

**TITLE XV: LAND USAGE**

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## CHAPTER 150: BUILDING REGULATIONS

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***GENERAL PROVISIONS***

**§ 150.001 FIRE LIMITS.**

The following described territory shall be known as the Fire District for the town: from Wall Street at Church Street to Elm Street, down Elm Street to Parrish Drive, west on Parrish Drive to Wall Street.  
(1990 Code, § 150.001)

**§ 150.002 WIRING OF BUILDING; INSPECTIONS.**

It shall be unlawful for any person, unless he or she be a licensed electrician, to wire any building and after the wiring has been done by a licensed electrician, the wiring shall be inspected and passed upon by the Superintendent of Light, Water and Electricity.  
(1990 Code, § 150.002) Penalty, see § 150.999

**§ 150.003 AERIAL SECURITY LIGHTS; INSTALLATION AND MAINTENANCE.**

(A) *Application.* Any property owner who wants an aerial security light or lights installed on his or her property shall make application therefore to the Town Manager. The Manager shall determine if the property where the owner wishes the light to be installed is in a location where the Electrical Department can get to and install the light without extra cost. If the location is not suitable, the Manager will discuss with the property owner a new location. In no instance will the Manager be bound to grant an application for an aerial security light.

(B) *Installation.* If, after reviewing the application, the Manager decides that the installation of an aerial security light is feasible, he or she will have the light installed on the applicant's property, at the expense of the town, in whatever location he or she deems appropriate.

(C) *Contract.* The Manager will grant no application for the installment for an aerial security light unless the property owner signs a contract for three years for the aerial security light to remain at its present location and agrees to pay for all damages to the aerial security light. The property owner may have the light removed before the three years but must agree to pay 60% of the remaining rate of the contract. At the end of this three-year period, the Manager will review the cost of maintaining the aerial security light and will determine if the cost will permit the maintaining of the aerial light. The property owner must agree to sign a renewal contract or the aerial security light will be removed from the property.

(D) *Monthly rates.*

(1) Rates are set for three types of aerial security lights that may be installed:

<i>Watts</i>	<i>Rates</i>
175	\$4.25
400	\$8.50
1,500	\$27.50

(2) These rates are subject to change with the increased cost of the electricity. This cost may change without notice.

(1990 Code, § 150.003) (Ord. passed 2-10-1976)

**§ 150.004 SHELTER IN PUBLIC STRUCTURES; FALLOUT PROTECTION; EXEMPTIONS.**

(A) Every officer, board, department, commission or commissions of the town, charged with the duty of preparing specifications, or awarding or entering into contracts for the design, erection or construction of buildings, or other structures, including additions to existing structures for the town, shall incorporate or cause to be incorporated in the buildings, or other structures, fallout protection for at least its normal anticipated population which shall meet or exceed the minimum space and fallout protection criteria recommended by the Office of Civil Defense and United States Department of Defense, unless exempted from the shelter requirements in accordance with division (B) below.

(B) The Civil Defense Director may exempt buildings or structures from this requirement by means of memorandum where he or she finds that the incorporation of the fallout shelter will create an additional net cost in the construction of the structure in excess of 0% of the estimated cost thereof without the shelter so incorporated, or that other factors as he or she may determine make unnecessary or impracticable the incorporation of the fallout shelter in the structures.

(C) It shall be the policy of the town that fallout shelters be incorporated in all public buildings of the town to the fullest extent practicable, in order to provide protection against radiation for the greatest number of people in the event of nuclear attack.  
(1990 Code, § 150.004)

**§ 150.005 CONDITIONS OF HOTELS, THEATERS AND THE LIKE; EXITS.**

(A) Every owner, lessee, keeper or manager of any and every boarding house, tenement house, lodging house, hotel or theater or manufactory, shall cause every part thereof to be kept in a clean and wholesome condition, adequately lighted and ventilated, and he or she shall supply adequate toilets and keep the same in a sanitary condition as not be offensive or detrimental to health. Each day the offensive condition is allowed to continue after notification from the Police Department shall constitute a separate offense within the meaning of this section.

(B) Every exit in any theater or motion picture house shall be plainly indicated by a sign bearing the word "Exit," which sign shall be kept lighted throughout each performance.

(C) (1) All doors, aisles and passageways within and leading into or out of the theaters, churches and all other places of public assemblage, shall, during the entire time which any show, performance, service, exhibition, lecture, concert, ball or other assemblage may be held therein, be kept adequately lighted and free from easels, signs, standards, campstools, chairs, sofas, benches and any other article or articles that might obstruct or delay the exit of the audience, congregation or assemblage and doors of the buildings while occupied shall not be fastened so that they cannot easily be opened by anyone from within.

(2) No person shall sit or stand or remain seated or standing, nor shall the owner or operator of the place allow any person to remain in any place of public assemblage in any aisle under any circumstances, or in any exit or passage required for the safe exit of the assemblage.

(3) Clear passage from all exits and on outside sidewalks of all theaters and other places of public assemblage shall be maintained at all times. No aisle, passageway or stairway in any store shall be obstructed with tables, showcases or other obstructions during the hours the store is open to the public. (1990 Code, § 150.005) Penalty, see § 150.999

**§ 150.006 HOUSE MOVING.**

No person shall move or attempt to move any house or building of whatsoever size or dimension, on, over or across any paved street, without first obtaining a lawful permit to do so. And any person who aids, abets or assists, or in any way encourages another to undertake any house moving as aforesaid, there having been no permit issued, shall receive the same punishment as the person or persons attempting the house moving. The payment of the fine shall in no way relieve any offender of liability for damages to be recovered in a civil action. (1990 Code, § 150.006) Penalty, see § 150.999

***ADOPTION OF REGULATORY CODES BY REFERENCE***

**§ 150.015 SCOPE; APPLICATION OF REGULATIONS.**

(A) The provisions of this subchapter and of the regulatory codes herein adopted shall apply to the following:

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

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

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

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

(B) The adoption of this subchapter and the codes herein adopted by reference, shall constitute a resolution making the regulatory codes herein adopted applicable to dwellings and outbuildings used in connection therewith and to apartment buildings used exclusively as the residence of not more than two families. (1990 Code, § 150.015) (Ord. passed 2-10-1969)

**§ 150.016 COMPLIANCE WITH CODES.**

(A) All buildings or structures which are hereafter constructed, reconstructed, erected, altered, extended, enlarged, repaired, demolished or moved shall conform to the requirements, minimum standards and other provisions of either the North Carolina State Building Code, General Construction, Volume I or the North Carolina Uniform Residential Building Code, whichever is applicable, or of both if both are applicable.

