section shall be under the supervision of the County Health Officer. (1990 Code, §94.20) Penalty, see §10.99

§ 94.21 INTERFERENCE WITH HEALTH OFFICER PROHIBITED.

It shall be unlawful for any person to hinder, obstruct or delay the Health Officer or any of his or her assistants in the lawful discharge of their duties. (1990 Code, §94.21) Penalty, see §10.99

§ 94.22 RIGHT OF ENTRY UPON INSPECTION.

The County Health Officer or any of his or her assistants shall have the right to enter any premises at any reasonable hour upon reasonable notice with respect to residential premises for the purpose of making inspections or investigations. (1990 Code, §94.22)

CHAPTER 95: LITTERING

Section

- 95.1 Littering on public or private property
- 95.2 Littering from vehicles
- 95.3 Maintenance of public areas
- 95.4 Receptacles

- 95.99 Penalty

§ 95.01 LITTERING ON PUBLIC OR PRIVATE PROPERTY.

It shall be unlawful for any person, firm, organization or private corporation to throw or deposit upon any street or sidewalk, or upon any private property, except with written permission of the owner or occupant of the private property, any trash, refuse, garbage, building material, cans, bottles, broken glass, paper or any type of litter.
(1990 Code, §95.01) Penalty, see §95.99

§ 95.02 LITTERING FROM 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 within the town or upon private property.
(1990 Code, §95.02) Penalty, see §95.99

§ 95.03 MAINTENANCE OF PUBLIC AREAS.

Every owner, lessee, tenant, occupant or person in charge of any commercial establishment or premises who maintains any paved or unpaved areas for the use of the public, either for parking or as access areas and 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.
(1990 Code, §95.03) Penalty, see §95.99

§ 95.04 RECEPTACLES.

Suitable receptacles shall be provided in all parking or access areas within the meaning of §95.03. The receptacles shall be plainly marked and constructed to prevent scattering of any trash, litter, rubbish or other material deposited therein.

(1990 Code, §95.04) Penalty, see §95.99

§ 95.99 PENALTY.

(A) Any person found guilty of violating ' §95.01 and 95.02 shall be guilty of a misdemeanor and shall be fined not more than \$50.

(B) (1) Any violation of ' §95.03 and 95.04 shall subject the violator to a civil penalty in the sum of \$100 per day.

(a) A citation for the civil penalty shall be issued by the Town Manager.

(b) Each citation for a civil penalty must be paid within the specified number of hours after issuance.

(2) Each and every day that the violator continues in violation of any provision of this chapter shall be a separate and distinct offense.

(3) This chapter may also be enforced by an appropriate equitable remedy issuing from a court of competent jurisdiction.

(1990 Code, §95.99)

CHAPTER 96: NOISE CONTROL

Section

- 96.1 Loud, unnecessary noises prohibited
- 96.2 Prohibited acts enumerated

§ 96.01 LOUD, UNNECESSARY NOISES PROHIBITED.

It shall be unlawful to make or create any unreasonably loud, disturbing and unnecessary noise in the town and the same is hereby prohibited. Noise of the character, intensity and duration as to be detrimental to the life or health of any individual is also prohibited.

(1990 Code, §96.01) (Ord. passed 6-14-1965) Penalty, see §10.99

§ 96.02 PROHIBITED ACTS ENUMERATED.

The following acts, among others, are declared to be loud, disturbing and unnecessary noises in violation of §96.01, but the enumeration shall not be deemed to be exclusive, namely.

(A) *Horns or signal devices.* The sounding of any horn or signal device on any automobile, motorcycle, bus or other vehicle while not in motion, except as a danger signal if another vehicle is approaching apparently out of control, or if in motion only as a danger signal after or as brakes are being applied and deceleration of the vehicle is intended; the creation by means of any signal device of any unreasonably loud or harsh sound, the sounding of the device for any unnecessary and unreasonably period of time.

(B) *Sirens or gongs.* The use of any gong or siren upon any vehicle, other than police, fire or other emergency vehicle.

(C) *Radios, phonographs and musical instruments.* The playing of any radio, phonograph or other musical instrument in such a manner or with the volume, particularly during the hours between 11:00 p.m. and 7:00 a.m., as to annoy or disturb the quiet, comfort or repose of any person in any dwelling, hotel or other type of residence. No piccolos shall be played in the residential sections of the town.

(D) *Animals and fowl.* The keeping of any animal or fowl which by causing frequent or long-continued noise shall disturb the comfort and repose of any person in the vicinity.

(E) *Vehicles.* The use of any automobile, motorcycle or other vehicle so out of repair, so loaded or in the manner as to create loud or unnecessary grating, grinding, rattling, spinning wheels or other loud noise.

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(F) *Exhausts.* The discharge into the open air of the exhaust of any steam engine, stationary internal combustion engine, motor vehicle or motorboat engine except through a muffler or other device which will effectively prevent loud or explosive noises therefrom.

(G) *Devices operated by compressed air.* The use of any mechanical device operated by compressed air unless the noise created thereby is effectively muffled and reduced.

(H) *Adjacent to church on Sunday.* The creation of any excessive noise on Sundays on any street adjacent to any church, provided conspicuous signs are displayed in the streets adjacent to churches indicating that the same is a church street.

(I) *Bells.* The sounding of any bell or gong attached to any building or premises which disturbs the quiet or repose of persons in the vicinity thereof; provided, that nothing contained herein shall prohibit churches or schools from ringing the bells as may be necessary.

(J) *Peddlers and hawkers.* The shouting and crying of peddlers, barkers, hawkers and vendors which disturbs the quiet and peace of the neighborhood.

(K) *Loudspeakers and the like.* The use of any drum, loudspeaker or other instrument or device for the purpose of attracting attention by creation of noise to any performance, show or sale or display of merchandise. However, nothing contained herein shall prevent or interfere with the activities of the Annual Singing Convention held at the municipal park and the Annual Mule Day celebration.

(L) *Sound trucks.* The use of any mechanical loudspeakers or amplifiers on trucks or other moving vehicles for advertising or other purposes except where a specific license is received from the Town Manager.
(1990 Code, §96.02) Penalty, see §10.99

CHAPTER 97: NUISANCES; WEEDS; SOLID WASTES AND REFUSE

Section

Weeds; Accumulation of Refuse

- 97.1 Certain conditions declared a nuisance
- 97.2 Notice of complaint; investigation
- 97.3 Abatement procedure
- 97.4 Additional remedies; criminal action
- 97.5 Mowing fees

Accumulation of Solid Wastes

- 97.15 Definition
- 97.16 Certain conditions declared a nuisance
- 97.17 Notice of complaint; investigation
- 97.18 Abatement procedure
- 97.19 Additional remedies; criminal charges and civil penalty

WEEDS; ACCUMULATION OF REFUSE

§ 97.01 CERTAIN CONDITIONS DECLARED A NUISANCE.