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

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

(D) All electrical wiring, installations and appurtenances shall be erected, altered, repaired, used and maintained in accordance with the minimum standards, requirements and other provisions of the North Carolina Electrical Code (North Carolina State Building Code, Volume IV, Electrical).  
(1990 Code, § 150.016) (Ord. passed 2-10-1969)

**§ 150.017 BUILDING CODE ADOPTED.**

The 1967 edition of the North Carolina State Building Code, Volume I, General Construction, as adopted by the North Carolina Building Code Council and as amended, is hereby adopted by reference as fully as though set forth herein as the Building Code of the town, to the extent the code is applicable for safe and stable design, methods of construction, minimum standards and use of materials in buildings or structures hereafter erected, enlarged, altered, repaired or otherwise constructed or reconstructed.  
(1990 Code, § 150.017) (Ord. passed 2-10-1969)

**§ 150.018 PLUMBING CODE ADOPTED.**

The 1968 edition of the North Carolina Plumbing Code (North Carolina State Building Code, Volume II, Plumbing) as adopted and published by the North Carolina Building Code Council and as amended, is hereby adopted by reference as fully as though set forth herein as the Plumbing Code for the town.  
(1990 Code, § 150.018) (Ord. passed 2-10-1969)

**§ 150.019 HEATING CODE ADOPTED.**

The 1971 edition of the North Carolina Heating Code (North Carolina State Building Code, Volume III, Heating) as adopted and published by the North Carolina Building Code Council and as amended, is hereby adopted by reference as fully as though set forth herein as the Heating Code for the town.  
(1990 Code, § 150.019) (Ord. passed 2-10-1969)



**§ 150.020 ELECTRICAL CODE ADOPTED.**

The 1971 edition of the North Carolina Electrical Code (North Carolina State Building Code, Volume IV, Electrical), adopting by reference the 1965 edition of the National Electrical Code of the National Fire Protection Association as adopted by the North Carolina Building Code Council and as amended, is hereby adopted by reference as fully as though set forth herein as the Electrical Code for the town.  
(1990 Code, § 150.020) (Ord. passed 2-10-1969)

**§ 150.021 RESIDENTIAL BUILDING CODE ADOPTED.**

The 1968 edition or later edition of the North Carolina Uniform Residential Building Code, as adopted by the North Carolina Building Inspectors Association, and as published by the North Carolina Building Code Council, is hereby adopted by reference as fully as though set forth herein as the Residential Building Code for one- and two-family residential buildings in the town.  
(1990 Code, § 150.021) (Ord. passed 2-10-1969)

**§ 150.022 AMENDMENTS TO CODES.**

Amendments to the regulatory codes adopted by reference in this subchapter, which are from time to time adopted and published by the agencies or organizations referred to herein, shall be effective in the town at the time the amendments are filed with the Town Clerk-Treasurer as provided in § 150.023.  
(1990 Code, § 150.022) (Ord. passed 2-10-1969)

**§ 150.023 COPIES OF CODES FILED WITH TOWN CLERK-TREASURER.**

An official copy of each regulatory code adopted herein, and official copies of all amendments thereto, shall be kept on file in the office of the Town Clerk-Treasurer. The copies shall be the official copies of the codes and the amendments.  
(1990 Code, § 150.023) (Ord. passed 2-10-1969)

***ENERGY CONSERVATION STANDARDS; LICENSING OF INSULATION CONTRACTORS***

**§ 150.035 AUTHORITY.**

This subchapter is adopted pursuant to G.S. § 160A-194.  
(1990 Code, § 150.035) (Ord. passed 12-13-1977)

**§ 150.036 LICENSE REQUIRED.**

On and after January 1, 1978, no person, firm or corporation may for a consideration install, alter or restore within the town any insulation or other materials or energy utilization equipment designed or intended to meet the State Building Code requirements for insulation and energy utilization standards who is not either:

- (A) Licensed as a contractor to do the proposed work under G.S. Chapter 87;
- (B) Working under the supervision of a registered architect or professional engineer;
- (C) An owner working upon his or her own building; or
- (D) Licensed under this subchapter.

(1990 Code, § 150.036) (Ord. passed 12-13-1977) Penalty, see § 150.999

**§ 150.037 APPLICATIONS.**

Every person desiring a license under this subchapter shall submit an application for the license to the Town Manager conforming to the following requirements:

(A) *Form of application.* Each application shall be a written statement upon forms provided by the Manager.

(B) *Contents of application.* Each application shall contain the following information:

- (1) Name and home address of the applicant, if an individual, or home office address, if a corporation or partnership;
- (2) Names and home addresses of the partners, if a partnership;
- (3) Names and home addresses of the officers and directors, if a corporation;
- (4) Place where the proposed business is to be located;
- (5) Complete record of all convictions of felonies or acts involving dishonesty, fraud or deceit by the applicant or any employee, partner, officer or director of the applicant, whether in this or any other state or jurisdiction;
- (6) Complete record of all licenses held by the applicant or any employee, partner, officer or director of the applicant authorizing activities of the type authorized herein or other activities involving construction, alteration or modification of buildings and structures; and
- (7) Information as to the circumstances in which any local, state or federal government or agency has refused, suspended or revoked a license of the type described in division (B)(6) above to the applicant or any employee, partner, officer or director of the applicant.

(C) *Fees.* Each application shall be accompanied by a fee in the amount of \$15 for the license, the amount to be for the calendar year and prorated by quarters to the end of the year.

(D) *False statements.* False statements on any application for a license shall be grounds for immediate revocation or denial of the license.  
(1990 Code, § 150.037) (Ord. passed 12-13-1977)

### **§ 150.038 PROCEDURE FOR ISSUANCE.**

(A) *Review by town officers.* Each application received by the Town Manager shall be promptly forwarded to the Inspection Department for review. The officers shall promptly make any comments and recommendations pertaining to the application and forward them to the Town Manager.

(B) *Licensing agency.* The application and any comments and recommendations relating thereto shall be considered by the Manager, which shall then issue or deny the license pursuant to the following standards.

(C) *Standards.* The Manager shall issue the license unless it shall find that the applicant or any employee, partner, officer or director of the applicant:

(1) Has been convicted within the last three years of a felony or an act involving dishonesty, fraud or deceit, whether in this or any other state or jurisdiction;

(2) Has been refused a license to do the type of work authorized herein or has had a license suspended or revoked by any local, state or federal government or agency and the government or agency has not subsequently granted or restored the license;

(3) Has knowingly made a false statement in the application; or

(4) Has failed to post the bond or other security required by § 150.039.  
(1990 Code, § 150.038) (Ord. passed 12-13-1977)

### **§ 150.039 BOND REQUIRED.**

(A) Before a license shall be issued to any applicant, the applicant shall post a bond with the town in the amount of \$1,000. In lieu of posting a bond, the applicant may deposit a cashier's check or cash in the same amount.