The existence of any of the following conditions on any vacant lot or other parcel of land within the corporate limits is hereby declared to be dangerous and prejudicial to the public health or safety and to constitute a public nuisance.

(A) The uncontrolled growth of of weeds, grass, or other similar ground cover vegetation, other than trees and shrubs, to a height in excess of 12 inches causing, or threatening to cause, a hazard detrimental to the public health or safety.

(B) Any accumulation of rubbish, trash, 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 or vermin of any kind which is or may be dangerous or prejudicial to the public health.

(C) 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.

(D) The open storage of any abandoned ice box, refrigerator, stove, glass, building material, building rubbish, box springs and mattresses or similar items.

(E) Any condition detrimental to the public health which violates the rules and regulations of the County Health Department.
(1990 Code, §97.01) (Ord. passed 6-12-1990)

§ 97.02 NOTICE OF COMPLAINT; INVESTIGATION.

The Building Inspector, upon notice from any person of the possible existence of any of the conditions described in §97.01, shall cause to be made by the appropriate County Health Department official, or Building Inspector, the investigation as may be necessary to determine whether conditions exist which may constitute a public nuisance as declared in §97.01.
(1990 Code, §97.02) (Ord. passed 6-12-1990)

§ 97.03 ABATEMENT PROCEDURE.

(A) If it appears that the conditions exist, the Building Inspector shall cause to be delivered or mailed to the owner of the property upon which the conditions exist, a notice stating the reasons why the conditions may constitute a violation and that a hearing will be held before the Building Inspector at a place therein fixed, not less than ten or more than 30 days after the delivery or mailing of the notice. The owner or any party in interest shall have the right to file an answer to the notice and to appear in person, or otherwise, and give evidence at the place and time fixed in the notice. Any person desiring to do so may attend the hearing and give evidence relevant to the matter being heard. The rules of evidence prevailing in courts of law or equity shall not be controlling in the hearings.

(B) If a determination is made that the conditions constituting a public nuisance exist, the Building Inspector shall notify, in writing, the owner of the premises in question of the conditions constituting the public nuisance and shall order the prompt abatement thereof within 15 days from the receipt of the written notice.

(C) If the owner, having been ordered to abate a public nuisance, fails, neglects or refuses to abate or remove the condition constituting the nuisance within 15 days from receipt of the order, the Building Inspector shall cause the condition to be removed or otherwise remedied by either: i) having employees of the town to go upon the premises and remove or otherwise abate the nuisance under the supervision of an officer or employee designated by the Building Inspector OR ii) having and/or causing an entity engaged in the trade of mowing and/or landscaping services to go upon the premises of said owner and remove or otherwise abate the nuisance. Any person who has been ordered to abate a public nuisance may, within the time allowed by this subchapter, request the town in writing to remove the condition, the cost of which shall be paid by the person making the request. (Ordinance revised 3-24-2011)

(D) The actual cost incurred by the town in removing or otherwise remedying a public nuisance shall be charged to the owner of the lot or parcel of land, and it shall be the duty of the Tax Collector to mail a statement of the charges to the owner or other person in possession of the premises with instructions that the charges are due and payable within 30 days from the receipt thereof. The Town may, at its discretion, and in the alternative, assign its right to collect the actual cost incurred by the Town in hiring an entity engaged in the trade of mowing and/or landscaping services to go upon the premises of said owner and removing or otherwise abating said nuisance.

(E) In the event charges for the removal or abatement of a public nuisance are not paid within 30 days after the receipt of a statement of charges as provided for in division (C) above and as calculated in Town of Benson Ordinance § 97.05, the charges shall become a lien upon the land or premises where the public nuisance existed and shall be collected as unpaid taxes, as provided in G.S. § 160A-193.. (1990 Code, §97.03) (Ord. passed 6-12-1990) (Revised 3-24-2011)

Nuisances; Weeds; Solid Wastes and Refuse
§ 97.04 ADDITIONAL REMEDIES; CRIMINAL ACTION.

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

(1990 Code, §97.04) (Ord. passed 6-12-1990)

§ 97.05 MOWING FEES.

If a property owner, having been ordered to abate a public nuisance, fails, neglects or refuses to abate or remove the condition constituting the nuisance within 15 days from receipt of the order, and the Building Inspector has caused the condition to be removed or otherwise remedied by either procedure i or ii as set forth in Town of Benson Ordinance 97.03(B), then said property shall be assessed fees for said abatement as follows:

I. If employees of the Town perform the removal or abatement, the fees assessed to the property owner shall be:

- (A) For the first offense: \$100 fee and supply a list of contacts that do mowing;
 - (B) For the second offense: \$100 fee plus \$100 penalty fee; and
 - (C) For the third offense and/or any additional offenses: \$100 fee plus \$200 penalty fee.
- (Ord. passed 8-10-2004) (Revised 3-24-2011)

II. If an entity acting as an agent of the Town performs the removal or abatement, the fees assessed to the property owner shall be:

- (A) For the first offense: the fees assessed to the property owner shall be equal to the actual costs charged by said entity in removal or abatement, and the property owner shall be supplied with a list of contacts that do mowing;
- (B) For the second offense: the fees assessed to the property owner shall be equal to the actual costs charged by said entity in removal or abatement plus \$100 penalty fee; and
- (C) For the third offense and/or any additional offenses: the fees assessed to the property owner shall be equal to the actual costs charged by said entity in removal or abatement plus \$200 penalty fee. (Ordinance passed 3-24-2011)

ACCUMULATION OF SOLID WASTES

§ 97.15 DEFINITION.

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

SOLID WASTES. All useless, unwanted or discarded nongaseous and non-liquid materials resulting from domestic, industrial, commercial or community activities.

(1990 Code, §97.15) (Ord. passed 6-12-1990)

§ 97.16 CERTAIN CONDITIONS DECLARED A NUISANCE.

The existence of an accumulation of solid wastes on any lot or parcel of land within the corporate limits, uncovered, unenclosed or under circumstances otherwise resulting in or threatening to cause any of the following conditions is hereby declared to be dangerous and prejudicial to the public health or safety and to constitute a nuisance:

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- (A) A fire hazard;
- (B) Accumulation of stagnant water;
- (C) Inhabitation therein of rats or other vermin of any kind;

(D) Substantial risk of injury to minors or other persons, such as but not limited to open storage or accumulation of any abandoned refrigerator or other appliance, glass, building materials or similar items;

(E) Emission or effluence of noxious or offensive particulate matter, dust, sludge or other materials or substances which tend to pollute or contaminate land, water or air, rendering or tending to render it injurious to human health, habitation or welfare, to animal or plant life or to property, or interfering or tending to interfere with the enjoyment of life or property; provided that this division shall be construed consistent with and supplementary to, and not in conflict with, applicable state and federal laws and regulations; and

(F) Any condition detrimental to the public health which violates state or federal law, or the rules and regulations of the County Health Department.
(1990 Code, §97.16) (Ord. passed 6-12-1990)

§ 97.17 NOTICE OF COMPLAINT; INVESTIGATION.

The Building Inspector, upon notice from any person of the possible existence of any of the conditions described in §97.16, shall cause to be made by the appropriate County Health Department official or Building Inspector, the investigation as may be necessary to determine whether conditions exist which may constitute a public nuisance as declared in §97.16.

(1990 Code, §97.17) (Ord. passed 6-12-1990)

§ 97.18 ABATEMENT PROCEDURE.

(A) If it appears that the conditions exist, the Building Inspector shall cause to be delivered or mailed to the owner and any lessee or occupier of the property upon which the conditions exist, a notice stating the reasons why the conditions may constitute a violation and that an informal hearing will be held before the Building Inspector at a time and place therein specified, not less than ten nor more than 30 days after the delivery or mailing of the notice. The owner or any party in interest shall have the right to file an answer to the notice and to appear in person, or otherwise, and give evidence at the time and place fixed in the notice. Any person desiring to do so may attend the hearing and give evidence relevant to the matter being heard. The rules of evidence prevailing in courts of law or equity shall not be controlling in the hearings.

(B) If a determination is made that the conditions constituting a public nuisance exist, the Building Inspector shall notify, in writing, the owner and lessee or occupier of the premises in question of the conditions constituting the public nuisance and shall order the prompt abatement thereof within 15 days from the receipt of the written notice.

(C) If the owner, lessee or occupier, having been ordered to abate a public nuisance, fails, neglects or refuses to abate or remove the condition constituting the nuisance within 15 days from receipt of the order, the Building Inspector may cause the condition to be removed or otherwise remedied by having employees of the town to go upon the premises and remove or otherwise abate the nuisance under the supervision of an appropriate officer or employee. Any person who has been ordered to abate a public nuisance may within the time allowed by this subchapter, request the town in writing to remove the condition, the cost of which shall be paid by the person making the request.

(D) The total costs incurred by the town in removing or otherwise remedying a public nuisance shall be charged to the owner of the lot or parcel of land, and it shall be the duty of the Tax Collector to mail a statement of the charges to the owner or other person in possession of the premises with instructions that the charges are due and payable within 30 days from the receipt thereof. In any case in which the costs are imposed under the provisions of this

subchapter, the Building Inspector shall properly certify to the Tax Collector, in writing, the nature of the work and date performed, the name of the property owner, the address of the property, and the total costs to the town (including actual cost in labor and materials, investigation of ownership and violation, inspection and the like).

(E) In the event charges for the removal or abatement of a public nuisance are not paid within 30 days after the receipt of a statement of charges as provided for in this subchapter, the charges shall become a lien upon the land or premises where the public nuisance existed and shall be collected as unpaid taxes, together with any legal expenses including attorneys fees, as provided in G.S. §160A-193.

(1990 Code, §97.18) (Ord. passed 6-12-1990)

§ 97.19 ADDITIONAL REMEDIES; CRIMINAL CHARGES AND CIVIL PENALTY.

(A) The procedure set in this subchapter shall be in addition to any other remedies that may now or hereafter exist under law for the abatement of public nuisances and this subchapter shall not prevent the institution of criminal charges against any person, firm or corporation violating the provisions of this subchapter, as provided in G.S. §14-4.

(B) In addition to other available remedies, this subchapter may be enforced by an appropriate equitable remedy issuing from a court of competent jurisdiction and applied for by the town as provided in G.S. §160A-175(d).

(C) Also in addition to other available remedies, any violation of the provisions of this subchapter may subject the offender to a civil penalty in an amount up to \$50 per day, which may be recovered by the town within 30 days after he or she has been cited by the Building Inspector for violation as provided in G.S. §160A-175(c).

(1990 Code, §97.19) (Ord. passed 6-12-1990) (Revised 3-24-2011)

CHAPTER 98: PARKS AND RECREATION

Section

Campgrounds

- 98.1 Definition
- 98.2 Conformance
- 98.3 Permit required
- 98.4 Display of permit
- 98.5 Unauthorized use
- 98.6 Sanitation requirement
- 98.7 Exceptions

- 98.99 Penalty

CAMPGROUNDS

§ 98.01 DEFINITION.

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

CAMPGROUNDS. The use of a tract of land for two or more campsites.

CAMPSITES. The temporary, nonpermanent overnight use of property by a sleeping bag, or a tent, or a trailer or other means of temporary use of property for overnight stays.
(’75 Code, § 10.74) (Ord. passed 4-28-88)

§ 98.02 CONFORMANCE.

All campgrounds shall be subject to the following rules and regulations as set forth in this subchapter.
(’75 Code, § 10.76) (Ord. passed 4-28-88) Penalty, see § 98.99

§ 98.03 PERMIT REQUIRED.

No persons shall maintain a campground within the town without first obtaining a permit therefore from the town.

(A) All persons maintaining a campground shall obtain a permit therefore from the Tax Collector of the town. Applications for such permits shall be made with the Tax Collector in such form as may be required by the town and shall be accompanied by permit fee in the amount of \$100 per Campground plus \$10 garbage disposal fee for each campsite within the said campground. Said permit shall contain a sketch or drawing of the planned campground showing the number of campsites and the number of people estimated to use each campsite. Said permit shall need to be approved at least 7 days before use of said campground. Issuance of permit hereby authorizes Town of Benson Building Inspector or his designee to enter upon campgrounds for verification of number of campsites and that the campground meets all of Town of Benson ordinances and setbacks. ('75 Code, § 10.76(a) (approved 3/22/07)

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(B) No person shall be able to obtain a campground permit for a campground unless said person is the owner of said property or lessee of said property. ('75 Code, § 10.76(b))

(C) The owner or lessee of the tract of land on which a campground is located shall be responsible for obtaining said permit and shall be the responsible person for any violations of the permit application. ('75 Code, § 10.76(f))

(D) No one shall be able to obtain more than four campground permits in a calendar year for a particular tract of land. ('75 Code, § 10.76(d))

(E) Campground permits shall be valid for a period of five days or 120 hours. ('75 Code, § 10.76(e)) (Ord. passed 4-28-88) Penalty, see § 98.99

§ 98.04 DISPLAY OF PERMIT.

The campground permit shall be prominently displayed on the campground tract and visible from the street at all times during the use of said tract for campsites. ('75 Code, § 10.77) (Ord. passed 4-28-88) Penalty, see § 98.99

§ 98.05 UNAUTHORIZED USE.

No person shall be permitted to use any tract of land within the town for campground purposes for any tract that has not received a permit for a campground. Any person using a tract within the town for a campground purposes on a tract of land that has not received a permit for a campground shall be in violation of this subchapter. ('75 Code, § 10.78) (Ord. passed 4-28-88) Penalty, see § 98.99

§ 98.06 SANITATION REQUIREMENT.