(B) The security required by division (A) above shall be available to indemnify any person for any damage which may accrue by reason of the applicant's failure to properly provide or install insulation, energy utilization equipment or other materials designed or intended to meet the State Building Code Standards for insulation and energy utilization.  
(1990 Code, § 150.039) (Ord. passed 12-13-1977)

**§ 150.040 TERMINATION AND RENEWAL OF LICENSES.**

All licenses issued hereunder shall terminate on the last day of the calendar year for which issued. Renewal of the licenses shall be pursuant to the same procedures and requirements set forth for initial issuance. (1990 Code, § 150.040) (Ord. passed 12-13-1977)

**§ 150.041 SUSPENSION; REVOCATION.**

(A) The Town Manager may suspend or revoke any license issued hereunder at any time upon a showing that the applicant or any employee, partner, officer or director of the applicant has:

- (1) Knowingly made a false statement in the application for a license;
- (2) Violated the State Building Code requirements as to insulation or energy utilization equipment or materials, whether in this or any other jurisdiction; or
- (3) Been convicted of an act involving dishonesty, fraud or deceit with respect to any contract entered into for work requiring this license.

(B) Any licensee whose license is suspended or revoked may appeal the suspension or revocation to the Town Board of Commissioners. After reasonable notice to the licensee, the Board shall afford the licensee an opportunity to show why its license should not be suspended or revoked. (1990 Code, § 150.041) (Ord. passed 12-13-1977)

**§ 150.042 CHANGE OF LOCATION OF BUSINESS.**

The location of any licensed business may be changed, provided, ten days' notice thereof is given to the town and operation at the new location does not violate any applicable state or local law, ordinance or regulation. (1990 Code, § 150.042) (Ord. passed 12-13-1977)

**§ 150.043 REQUIRED PERMIT; FEE; EXCEPTIONS.**

(A) On and after January 1, 1978, no person, firm or corporation may, for a consideration, install, alter or restore any insulation or other materials or energy utilization equipment designed or intended to meet the State Building Code requirements for insulation and energy utilization without first securing a special insulation and energy utilization permit from the Town Manager for each item of work, which permit shall evidence compliance with the insulation and energy utilization standards of the State Building Code.

(B) There shall be a fee of \$10 for each permit issued.

(C) The following shall not be required to obtain the permit required by division (A) above:

- (1) An owner working upon his or her own building;

(2) An installer working under the supervision of a registered architect or professional engineer, when the work is being performed under a general building permit; and

(3) A contractor licensed to do the proposed work under G.S. Chapter 87, when the work is being performed under a general building permit.

(1990 Code, § 150.043) (Ord. passed 12-13-1977) Penalty, see § 150.999

## ***PERMIT REQUIREMENTS***

### **§ 150.055 PERMITS REQUIRED.**

#### ***(A) Building permit.***

(1) No person shall commence or proceed with the construction, reconstruction, alteration, repair, removal or demolition of any building or other structure, or any part thereof, without a written permit therefore from the Building Inspector. However, no building permit shall be required for work, the total cost of which does not exceed \$100 and which does not involve any change of the structural parts or the stairways, elevators, fire escapes or other means of egress of the building or the structure in question. Board of Health approval of property for septic tank required where sewage system cannot be connected to town sewer.

(2) In all cases of removal or demolition of a building or structure, a good and sufficient bond in the sum of \$500 shall be posted by the property owner or by his or her contractor at the time of application for a permit, to insure complete removal or demolition, including all rubble and debris. Failure on the part of the property owner or his or her contractor to completely demolish, remove and clear the premises, after 30-days' notice by the Building Inspector, shall be cause for forfeiture of the bond.

***(B) Plumbing permit.*** No person shall commence or proceed with the installation, extension or general repair of any plumbing system without a written permit, therefore, from the Plumbing Inspector. However, no permit shall be required for minor repairs or replacements on the house side of a trap to an installed system of plumbing if the repairs or replacements do not disrupt the original water supply or the waste or ventilating systems. Board of Health approval of property for septic tank required where sewage system cannot be connected to town sewer.

***(C) Heating-air conditioning permit.*** No person shall commence or proceed with alteration or general repair of any heating or cooling equipment system without a written permit from the Heating-Air Conditioning Inspector. However, no permit shall be required for minor repairs or minor burner services or filter replacements of warm air furnaces or cooling system.

***(D) Electrical permit.*** No person shall commence or proceed with the installation, extension, alteration or general repair of any electrical wiring, devices, appliances or equipment without a written permit therefore from the Electrical Inspector. However, no permit shall be required for minor repair work such as the replacement of lamps or the connection of portable devices to suitable receptacles which have been permanently installed. No

permit shall be required for the installation, alteration or repair of the electrical wiring, devices, appliances and equipment installed by or for an electrical public utility corporation for the use of the corporation in the generation, transmission, distribution or metering of electrical energy, or for the use of the corporation in the operation of signals or the transmission of intelligence.

(1990 Code, § 150.055) (Ord. passed 2-10-1969) Penalty, see § 150.999

**§150.056 APPLICATION FOR PERMIT.**

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

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

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

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

(1990 Code, § 150.056) (Ord. passed 2-10-1969)

**§ 150.057 PLANS AND SPECIFICATIONS.**

Detailed plans and specifications shall accompany each application for permit when the estimated total cost of the building or structure is in excess of \$20,000, and for any other building or structure where plans and specifications are deemed necessary by the appropriate Inspector in order for him or her to determine whether the proposed work complies with the appropriate regulatory codes. Plans shall be drawn to scale with sufficient clarity to indicate the nature and extent of the work proposed, and the plans and specifications together shall contain information sufficient to indicate that the work proposed will conform to the provisions of this subchapter and the appropriate regulatory codes. Where plans and specifications are required, a copy of the same shall be kept at the work until all authorized operations have been completed and approved by the appropriate Inspector.

(1990 Code, § 150.057) (Ord. passed 2-10-1969)

**§ 150.058 LIMITATIONS ON ISSUANCE OF PERMITS.**

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

(B) Where detailed plans and specifications are required under this subchapter, no building permit shall be issued unless the plans and specifications have been provided.

(1990 Code, § 150.058) (Ord. passed 2-10-1969)

**§ 150.059 ISSUANCE OF PERMIT.**

When proper application for a permit has been made, and the appropriate Inspector is satisfied that the application and the proposed work comply with the provisions of this subchapter and the appropriate regulatory codes, he or she shall issue the permit, upon payment of the proper fee or fees as hereinafter provided in § 150.063.

(1990 Code, § 150.059) (Ord. passed 2-10-1969)

#### **§ 150.060 REVOCATION OF PERMITS.**

(A) The appropriate Inspector may revoke and require the return of any permit by notifying the permit holder in writing stating the reason for the revocation.