All campgrounds shall be required to have on-site port-a-johns for use bycampers of said campground as follows:

- (A) Two to five campsites, or no more than 20 persons using said campsite shall be required to have one port-a-john;
- (B) Six to ten campsites, or no more than 40 people, shall be required to have two port-a-johns;
- (C) Eleven to 15 campsites, or no more than 60 people, shall be required to have three port-a-johns;
- (D) Sixteen to 20 campsites, or no more than 80 people, shall be required to have four port-a-johns;
- (E) Twenty-one to 25 campsites, or no more than 100 people, shall be required to have five port-a-johns; and
- (F) For each five campsites and for each 20 people thereafter there shall be required at least one port-a-john ('75 Code, § 10.76(c)) (Ord. passed 4-28-88) Penalty, see § 98.99

§ 98.07 EXCEPTIONS.

The provisions of this subchapter shall not apply to:

- (A) Property having only one campsite; or
- (B) Personal use by the owner of the tract of land for personal use by himself or herself or his or her family. (1990 Code, §98.07) (Ord. passed 4-28-1988)

§ 98.99 PENALTY.

Anyone violating this chapter will be guilty of a misdemeanor and can be confined for not more than 30 days or fined in excess of \$200. Each day's continuing violation of this chapter shall be a separate and distinct offense. (1990 Code, §98.99) (Ord. passed 4-28-1988; Ord. passed 5-14-2002)

CHAPTER 99: STREETS AND SIDEWALKS

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GENERAL PROVISIONS**§ 99.001 SIDEWALK AREAS TO BE KEPT CLEAN.**

Every occupant of a lot on any street, and in case the lot is not occupied, then the owner of the lot shall keep the sidewalk and that space between the sidewalk and the street proper, and the gutter, open and free from obstruction of any kind as far as the lot extends. If the space is not kept clean, free and open from obstruction of any kind for a period of 12 hours after notice from the Police Department, the occupant, occupants or owner of the lot shall be deemed guilty of violating this section and each additional 12 hours the place is left obstructed or cultivated shall constitute a separate and distinct violation thereof.

(1990 Code, §99.01) Penalty, see §10.99

§ 99.002 PLACING OBJECTS ON STREETS AND SIDEWALKS.

(A) It shall be unlawful for any person, firm or corporation to place, without the written permission of the Town Manager or the Chief of Police, any sign or obstruction whatsoever on or above the streets or sidewalks of the town. In construing this section that space lying between the sidewalk and the street proper shall be deemed a part of the public street. Every day the obstruction remains on the street after the person responsible is notified to remove same by the Chief of Police or his or her assistants shall constitute a separate offense within the meaning of this section.

(B) No person shall deposit and leave on any street or sidewalk lumber, brick, stone, dirt or wood or other substance that obstructs the sidewalk or the street or any part of it; nor shall any person place in any alley or on any sidewalk any box, barrel, crate or cask, wood or other substance which shall hinder, delay or inconvenience those entitled to the use of the alley or street or sidewalk. Every day the obstruction shall remain after notice from the police officer to remove the same shall constitute a separate like offense. However, building material, earth and other substance may, by permission of the Town Manager, in writing, be allowed under the restrictions as he or she may impose.

(1990 Code, §99.02) Penalty, see §10.99

§ 99.003 DISPLAY OF GOODS PROHIBITED.

It shall be unlawful for any person to display on any street, or on the sidewalks adjacent to any street, any goods, wares or merchandise, cold drink stands, farm implements, vehicles, fish or fresh meats, fruits, vegetables, coops, crates, boxes, refrigerators or other obstructions. Every day or fractional part of a day the obstruction shall remain after ample time to remove the same upon notice to do so, shall constitute a separate offense, punishable as in the first instance.

(1990 Code, §99.03) Penalty, see §10.99

§ 99.004 WASHING OR REPAIRING VEHICLES ON STREETS RESTRICTED.

(A) It shall be unlawful to wash or clean trucks or automobiles in any open street or on a sidewalk. Nothing herein shall be construed to forbid any owner's washing his or her own truck or automobile, or having it done in the proximity of his or her own home.

(B) It shall be unlawful for any mechanic or other person acting as such to do any repair work on, or to, any vehicle, whatsoever, in the open street, except such as is absolutely necessary to be done before the vehicle can be driven or drawn without damage to the street.

(1990 Code, §99.04) Penalty, see §10.99

§ 99.005 VEHICLES DAMAGING PAVEMENT ON STREETS.

It shall be unlawful for any person, firm or corporation to operate or drive over the paved streets of the town any tractor, traction engine, mower, reaper, plow or other vehicle of any kind having corrugated or spurred wheels or to move across the street or sidewalks any object or instrument whatever which will in any way scar, damage or injure the pavement.

(1990 Code, §99.05) Penalty, see §10.99

§ 99.006 DAMAGE TO CULVERTS, BRIDGES, TREES AND FLOWERS; LIGHTS AND SIGNS ON STREETS AND SIDEWALKS.

(A) *Damage to culverts, bridges, trees and flowers.*

(1) No person shall injure or misplace any part of any culvert, ditch and drain or other property belonging to or used by the town, or shall place any obstruction in any culvert, ditch or drain, to prevent the free flow of water on or over the streets of the town.

(2) It shall be unlawful for any person to intentionally, whether in fun, pastime or malice, tear up, remove or otherwise meddle with and injure any bridge on any sidewalk or street, or who shall in any manner cut, skin or otherwise injure any shade tree, ornamental tree or flowers, set and tended for ornament, on any street, sidewalk or other public places.

(B) *Defacing*. No person shall injure, tamper with, remove or paint upon or deface any sign, sign post, street light, traffic signal or bulletin board or other municipal property upon the streets and sidewalks except employees of the town in performance of their duties.

(1990 Code, §99.06) Penalty, see §10.99

§ 99.007 ROPING OFF STREETS.

It shall be unlawful for any person to obstruct any street in the town by roping the same off on account of sickness or for any other reason without the written permission of the Chief of Police which may be issued by the Chief upon written application of the attending physician of the patient living on the street.

(1990 Code, §99.07) Penalty, see §10.99

§ 99.008 SHEDS AND AWNINGS.

No person shall erect or repair over any sidewalk or street any wooden shed or awning or any wooden shed for the support of an awning or erect upon any street or sidewalk any post for the support of any awning. If any person shall violate this section then each day that the above forbidden structure shall remain after notice shall constitute a separate violation. This shall not be construed to prevent the erection over the sidewalk of cloth or metal awnings supported upon metallic frames firmly suspended from the building, and at least seven feet above the level of the sidewalk.

(1990 Code, §99.08) Penalty, see §10.99

§ 99.009 PLAYING GAMES IN STREETS; SKATING.

(A) It shall be unlawful for any person in any street or other public place, except the yards and spaces as shall be set apart for the purpose, to engage in any game, kick or throw any ball, stone, stick or other missile, whether by foot, hand, sling, bean-shooter, air rifle or otherwise.

(B) It shall be unlawful for any person, child or adult, to skate on Main Street, and so much of Highway No. 301 and 50 as is within the corporate limits of the town.

(1990 Code, §99.09) Penalty, see §10.99

§ 99.010 DEPOSIT OF HUMAN WASTES ON STREETS OR SIDEWALKS.

No person shall deposit or leave human excrement on a street, or sidewalk, in an alley, or on any premises except in an approved sanitary facility.

(1990 Code, §99.10) Penalty, see §10.99

EXCAVATIONS, CONSTRUCTION AND REPAIRS**§ 99.020 PERMIT TO DIG IN STREETS.**

Any person who shall make any excavation in or under any street or sidewalk within the corporate limits of the town without the written permission of the Town Manager, having been secured before the act is done, shall be deemed guilty of violating this section. Any person who has been found guilty of making such excavation as herein above mentioned or of otherwise damaging the sidewalks and streets, and who shall thereafter fail or refuse to put the sidewalk or street in the same condition as before the act of excavation or other damage has been done, shall be deemed guilty of violating this section. In construing this section, the act of excavating shall constitute one act; and the refusal or failure to restore the damage to the street or sidewalk shall constitute a separate offense which shall be punishable as separate offenses. The Town Manager, or his or her duly authorized agent, shall be the judge as to whether the damage done to the street or sidewalk has been remedied.

(1990 Code, §99.20) Penalty, see §10.99

§ 99.021 PERMIT TO MIX BUILDING MATERIALS.

It shall be unlawful to mix mortar, lime, cement or other building materials on the streets of the town without permission from the Chief of Police. The Chief of Police may give permission only on the condition that the mortar, lime, cement and other materials shall be mixed in boxes made so as to protect the street pavement from damage.

(1990 Code, §99.21) Penalty, see §10.99

§ 99.022 CONSTRUCTION NEAR SIDEWALK.

(A) Before building or remodeling at any place where the same is in close proximity to the sidewalk, a passageway shall be constructed so as to leave the sidewalk unobstructed and provide safe and easy passage.

(B) It shall be the duty of any person, company or corporation, doing construction, or improvement work on the streets or sidewalks, to post the notices and raise the signals and barricades as may be necessary to warn the public against trespassing upon the work while in progress. And when these duties shall have been complied with, no person, unauthorized to do so, shall remove the notice or barricades, or trespass upon any repair or improvement work, until the street or sidewalk shall be again opened to the public.

(1990 Code, §99.22) Penalty, see §10.99

§ 99.023 SIDEWALK CONSTRUCTION; MAINTENANCE.

(A) No sidewalk of any description shall be built by any individual, firm or corporation, of any brick, wood or other material without a written permit from the town.

(B) All repairs or improvements to the sidewalks shall be made with at least the same grade of material of which the sidewalk was at first made, the same to be made of good concrete approved by the Town Manager or an engineer or agent designated by them, the concrete to be of the following specifications: the base shall be of concrete four inches in thickness, composed of one part Portland cement which will stand the government tests,

three parts clean sharp sand and six parts clean gravel or crushed granite, no gravel or crushed granite to be more than one-half inch in diameter. The finished coat shall be one inch thick and composed of one part Portland cement of the above grade and one and one-half part clean sharp sand. There shall be expansion joints cut through the base by a line extending longitudinally with the sidewalk and in the middle thereof cut through one-half inch in width and filled with sand and bilateral seams or cuts of the same kind every five feet. There shall be expansion joints every 50 feet, one-half inch in width cut to the grade established by the Town Manager as indicated by the grade line of the curbstone to be furnished and set by the Town Manager or his or her agents or engineer.

(1990 Code, §99.23)

§ 99.024 STREET REPAIR.

It shall be the duty of every person, firm or corporation, who shall open or dig a ditch, trench or hole in any street, public alley or sidewalk of the town, to put the street, public alley or sidewalk in as good condition in all respects as it was before.

(1990 Code, §99.24) Penalty, see §10.99

§ 99.025 BARRICADES AND WARNING LIGHTS.

It shall be unlawful for any person, firm or corporation making any excavation for any purpose whatsoever in any of the streets or sidewalks to fail to securely cover the excavations with planks or place ropes around the same three feet from the ground, or shall fail to place a sufficient number of red lights around the excavation before dark and to keep the light burning all night every night the excavation shall be open.

(1990 Code, §99.25) Penalty, see §10.99

ACCEPTANCE AND IMPROVEMENT OF PUBLIC STREETS

§ 99.035 POLICY.

The policy of the town for the acceptance of streets dedicated for public use and the policy for improving all streets shall be as hereinafter prescribed in this subchapter.

(1990 Code, §99.35)

§ 99.036 ACCEPTANCE OF NEW STREETS; REQUIREMENTS.

No street, alley or other public way dedicated for public use within the town will be accepted by the town as a public street and no maintenance or improvement will be authorized thereon unless the following requirements have been complied with.

(A) Prior to opening any street, alley or other public way, the property owner, owners or developer shall submit a preliminary plan to the Board of Commissioners for its approval. The preliminary plan shall show the location of the proposed street, alley or other public way, the right-of-way width, all adjacent property owners, watercourses and the other information as the Board may require.

(B) Minimum standards for new streets, extensions of existing streets or alleys for which approval is required shall be as follows:

(1) A minimum right-of-way width of 50 feet dedicated for street purposes. In addition, the Board may require a right-of-way width greater than 50 feet if the street is to be used as a major thoroughfare or where greater widths are required by a major street plan;

(2) A minimum right-of-way of 20 feet for all service alleys;

(3) Streets shall conform to the general street plan or major thoroughfare plan of the town as to location; and

(4) Streets shall intersect at right angles and the street alignment shall not change more abruptly than a vertical curve of 1,000-foot radius except where existing conditions justify a modification of this requirement by the Board.

(C) If the street plan is approved, the owner, owners or developer shall be required to make the following improvements at no cost to the town prior to the town accepting the street or alley as a public street.

(1) The right-of-way shall be cleared and graded to its final grade for the full width of the right-of-way. Grades shall not as far as practical exceed 5%.

(2) Streets shall be crowned and adequate street drainage ditches provided in accordance with the street improvement construction specifications of the town.

(3) Gravel or other suitable base course material shall be put in place for a minimum width of 34 feet, which shall be the minimum width for an improved street. Additional improved street widths may be required for major thoroughfares by the Board. Provided, the improved width of alleys need not exceed 20 feet.

(D) When the requirements of this section have been met to the satisfaction of the Board and the Town Engineer, the Board may, by resolution, accept the street or alley for public use.