(B) Permits shall be revoked for any material departure from the approved application, plans or specifications, for refusal or failure to comply with proper orders of the Inspector, for refusal or failure to comply with requirements of this subchapter and the appropriate regulatory codes or for false statements or misrepresentations made in securing the permit.

(1990 Code, § 150.060) (Ord. passed 2-10-1969)

#### **§ 150.061 TIME LIMITATIONS ON VALIDITY OF PERMITS.**

All permits issued under this subchapter shall expire by limitation six months after the date of issuance if the work authorized by the permit has not been commenced. If after commencement the work is discontinued for a period of 12 months, the permit therefore shall immediately expire. No work authorized by any permit which has expired shall thereafter be performed until a new permit therefore has been secured.

(1990 Code, § 150.061) (Ord. passed 2-10-1969)

#### **§ 150.062 CHANGES IN WORKS; APPROVAL REQUIRED.**

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

(1990 Code, § 150.062) (Ord. passed 2-10-1969)

#### **§ 150.063 PERMIT FEES.**

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

(B) Permit fees shall be as follows.

(1) *Building permit fees.* (See schedule of fees in office of Building Inspector).

(2) *Plumbing permit fees.* (See schedule of fees in office of Plumbing Inspector).

(3) *Heating-air conditioning permit fees.* (See schedule of fees in office of Heating-Air Conditioning Inspector).

(4) *Electrical permit fees.* (See schedule of fees in office of Electrical Inspector).  
(1990 Code, § 150.063) (Ord. passed 2-10-1969)

#### **§ 150.064 REGISTRATION OF CONTRACTORS; BOND.**

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

(B) Every person required to register at the office of the Inspection Department under division (A) above shall also give a good and sufficient bond in the sum of \$1,000, to be approved by the Town Attorney, conditioned upon faithful performance of duty in doing any work which he or she may have contracted to do, and to indemnify the town against loss in any manner whatsoever for any unskillful or negligent work or conduct in the performance of the duties imposed by the provisions of this subchapter or any regulatory code herein adopted, or any damage to any utility lines, streets or sidewalks in the town or for the use of defective or improper material in the work, or for any damage which may accrue to any person by reason of any default of the contract, or for the payment of any inspection or other fees required by this subchapter.  
(1990 Code, § 150.064) (Ord. passed 2-10-1969) Penalty, see § 150.999

#### ***ABANDONED STRUCTURES; REPAIR, CLOSING OR DEMOLITION***

#### **§ 150.075 FINDING; INTENT.**

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

(1990 Code, § 150.075) (Ord. passed 6-10-1980)

#### **§ 150.076 ENFORCEMENT OFFICER; DUTIES AND POWERS.**

(A) The Building Inspector is hereby designated as the town officer to enforce the provisions of this subchapter.

(B) It shall be the duty of the Building Inspector:

(1) To locate abandoned structures within the town and determine which structures are in violation of this subchapter;



(2) To take action pursuant to this subchapter as may be necessary to provide for the repair, closing or demolition of the structures;

(3) To keep an accurate record of all enforcement proceedings begun pursuant to the provisions of this subchapter; and

(4) To perform the other duties as may be prescribed herein or assigned to him or her by the Town Manager.

(C) The Building Inspector is authorized to exercise the powers as may be necessary to carry out the intent and the provisions of this subchapter, including the following powers in addition to others herein granted:

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

(2) To enter upon premises for the purpose of making inspections;

(3) To administer oaths and affirmations, examine witnesses and receive evidence; and

(4) To designate the other officers, agents and employees of the town as he or she deems necessary to carry out the provisions of this subchapter.

(1990 Code, § 150.076) (Ord. passed 6-10-1980)

#### **§ 150.077 STANDARDS FOR ENFORCEMENT.**

(A) Every abandoned structure within the town shall be deemed in violation of this subchapter whenever the structure constitutes a hazard to the health, safety or welfare of the town citizens as a result of:

(1) The attraction of insects or rodents;

(2) Conditions creating a fire hazard;

(3) Dangerous conditions constituting a threat to children; or

(4) Frequent use by vagrants as living quarters in the absence of sanitary facilities.

(B) In making the preliminary determination of whether or not an abandoned structure is in violation of this subchapter, the Building Inspector may, by way of illustration and not limitation, consider the presence or absence of the following conditions:

(1) Holes or cracks in the structure's floors, walls, ceilings or roof which might attract or admit rodents and insects, or become breeding places for rodents and insects;

(2) The collection of garbage or rubbish in or near the structure which might attract rodents and insects, or become breeding places for rodents and insects;

(3) Violations of the State Building Code, the State Electrical Code or the Fire Prevention Code which

constitute a fire hazard in the structure;

(4) The collection of garbage, rubbish or combustible material which constitute a fire hazard in the structure;

(5) The use of the structure or nearby grounds or facilities by children as a play area;

(6) Violations of the State Building Code which might result in danger to children using the structure or nearby grounds or facilities as a play area; and

(7) Repeated use of the structure by transients and vagrants, in the absence of sanitary facilities, for living, sleeping, cooking or eating.  
(1990 Code, § 150.077) (Ord. passed 6-10-1980)

### **§ 150.078 PROCEDURE FOR ENFORCEMENT.**

(A) *Preliminary investigation; notice; hearing.* Whenever a petition is filed with the Building Inspector by at least five residents of the town charging that any structure exists in violation of this subchapter, or whenever it appears to the Inspector, upon inspection, that any structure exists in violation hereof, he or she shall, if his or her preliminary investigation discloses a basis for the charges, issue and cause to be served upon the owner of and parties in interest in the structure, a complaint stating the charges and containing a notice that a hearing will be held before the Inspector at a place therein fixed, not less than ten nor more than 30 days after the serving of the complaint. The owner or any party in interest shall have the right to file an answer to the complaint and to appear in person, or otherwise, and give testimony at the place and time fixed in the complaint. Notice of the hearing shall also be given to at least one of the persons signing a petition relating to the structure. 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 hearings before the Inspector.

(B) *Procedure after hearing.* After the notice and hearing, the Inspector shall state in writing his or her determination of whether the structure violates this subchapter. If the Inspector determines that the dwelling is in violation he or she shall state in writing his or her findings of fact to support this determination, and shall issue and cause to be served upon the owner thereof an order directing and requiring the owner to either repair, alter and improve the structure or else remove or demolish the structure within a specified period of time, not to exceed 90 days.

(C) *Failure to comply with order.*

(1) *In personam remedy.* If the owner of any structure shall fail to comply with an order of the Inspector within the time specified therein, the Inspector may submit to the Board of Commissioners at its next regular meeting a resolution directing the Town Attorney to petition the Superior Court for an order directing the owner to comply with the order of the Inspector, as authorized by G.S. § 160A-446(g).

(2) *In rem remedy.* After failure of an owner of a structure to comply with an order of the Inspector within the time specified therein, if injunctive relief has not been sought or has not been granted as provided in division (C)(1) above, the Inspector shall submit to the Board of Commissioners an ordinance ordering the Inspector to cause the structure to be removed or demolished, as provided in the original order of the Inspector, and pending the removal or demolition, to placard the dwelling as provided by G.S. § 160A-443.

(D) *Petition to superior court by owner.* Any person aggrieved by an order issued by the Inspector shall have the right, within 30 days after issuance of the order, to petition the Superior Court for a temporary injunction

restraining the Inspector pending a final disposition of the cause, as provided by G.S. § 160A-446(f). (1990 Code, § 150.078) (Ord. passed 6-10-1980)

**§ 150.079 METHOD OF SERVICE OF COMPLAINTS AND ORDERS.**

Complaints or orders issued by the Building Inspector shall be served upon persons either personally or by registered or certified mail. If the whereabouts of the person are unknown and the same cannot be ascertained by the Inspector in the exercise of reasonable diligence, the Inspector shall make an affidavit to that effect and the serving of the complaint or order upon the person may be made by publication in a newspaper in the town in the manner prescribed in the Rules of Civil Procedure at least once, no later than the time at which personal service is required under § 150.078. Where service is made by publication, a notice of the pending proceedings shall be posted in a conspicuous place on the premises affected by the complaint or order. (1990 Code, § 150.079) (Ord. passed 6-10-1980)

**§ 150.080 IN REM ACTION BY BUILDING INSPECTOR; PLACARDING.**

After failure of an owner of a structure to comply with an order of the Building Inspector issued pursuant to the provisions of this subchapter, and upon adoption by the Board of Commissioners of an ordinance authorizing and directing him or her to do so, as provided by G.S. § 160A-443(5) and § 150.078(C), the Inspector shall proceed to cause the structure to be removed or demolished, as directed by the ordinance of the Board of Commissioners and shall cause to be posted on the main entrance of the structure a placard prohibiting the use or occupation of the structure. Use or occupation of a building so posted shall constitute a misdemeanor. Each ordinance shall be recorded in the office of the County Register of Deeds, and shall be indexed in the name of the property owner in the grantor index, as provided by G.S. § 160A-443(5). (1990 Code, § 150.080) (Ord. passed 6-10-1980)

**§ 150.081 COSTS OF LIEN ON PREMISES.**

As provided by G.S. § 160A-443(6), the amount of the cost of any removal or demolition caused to be made or done by the Building Inspector pursuant to this subchapter shall be a lien against the real property upon which the cost was incurred. This lien shall be filed, have the same priority and be enforced and the costs collected as provided by G.S. Chapter 160A, Article 10. (1990 Code, § 150.081) (Ord. passed 6-10-1980)

**§ 150.082 ALTERNATIVE REMEDIES.**

Neither this subchapter nor any of its provisions shall be construed to impair, or limit in any way, the power of the town to define and declare nuisances and to cause their abatement by summary action or otherwise, or to enforce this subchapter by criminal process, and the enforcement of any remedy provided herein shall not prevent the enforcement of any other remedy or remedies provided herein or in other ordinances or laws. (1990 Code, § 150.082) (Ord. passed 6-10-1980)

## ***INSPECTION DEPARTMENT***

### **§ 150.095 ORGANIZATION.**

The Inspection Department shall consist of a Building Inspector, a Plumbing Inspector, a Heating-Air Conditioning Inspector and Electrical Inspector, and the other Inspectors or deputy or assistant Inspectors as may be authorized by the Town Manager. The Town Manager may, in his or her discretion, designate a department head.

(1990 Code, § 150.095) (Ord. passed 2-10-1969)

### **§ 150.096 DUTIES OF DEPARTMENT AND INSPECTORS.**

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

(B) The North Carolina State Building Code, Volume I, General Construction, and the North Carolina Uniform Residential Building Code shall be enforced by the Building Inspector. The North Carolina Plumbing Code shall be enforced by the Plumbing Inspector. The North Carolina Heating Code shall be enforced by the Heating-Air Conditioning Inspector. The North Carolina State Electrical Code shall be enforced by the Electrical Inspector.

(C) No member of the Inspection Department shall willfully fail to perform the duties required of him or her by law, or willfully shall improperly issue a permit, nor shall give a certificate of compliance without first making the inspections required by law, or willfully shall improperly give a certificate of compliance.

(1990 Code, § 150.096) (Ord. passed 2-10-1969) Penalty, see § 150.999

### **§ 150.097 REPORTS AND RECORDS.**

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

(1990 Code, § 150.097) (Ord. passed 2-10-1969)

### **§ 150.098 INSPECTION PROCEDURE.**

(A) *Inspections.* The Inspection Department shall inspect all buildings and structures and work therein for which a permit of any kind has been issued as often as necessary in order to determine whether the work complies with this subchapter and the appropriate codes. When deemed necessary by the appropriate Inspector, materials and assemblies may be inspected at the point of manufacture or fabrication, or inspections may be made by approved and recognized inspection organizations; provided, no approval shall be based upon reports of the organizations unless the same are in writing and certified by a responsible officer of the organization. All holders of permits or their agents shall notify the Inspection Department and the appropriate Inspector at each of the

following stages of construction so that approval may be given before work is continued.

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

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

(3) *Fireproofing inspection.* To be made after all areas required to be protected by fireproofing are lathed, but before the plastering or other fireproofing is applied.

(4) *Final inspection.* To be made after the building or structure has all doors hung, fixtures set and ready for occupancy, but before the building is occupied.

(B) *Calls for inspection.*

(1) *Request for inspections may be made to the office of the Inspection Department or to the appropriate Inspector.* The Inspection Department shall make inspections as soon as practicable after request is made, therefore, provided the work is ready for inspection at the time the request is made.