(1990 Code, §99.36) Penalty, see §10.99

§ 99.037 PETITION FOR STREET IMPROVEMENTS.

(A) From and after the effective date of this subchapter, the town will not consider paving or otherwise improving any street or alley unless a petition is presented to the Board on forms provided by the town and signed by a majority of property owners who represent a majority of the lineal footage on the street proposed to be improved requesting for cost of the improvement be assessed against abutting property owners as set forth in ' §99.045 and 99.046.

(B) (1) Street improvements for all streets which shall be included in the property owner's petition shall include the following:

(a) Storm sewer drainage facilities, including drainage pipe 30 inches or less in diameter, inlets and other necessary incidentals as may be required by town specifications if the Board of Commissioners deem storm drainage necessary for a particular project;

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(b) Curb and gutter as required by town specifications if the Board of Commissioners deem curb and gutter necessary for a particular project;

(c) Grading for a width of 34 feet on those streets which were opened prior to the effective date of this subchapter and which need to be graded prior to surfacing;

(d) Base course material for a width of 34 feet if existing base course is not adequate in accordance with town specifications; and

(e) Street surfacing according to town specifications for a width of 30 feet.

(2) The improvement costs for street widths in excess of 34 feet, the cost of required drainage facilities which are larger in size than required herein and the total cost of all improvements at street intersections shall not be assessed against abutting property owners and shall be paid for by the town.

(1990 Code, §99.37) (Ord. passed 11-9-1982; Ord. passed 11-11-1982)

§ 99.038 STREET IMPROVEMENT PROJECT PROCEDURE.

(A) Upon the receipt of a petition for street improvements, the Town Manager shall examine the petition and certify as to its sufficiency to the Board of Commissioners. No petition shall be considered for street improvements where streets have been opened after the effective date of this subchapter in violation of §99.036. In addition, no petition shall be considered for a street less than one normal block in length.

(B) If the petition from the property owners is found to be sufficient, the Board shall direct the Town Engineer to estimate the total cost per foot of property frontage and the total cost for intersections and other improvements, the cost of which is to be borne by the town.

(C) When cost estimates are received, the Board shall consider the availability of funds for street improvements, the degree of development along the street proposed to be improved and may approve the street improvement project as they deem best.

(D) When a street improvement project is approved, the property owners abutting the improvements shall be notified of their estimated cost per foot of frontage as set forth in ' §99.036 and 99.037, and further notified that each owner has the opportunity to pay his or her proportionate share in cash in advance.

(E) The street improvement assessment procedure as authorized in G.S. ' §160A-216 *et seq.* shall be followed and assessments shall be made against the properties abutting upon the improvement according to an equal rate per front foot based on the proportions as set forth in ' §99.036 and 99.037. Property owners who have made a cash deposit in advance as stated herein, shall be credited for the payments on the assessment rolls. In accordance with the requirements of the General Statutes, property owners not paying assessments in cash in advance or within 30 days after publication of the notice that the assessment roll has been confirmed shall pay their assessments in equal annual installments, for which the number of years shall be set by the Town Manager, not to exceed five years, with the annual installments bearing an interest rate of 8% per annum.

(F) In event the actual cost of improvements is less than the estimated cost, the excess shall be funded to the property owners. In event the actual cost exceeds the estimated cost, the property owners will be assessed for this amount or may pay the amount in cash in the manner provided by law.
 (1990 Code, §99.38) (Ord. passed 11-9-1982)

§ 99.039 SIDEWALK IMPROVEMENTS; EXCEPTION.

(A) *Petition.* Petitions for street improvements may include requests for sidewalk improvements in accordance with town specifications. The sidewalk improvements may be constructed as part of the street improvement project and in the same manner except that 100% of the total cost of sidewalk improvements exclusive of the cost at intersections shall be assessed against the property owner.

(B) *Exception.* Request for assistance in the installation of sidewalks on street rights-of-way along certain properties within the town limits because of their proximity to Benson Singing Grove and other areas where activities occur such as Mule Day, Singing Convention, Arts in the Grove or other activities or events sponsored or sanctioned by the town will be considered as an exception. The town will consider each request based on the increased pedestrian traffic in and around these properties. With the safety and convenience of this increased pedestrian traffic in mind, the town may feel it necessary to assist the property owners of certain properties in this area in placing sidewalks along street rights-of-way on these properties, providing the following is met:

(1) To qualify, property owners must show and the town officials must verify and concur with the following:

- (a) That the safety of pedestrian traffic increase;
- (b) That more than normal residential pedestrian traffic exists along the street;
- (c) That the potential for damage to those certain properties where a sidewalk is being requested will be lessened with the addition of a sidewalk; and
- (d) That it would be a convenience to out-of-town pedestrian traffic when attending events in the area.

(2) Upon presentation of evidence of the aforementioned reasons by the respective property owners to the Board of Commissioners, the Board will determine that sidewalks are necessary along the street rights-of-way of certain properties and may approve the installation of a sidewalk provided that the property owner requesting the installation of a sidewalk agrees to pay two-thirds of the cost of the sidewalk. Cost of the installation of a sidewalk includes, but is not limited to all labor, materials, surveying fees, engineering fees, seeding, fertilizing and the removal of trees or any other object affected by the installation of sidewalks.

(3) If the installation is to be contracted, two-thirds of the cost for the contract price for total cost of installation shall be paid prior to work commencing. If installation is to be done by the town's work force, two-thirds of the estimated cost will be paid prior to commencement of work. Upon completion of the installation and once the final cost has been determined and if the final cost of installation is more than was estimated, the property owners benefitting from the installation of the sidewalk shall pay an additional amount necessary to equal two-thirds of the cost of installation. If the actual cost is less than estimated, the town will reimburse that portion already paid for installation of the sidewalk that exceeds two-thirds of the cost of the sidewalk. All the installation under this policy may be done providing the town has adequate funds budgeted for the installation of these sidewalks.

(1990 Code, §99.39) (Ord. passed 11-9-1993)

§ 99.040 INSTALLATION OF UTILITIES.

The Board of Commissioners prior to approving any project or authorizing any street improvement shall determine if water and sanitary sewer facilities have been installed within that portion of the street located between curbs. If the facilities have not been installed or if facilities are inadequate and will have to be replaced, the Board shall postpone the street improvement project pending the installation of the facilities.

(1990 Code, §99.40)

§ 99.041 RESPONSIBILITY OF PROPERTY OWNERS.

(A) Property owners along streets which are surfaced and have curb and gutter are responsible for replacing any driveway or walkway within the street right-of-way as a result of new street construction improvements. Driveway entrances and aprons at the curb line will be constructed by the town at the location designated by the property owner, and the cost thereof will be included in the total cost assessed for street improvements.

(B) Property owners shall be responsible for seeding, landscaping or otherwise improving the area between curbs and the property line as they may desire, provided, no walls or other permanent structures are located within the street right-of-way.