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

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

(D) *Certificate of occupancy.* No new building or part thereof shall be occupied, no addition or enlargement of any existing building shall be occupied, no existing building after being altered or moved shall be occupied and no change of occupancy shall be made in any existing building or part thereof, until the Inspection Department

has issued a certificate of occupancy therefore. A temporary certificate of occupancy may be issued for a portion or portions of a building which may safely be occupied prior to final completion and occupancy of the entire building. Application for certificate of occupancy may be made by the owner or his or her agent after all final inspections have been made for new buildings, or, in the case of existing buildings, after supplying the information and data necessary to determine compliance with this subchapter, the appropriate regulatory codes and the zoning ordinance for the occupancy intended. The Inspection Department shall issue a certificate of occupancy when, after examination and inspection, it is found that the building in all respects conforms to the provisions of this subchapter, the regulatory codes and the Zoning Code for the occupancy intended. (1990 Code, § 150.098) (Ord. passed 2-10-1969)

**§ 150.099 OVERSIGHT NOT TO LEGALIZE VIOLATION.**

No oversight or dereliction of duty on the part of any Inspector or other official or employee of the Inspection Department shall be deemed to legalize the violation of any provision of this subchapter, or any provision of any regulatory code herein adopted. (1990 Code, § 150.099) (Ord. passed 2-10-1969)

**§ 150.100 POWERS OF INSPECTION OFFICIALS.**

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

(B) *Stop orders.* Whenever any building, structure or part thereof is being demolished, constructed, reconstructed, altered or repaired in a hazardous manner, or in violation of any provisions of this subchapter or any other town or county ordinance, or in violation of any provisions of any regulatory code herein adopted, or in violation of the terms of the permit or permits issued therefore, or in the manner as to endanger life or property, the appropriate Inspector may order the work to be immediately stopped. The order shall be in writing to the owner of the property or to his or her agent, or to the person doing the work, and shall state the reasons therefore and the conditions under which the work may be resumed. (1990 Code, § 150.100) (Ord. passed 2-10-1969)

**§ 150.101 ENFORCEMENT OF ZONING CODE.**

(A) If the Inspection Department is charged with enforcement of the Zoning Code, then no permit for alteration, repair or construction of any building or structure shall be issued unless the plans and specifications show that the building or structure, and its proposed use, will be in compliance with applicable provisions of the Zoning Code.

(B) If the Inspection Department is not charged with enforcement of the zoning ordinance, then no permit for alteration, repair or construction of any building or structure shall be issued until a zoning permit has first been issued by the appropriate official charged with enforcement of the Zoning Code. (1990 Code, § 150.101) (Ord. passed 2-10-1969)

**§ 150.999 PENALTY.**

(A) Whoever shall violate any provision of this code for which no other penalty is provided, shall, upon conviction, be guilty of a misdemeanor and subject to a fine not to exceed \$50 or imprisonment not to exceed 30 days. Each day that any of the provisions of this code are violated shall constitute a separate offense.

(B) Any person, firm or corporation violating the provisions of §§ 150.035 through 150.043 shall be subject to all the applicable punishment, penalties and equitable relief provided for by G.S. § 160A-175 and Chapter 703, North Carolina Session Laws of 1977.  
(1990 Code, § 150.999) (Ord. passed 12-13-1977)





## CHAPTER 151: FLOOD DAMAGE PREVENTION

### Section

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***STATUTORY AUTHORIZATION, FINDING OF FACT, PURPOSE AND OBJECTIVES***

**§ 151.001 STATUTORY AUTHORIZATION.**

(A) The Legislature of the State of North Carolina has in G.S. Chapter 143, Article 21, Part 6, Chapter 160A, Article 19, Parts 3, 5 and 8 and Chapter 160A, Article 8, delegated the responsibility to local governmental units to adopt regulations designed to promote the public health, safety and general welfare of its citizenry.

(B) Therefore, the Board of Commissioners of the Town of Benson, North Carolina, does ordain as follows.

(Ord. passed 11-8-2005)

**§ 151.002 FINDINGS OF FACT.**

(A) The flood prone areas within the jurisdiction of the Town of Benson are subject to periodic inundation which results in loss of life, property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures of flood protection, relief and impairment of the tax base, all of which adversely affect the public health, safety and general welfare.

(B) These flood losses are caused by the cumulative effect of obstructions in floodplains causing increases in flood heights and velocities and by the occupancy in flood prone areas of uses vulnerable to floods or other hazards.

(Ord. passed 11-8-2005)

**§ 151.003 STATEMENT OF PURPOSE.**

It is the purpose of this chapter to promote public health, safety and general welfare and to minimize public and private losses due to flood conditions within flood prone areas by provisions designed to:

(A) Restrict or prohibit uses that are dangerous to health, safety and property due to water or erosion hazards or that result in damaging increases in erosion, flood heights or velocities;

(B) Require that uses vulnerable to floods, including facilities that serve the uses, be protected against flood damage at the time of initial construction;

(C) Control the alteration of natural floodplains, stream channels and natural protective barriers, which are involved in the accommodation of floodwaters;

(D) Control filling, grading, dredging and all other development that may increase erosion or flood damage; and

(E) Prevent or regulate the construction of flood barriers that will unnaturally divert floodwaters or which may increase flood hazards to other lands.  
(Ord. passed 11-8-2005)

#### **§ 151.004 OBJECTIVES.**

The objectives of this chapter are:

(A) To protect human life and health;

(B) To minimize expenditure of public money for costly flood control projects;

(C) To minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;

(D) To minimize prolonged business losses and interruptions;

(E) To minimize damage to public facilities and utilities (i.e. water and gas mains, electric, telephone, cable and sewer lines, streets and bridges) that are located in flood prone areas;

(F) To help maintain a stable tax base by providing for the sound use and development of flood prone areas; and

(G) To ensure that potential buyers are aware that property is in a special flood hazard area.  
(Ord. passed 11-8-2005)

### ***GENERAL PROVISIONS***

#### **§ 151.020 DEFINITIONS.**

(A) Unless specifically defined below, words or phrases used in this chapter shall be interpreted so as to give them the meaning they have in common usage and to give this chapter it's most reasonable application.

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

***ACCESSORY STRUCTURE (APPURTENANT STRUCTURE)***. A structure, which is located on the same parcel of property as the principal structure and the use of which is incidental to the use of the principal structure. Garages, carports and storage sheds are common urban accessory structures. Pole barns, hay sheds and the like qualify as accessory structures on farms, and may or may not be located on the same parcel as the farm dwelling or shop building.

**ADDITION (TO AN EXISTING BUILDING).** An extension or increase in the floor area or height of a building or structure.

**APPEAL.** A request for a review of the Floodplain Administrator's interpretation of any provision of this chapter.

**AREA OF SHALLOW FLOODING.** A designated Zone AO on a community's Flood Insurance Rate Map (FIRM) with base flood depths determined to be from one to three feet. These areas are located where a clearly defined channel does not exist, where the path of flooding is unpredictable and indeterminate, and where velocity flow may be evident.

**AREA OF SPECIAL FLOOD HAZARD.** See **SPECIAL FLOOD HAZARD AREA (SFHA).**

**BASE FLOOD.** The flood having a 1% chance of being equaled or exceeded in any given year.

**BASE FLOOD ELEVATION (BFE).** A determination as published in the Flood Insurance Study of the water surface elevations of the base flood. This elevation, when combined with the freeboard, establishes the regulatory flood protection elevation.

**BASEMENT.** Any area of the building having its floor subgrade (below ground level) on all sides.

**BUILDING.** See **STRUCTURE.**

**CHEMICAL STORAGE FACILITY.** A building, portion of a building or exterior area adjacent to a building used for the storage of any chemical or chemically reactive products.

**DEVELOPMENT.** Any man-made change to improved or unimproved real estate, including, but not limited to, buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations, or storage of equipment or materials.

**DISPOSAL.** Defined as in G.S. § 130A-290(a)(6).

**ELEVATED BUILDING.** A non-basement building which has its reference level raised above ground level by foundation walls, shear walls, posts, piers, pilings or columns.

**ENCROACHMENT.** The advance or infringement of uses, fill, excavation, buildings, permanent structures or development into a floodplain, which may impede or alter the flow capacity of a floodplain.

**EXISTING MANUFACTURED HOME PARK or MANUFACTURED HOME SUBDIVISION.** A manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) was completed before the original effective date of the floodplain management regulations adopted by the community.

**FLOOD or FLOODING.** A general and temporary condition of partial or complete inundation of normally dry land areas from:

- (a) The overflow of inland or tidal waters; and/or

(b) The unusual and rapid accumulation of runoff of surface waters from any source.

**FLOOD BOUNDARY** and **FLOODWAY MAP (FBFM)**. An official map of a community, issued by the Federal Emergency Management Agency, on which the special flood hazard areas and the floodways are delineated. This official map is a supplement to and shall be used in conjunction with the Flood Insurance Rate Map (FIRM).

**FLOOD HAZARD BOUNDARY MAP (FHBM)**. An official map of a community, issued by the Federal Emergency Management Agency, where the boundaries of the special flood hazard areas have been defined as Zone A.

**FLOOD INSURANCE**. The insurance coverage provided under the National Flood Insurance Program.

**FLOOD INSURANCE RATE MAP (FIRM)**. An official map of a community, issued by the Federal Emergency Management Agency, on which both the special flood hazard areas and the risk premium zones applicable to the community are delineated.

**FLOOD INSURANCE STUDY (FIS)**. An examination, evaluation and determination of flood hazard areas, corresponding water surface elevations (if appropriate), flood insurance risk zones and other flood data in a community issued by the Federal Emergency Management Agency. The Flood Insurance Study report includes Flood Insurance Rate Maps (FIRMs) and Flood Boundary and Floodway Maps (FBFMs), if published.

**FLOOD PRONE AREA**. See **FLOODPLAIN**.

**FLOOD ZONE**. A geographical area shown on a Flood Hazard Boundary Map or Flood Insurance Rate Map that reflects the severity or type of flooding in the area.

**FLOODPLAIN** or **FLOOD PRONE AREA**. Any land area susceptible to being inundated by water from any source. **FLOODPLAIN ADMINISTRATOR** is the individual appointed to administer and enforce the floodplain management regulations.

**FLOODPLAIN DEVELOPMENT PERMIT**. Any type of permit that is required in conformance with the provisions of this chapter, prior to the commencement of any development activity.

**FLOODPLAIN MANAGEMENT**. The operation of an overall program of corrective and preventive measures for reducing flood damage and preserving and enhancing, where possible, natural resources in the floodplain, including, but not limited to, emergency preparedness plans, flood control works, floodplain management regulations and open space plans.

**FLOODPLAIN REGULATIONS**. This chapter and other zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances and other applications of police power which control development in flood-prone areas. This term describes federal, state or local regulations, in any combination thereof, which provide standards for preventing and reducing flood loss and damage.

**FLOODPROOFING**. Any combination of structural and nonstructural additions, changes or adjustments to structures, which reduce or eliminate risk of flood damage to real estate or improved real property, water and sanitation facilities or structures with their contents.

**FLOODWAY.** The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot.

**FREEBOARD.** The height added to the base flood elevation (BFE) to account for watershed development as well as limitations of the engineering methodologies for the determination of flood elevations. The freeboard plus the base flood elevation establishes the regulatory flood protection elevation.

**FUNCTIONALLY DEPENDENT FACILITY.** A facility which cannot be used for its intended purpose unless it is located in close proximity to water, such as a docking or port facility necessary for the loading and unloading of cargo or passengers, shipbuilding or ship repair. The term does not include long-term storage, manufacture, sales or service facilities.

**HAZARDOUS WASTE MANAGEMENT FACILITY.** A facility for the collection, storage, processing, treatment, recycling, recovery or disposal of hazardous waste as defined in G.S. Chapter 130A, Article 9.

**HIGHEST ADJACENT GRADE (HAG).** The highest natural elevation of the ground surface, prior to construction, immediately next to the proposed walls of the structure.

**HISTORIC STRUCTURE.**

(a) Any structure that is:

1. Listed individually in the National Register of Historic Places (a listing maintained by the United States Department of Interior) or preliminarily determined by the Secretary of Interior as meeting the requirements for individual listing on the National Register;

2. Certified or preliminarily determined by the Secretary of Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;

3. Individually listed on a local inventory of historic landmarks in communities with a Certified Local Government (CLG) Program; or

4. Certified as contributing to the historical significance of a historic district designated by a community with a Certified Local Government (CLG) Program.

(b) Certified Local Government (CLG) Programs are approved by the United States Department of the Interior in cooperation with the North Carolina Department of Cultural Resources through the State Historic Preservation Officer as having met the requirements of the National Historic Preservation Act of 1966 as amended in 1980.

**LOWEST ADJACENT GRADE (LAG).** The elevation of the ground, sidewalk or patio slab immediately next to the building, or deck support, after completion of the building. For Zones A and AO, use the natural grade elevation prior to construction.

**LOWEST FLOOR.** The subfloor, top of slab or grade of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access or limited storage in an area other than a basement area is not considered a building's lowest floor, provided that such an enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of this chapter.

**MANUFACTURED HOME.** A structure, transportable in one or more sections, which is built on a permanent chassis and designed to be used with or without a permanent foundation when connected to the required utilities. The term **MANUFACTURED HOME** does not include a recreational vehicle.

**MANUFACTURED HOME PARK or SUBDIVISION.** A parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

**MARKET VALUE.** The building value, excluding the land value and that of any accessory structures or other improvements on the lot, established by independent certified appraisal, replacement cost depreciated by age of building and quality of construction (actual cash value), or adjusted tax assessed values.

**MEAN SEA LEVEL.** For purposes of the NFIP, the National Geodetic Vertical Datum (NGVD) as corrected in 1929, the North American Vertical Datum (NAVD) as corrected in 1988 or other vertical control datum used as a reference for establishing varying elevations within the floodplain, to which base flood elevations (BFEs) shown on a FIRM are referenced. Refer to each FIRM panel to determine datum used.