(C) Drainage pipes and other material on the right-of-way at the time of construction which were purchased by the property owner will be removed and placed on the lot of the owner for his or her disposition. The town will haul away the items if requested by the owner and with the owner's permission.

(1990 Code, §99.41)

§ 99.042 CONSTRUCTION SPECIFICATIONS.

All street grading, base course preparation, storm drainage, surfacing, curb and gutters and other improvements shall be constructed in accordance with the written specifications of the town which have been approved by the Board of Commissioners. All work shall be done under the supervision of the Town Engineer.

(1990 Code, §99.42) Penalty, see §10.99

§ 99.043 OPENING AND IMPROVING STREETS WITHOUT PETITION.

When in the opinion of the Board of Commissioners a new street should be opened and improved and no petition is filed asking for the assessment of the cost thereof, and when the Board is of the opinion that the public benefit will be greater than the benefit to abutting property owners, the Board may direct that the improvement be made and the entire cost thereof paid by the town.

(1990 Code, §99.43)

§ 99.044 RESURFACING IMPROVEMENTS.

Whenever it is necessary to resurface any street which has been surfaced under this policy as herein established, the town will undertake the resurfacing when funds are appropriated and the town shall bear the entire cost of the work.

(1990 Code, §99.44)

§ 99.045 PROPERTY OWNER'S COST.

The property owner's proportion of local improvement cost shall be determined as a percentage of the total cost of the project rather than on a set price per foot. For example, if the cost of installing curb and gutter, patching the street adjacent to the installation, placing needed catch basins and drain tile cost \$2,000, the property owners abutting the project shall pay 50% (for example) or \$1,000, each property owner's share of which shall be an assessment determined on an equal rate of the frontage abutting the improvement. In the case of water and sewer mains, however, a fixed tap-on fee is set.

(1990 Code, §99.45) (Ord. passed 10-15-1965)

§ 99.046 ASSESSMENTS UNDER PETITIONS.

(A) *Street grading.* An assessment shall be made only when previous maintenance and repair has not been regularly undertaken. When no maintenance has been performed but the street has been previously opened and is being proposed for town maintenance (except in the case of a private street where the entire cost shall be paid by the owner thereof, under contract, and according to the availability of labor, materials and equipment), one-half the cost shall be assessed.

(B) *Street paving and storm sewers.* One-half the cost shall be assessed for all new installation and re-paving under petition. Maintenance and repair shall not be assessed. Where the availability of funds permits it, a smaller ratio shall be considered for re-paving a street but, a larger share by the town shall be determined only after reviewing the cost of the project, the availability of funds and the schedule of similar projects to be done. Where possible, and in the absence of petitions for re-paving or new paving, consideration shall be given to using current operating funds or special funds to do maintenance and repair, new paving and re-paving.

(C) *Curb and gutter.* Two-thirds of the cost of curb and gutter, including necessary drainage, shall be assessed against the abutting and benefitting properties.

(D) *Sidewalks.* The entire cost of new sidewalks shall be assessed against the abutting and benefitting properties. Maintenance and repair of sidewalks placed under this policy shall be the responsibility of the property benefitting from their use. If the property owner defaults in making the improvement required, the entire cost of making the improvement required shall be assessed. Maintenance and repair of existing sidewalks shall be the responsibility of the town.

(E) *Water mains.* The town shall bear the entire cost for installing water mains providing that where extreme difficulties are encountered, the Town Board of Commissioners will decide whether an assessment shall be made. However, each benefitted resident tapping-on or connecting shall pay a charge commensurate with the actual costs of the tapping-on of an unpaved street, which shall include materials to the property line.

(F) *Sewer mains.* The town shall bear the entire cost for installing sewer mains, providing that where extreme difficulties are encountered, the Town Board will decide whether an assessment shall be made. However, each resident tapping-on or connecting shall pay a charge commensurate with the actual costs of the tapping-on of an unpaved street and \$250 on a paved street, which shall include materials to the property line.

(G) *Combined water and sewer tap-on.* Where possible water and sewer connections shall be made

concurrently, in which case the tap-on or connection fees together shall reflect the actual connection costs for an unpaved street and a paved street, which shall include materials to the property line.
(1990 Code, §99.46) (Ord. passed 10-15-1965)

§ 99.047 NEW SUBDIVISIONS; DEVELOPER'S COST.

Municipal sharing in the cost of opening previously dedicated street rights-of-way is desirable only where the completed street will meet the minimum standards set for all new streets in the subdivision regulations. Consequently, where a subdivision was approved prior to the adoption of subdivision regulations, but is proposed to be opened and eventually maintained by the town, the town will share in the cost to the same extent it would share a new subdivision street approved by the Board of Commissioners upon the recommendation of the Planning Board. If the developer will not agree to paying his or her share under this policy, the town will not share in the opening cost and will not accept the street for maintenance until the improvements are completed either by the developer or upon petition of the residents in the subdivision.

(1990 Code, §99.47)

PARADES AND DEMONSTRATIONS

§ 99.060 DEFINITIONS.

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

BLOCK. That portion of any street lying between its intersections with other streets.

GROUP DEMONSTRATION. Any assembly together or concert of action between or among two or more persons for the purpose of protesting any matter or of making known any position or promotion of the persons, or of or on behalf of any organization or class of persons, or for the purpose of attracting attention of the assembly.

PARADE. Any assemblage of two or more persons participating in or operating any vehicle in any march, ceremony, show, exhibition or procession of any kind in or upon the public streets, sidewalks, alleys, parks or other public grounds or places.

PERSON. Any person, firm, corporation, partnership, association or other organization, whether formal or informal.

PICKET LINE. Any two or more persons formed together for the purpose of making known any position or promotion of the persons, or on behalf of any organization or class of persons.

(1990 Code, §99.60)

§ 99.061 PERMIT REQUIRED.

It shall be unlawful for any person to organize, conduct or participate in any parade, picket line or group demonstration in or upon any street, sidewalk, alley or other public place within the town unless a permit therefore has

been issued by the town in accordance with the provisions of this subchapter.
(1990 Code, §99.61) Penalty, see §10.99

§ 99.062 ISSUANCE OF PERMIT; STANDARDS.

The Chief of Police shall issue a permit for the proposed parade unless he or she finds that:

(A) The parades, picket lines or group demonstrations are to commence before 6:00 a.m. or terminate after 5:00 p.m.;

(B) The parades or group demonstrations are to be held at the same time and place as those designated in a permit issued pursuant to a written application previously received by the Chief of Police or his or her designee;

(C) The conduct of the parade will substantially interrupt the safe and orderly movement of other traffic contiguous to its route;

(D) The conduct of the parade will require the diversion of so great a number of police officers of the town to properly police the line of movement of the parade and of contiguous areas so that adequate police protection cannot be provided to the remainder of the town;

(E) The conduct of the parade will require the diversion of so great a number of ambulances so that adequate ambulance service to portions of the town not occupied by the parade and contiguous areas will be prevented;

(F) The concentration of persons, animals and vehicles at assembly points of the parade will substantially interfere with adequate fire and police protection of, or ambulance service to, areas contiguous to the assembly areas;

(G) The conduct of the parade is reasonably likely to result in violence to persons or property causing serious harm to the public;

(H) The parade is to be held for the primary purposes of advertising a product, good or event, and is designed to be held primarily for private profit; or

(I) The conduct of the parade will interfere with the movement of firefighting equipment to the an extent that adequate fire protection cannot be provided to the town.

(1990 Code, §99.62)

§ 99.063 WRITTEN APPLICATION.

The Chief of Police or his or her designee shall issue permits as required in §99.062, and in the issuance thereof he or she shall:

(A) Require a written application for permit to be filed not less than 24 hours in advance of the parade, picket line or group demonstration which application shall specify the time and place for the commencement of any picket line and the time, place, route and duration of any parade or group demonstration;

(B) Require that the application for a permit specify whether or not minors below the age of 18 years will be permitted to participate; and

(C) Require that the application for a permit shall specify and the permit shall designate the person or persons in charge of the activity. The person shall be required to accompany the parade, picket line or group demonstration and shall carry the permit with him or her at that time. The permit shall not be valid in the possession of any other person. (1990 Code, §99.63)

§ 99.064 REVOCATION OF PERMIT.

The Chief of Police shall revoke any permit granted for a parade, picket line or group demonstration for any of the following causes:

(A) The violation by any participant of §99.065; or

(B) The failure to comply with the terms and conditions of the permit.
(1990 Code, §99.64)

§ 99.065 CERTAIN ACTIVITIES PROHIBITED.

The following acts or activities, when performed or undertaken in conjunction with or as a part of, any parade, picket line or group demonstration, are hereby prohibited and declared unlawful:

(A) The carrying on or about the person any firearm, or any weapon or article, including but not limited to blackjacks, night sticks or flashlights which by their use might constitute a deadly weapon; or

(B) The taking or keeping of any dog or other vicious animal, whether leashed or unleashed.
(1990 Code, §99.65) Penalty, see §10.99

§ 99.066 INTERFERING WITH PARADES.

No person shall hamper, obstruct, impede or interfere with any parade, picket line or group demonstration being conducted under authority of a permit duly issued by the Chief of Police.
(1990 Code, §99.66) Penalty, see §10.99

§ 99.067 PICKETING; ADDITIONAL REGULATIONS.

Picket lines and picketing shall be subject to the following additional regulations:

(A) Picketing may be conducted only on the sidewalks reserved for pedestrian movement, and may not be conducted on the portion of a street used primarily for vehicular traffic;

(B) Not more than ten pickets promoting the same objective shall be permitted to use either of the two sidewalks within a single block at any one time;

(C) Pickets may carry written or printed placards or signs not exceeding two feet in width and two feet in length promoting the objective for which the picketing is done; provided, the words used are not derogatory or defamatory in

nature; and

(D) Pickets must march in single file and not abreast and must not march closer together than 15 feet except in passing one another.

(1990 Code, §99.67) Penalty, see §10.99

§ 99.068 EXCEPTIONS.

This subchapter shall not apply to:

(A) Funeral processions; or

(B) Any governmental agency acting within the scope of its functions.

(1990 Code, §99.68)

RAILROAD CROSSINGS

§ 99.080 LAYING AND CONSTRUCTION OF TRACKS AND SWITCHES; COSTS TO BE BORNE BY RAILROAD COMPANY.

(A) The Board of Commissioners may direct, control and prohibit the laying of railroad tracks and switches in public streets and alleys. All railroad tracks, crossings and bridges shall be constructed so as not to interfere with drainage patterns or with the ordinary travel and use of the public streets and alleys.

(B) The costs of constructing, reconstructing and improving public streets and alleys, including the widening thereof, within areas covered by railroad cross-ties, including cross timbers, shall be borne equally by the town and the railroad company. The costs of maintaining and repairing the areas after construction shall be borne by the railroad company.

(G.S. §160A-298(a), (b)) (1990 Code, §99.80) Penalty, see §10.99

§ 99.081 SUITABLE CROSSING GATES TO BE INSTALLED, MAINTAINED.

(A) At each railroad grade crossing hereinafter designated in this section, the railroad operating trains, locomotives or rolling stock of any kind over the crossing shall maintain at all times suitable crossing gates, which shall be closed when any train, locomotive or other rolling stock is passing over, or approaching near to the crossing for the purpose of passing over, the same. The grade crossings at which crossing gates shall be so maintained are located as provided in this section. In lieu of the following, the railroad may install and maintain highway grade crossing automatic flashing light signals with or without short arm gates.

(B) Crossing gates required at the following grade crossings:

(1) Railroad and Main Street; and

(2) Railroad and Parrish Drive.

(1990 Code, § 99.81)

§ 99.082 COSTS OF MAINTAINING WARNING SIGNS, LIGHTS AND OTHER SAFETY DEVICES.

The town shall bear 90% of the costs of warning signs, gates, lights and other safety devices at grade crossings, and the railroad company shall bear 10% of the costs. The costs of maintaining warning signs, gates, lights and other safety devices installed after January 1, 1972, shall be borne equally by the town and the railroad company. The maintenance shall be performed by the railroad company and the town shall pay annually to the railroad company 50% of these costs. In maintaining maintenance cost records and determining the costs, the town and the railroad company shall use the same methods and procedures as are now or may hereafter be used by the State Board of Transportation. (G.S. §160A-298(c)) (1990 Code, §99.82)

§ 99.083 BRIDGES AND UNDERPASSES.

(A) The Board of Commissioners may require that a grade crossing be eliminated and replaced by a railroad bridge or by a railroad underpass, if the Board finds as a fact that the grade crossing constitutes an unreasonable hazard to vehicular or pedestrian traffic. In the event, the town shall bear 90% of the costs and the railroad company shall bear 10% of the costs. If the town constructs a new street which requires a grade separation and which does not replace an existing street, the town shall bear all of the costs. If a railroad company constructs a new track across the grade, or under or over an existing street, the railroad company shall pay the entire cost thereof. The town shall pay the costs of maintaining street bridges which cross over railroads. Railroad companies shall pay the cost of maintaining railroad bridges over streets, except that the town shall pay the costs of maintaining street pavement, sidewalks, street drainage and street lighting where streets cross under railroads.

(B) Whenever the widening, improving or other changes in a street require that a railroad bridge be relocated, enlarged, heightened or otherwise reconstructed, the town shall bear 90% of the costs and the company shall bear 10% of the costs.

(G.S. §160A-298(d), (e)) (1990 Code, §99.83)