**NEW CONSTRUCTION.** Structures for which the start of construction commenced on or after the effective date of the original version of this chapter, and includes any subsequent improvements to the structures.

**NONCONFORMING BUILDING or DEVELOPMENT.** Any legally existing building or development which fails to comply with the current provisions of this chapter.

**NON-ENCROACHMENT AREA.** The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot as designated in the Flood Insurance Study report.

**POST-FIRM.** Construction or other development which started on or after the effective date of the initial Flood Insurance Rate Map for the area.

**PRE-FIRM.** Construction or other development which started before the effective date of the initial Flood Insurance Rate Map for the area.

**PRINCIPALLY ABOVE GROUND.** That at least 51% of the actual cash value of the structure is above ground.

**PUBLIC SAFETY and/or NUISANCE.** Anything which is injurious to the safety or health of an entire community or neighborhood, or any considerable number of persons, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, or river, bay, stream, canal or basin.

**RECREATIONAL VEHICLE (RV).** A vehicle, which is:

- (a) Built on a single chassis;

(b) Four hundred square feet or less when measured at the largest horizontal projection;

(c) Designed to be self-propelled or permanently towable by a light duty truck; and

(d) Not designed for use as a permanent primary dwelling, but as temporary living quarters for recreational, camping, travel or seasonal use.

**REFERENCE LEVEL.** The portion of a structure or other development that must be compared to the regulatory flood protection elevation to determine regulatory compliance. For structures within special flood hazard areas designated as Zone A1-A30, AE, A, A99 or AO, the **REFERENCE LEVEL** is the top of the lowest floor or bottom of lowest attendant utility including duct work, whichever is lower.

**REGULATORY FLOOD PROTECTION ELEVATION.** The elevation, in relation to mean sea level, to which the reference level of all structures and other development located within special flood hazard areas must be protected. Where base flood elevations (BFEs) have been determined, this elevation shall be the BFE. Where no BFE has been established, this elevation shall be at least two feet above the highest adjacent grade.

**REMEDY A VIOLATION.** To bring the structure or other development into compliance with state and community floodplain management regulations, or, if this is not possible, to reduce the impacts of its noncompliance. Ways that impacts may be reduced include protecting the structure or other affected development from flood damages, implementing the enforcement provisions of the ordinance or otherwise deterring future similar violations or reducing federal financial exposure with regard to the structure or other development.

**REPETITIVE LOSS.** Flood-related damages sustained by a structure on two separate occasions during any ten-year period for which the cost of repairs at the time of each flood event, on the average, equals or exceeds 25% of the market value of the structure before the damage occurred.

**RIVERIN.** Relating to, formed by or resembling a river (including tributaries), stream, brook and the like.

**SALVAGE YARD.** Any non-residential property used for the storage, collection and/or recycling of any type of equipment, and including but not limited to vehicles, appliances and related machinery.

**SOLID WASTE DISPOSAL FACILITY.** Any facility involved in the disposal of solid waste, as defined in G.S. § 130A-290(a)(35).

**SOLID WASTE DISPOSAL SITE.** Defined as in G.S. § 130A-290(a)(36).

**SPECIAL FLOOD HAZARD AREA (SFHA).** The land in the floodplain subject to a 1% or greater chance of being flooded in any given year as determined in § 151.041.

**START OF CONSTRUCTION.** Includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition placement or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure (including a manufactured home) on a site, such as the pouring of slabs or footings, installation of piles, construction of columns or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling, nor does it include the installation of streets and/or walkways, nor does it include excavation for a basement, footings, piers or foundations or the erection of temporary forms, nor does it include the installation on the property of accessory buildings, such as garages or



sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual **START OF CONSTRUCTION** means the first alteration of any wall, ceiling, floor or other structural part of the building, whether or not that alteration affects the external dimensions of the building.

**STRUCTURE.** A walled and roofed building, a manufactured home or a gas or liquid storage tank that is principally above ground. For floodplain management purposes, principally above ground means that at least 51% of the actual cash value of the structure is above ground.

**SUBSTANTIAL DAMAGE.** Damage of any origin sustained by a structure during any one-year period whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50% of the market value of the structure before the damage occurred. See definition of **SUBSTANTIAL IMPROVEMENT**. **SUBSTANTIAL DAMAGE** also means flood-related damage sustained by a structure on two separate occasions during a ten-year period for which the cost of repairs at the time of each flood event, on the average, equals or exceeds 25% of the market value of the structure before the damage occurred.

**SUBSTANTIAL IMPROVEMENT.** Any combination of repairs, reconstruction, rehabilitation, addition or other improvement of a structure, taking place during any one-year period for which the cost equals or exceeds 50% of the market value of the structure before the start of construction of the improvement. This term includes structures which have incurred substantial damage, regardless of the actual repair work performed. The term does not, however, include either:

(a) Any correction of existing violations of state or community Health, Sanitary or Safety Code specifications which have been identified by the Community Code Enforcement Official and which are the minimum necessary to assure safe living conditions; or

(b) Any alteration of a historic structure provided that the alteration will not preclude the structure's continued designation as a historic structure.

**VARIANCE.** A grant of relief from the requirements of this chapter.

**VIOLATION.** The failure of a structure or other development to be fully compliant with the community's floodplain management regulations. A structure or other development without the elevation certificate, other certification, or other evidence of compliance required in §§ 151.060 through 151.064 and §§ 151.75 through 151.076 is presumed to be in violation until the time as that documentation is provided.

**WATER SURFACE ELEVATION (WSE).** The height, in relation to mean sea level (existing grade in case of Zone AO), of floods of various magnitudes and frequencies in the floodplains of coastal or riverine areas.

**WATERCOURSE.** A lake, river, creek, stream, wash, channel or other topographic feature on or over which waters flow at least periodically. **WATERCOURSE** includes specifically designated areas in which substantial flood damage may occur.

(Ord. passed 11-8-2005)

**§ 151.021 LANDS TO WHICH THIS CHAPTER APPLIES.**

This chapter shall apply to all special flood hazard areas within the jurisdiction, including Extra-Territorial Jurisdictions (ETJ) if applicable, of the Town of Benson and within the jurisdiction of any other community whose governing body agrees, by resolution, to the applicability.  
(Ord. passed 11-8-2005)

**§ 151.022 BASIS FOR ESTABLISHING THE SPECIAL FLOOD HAZARD AREAS.**

(A) The special flood hazard areas are those identified by the Federal Emergency Management Agency (FEMA) or produced under the Cooperating Technical State (CTS) agreement between the State of North Carolina and FEMA in its Flood Hazard Boundary Map (FHBM) or Flood Insurance Study (FIS) and its accompanying flood maps such as the Flood Insurance Rate Map(s) (FIRM) and/or the Flood Boundary Floodway Map(s) (FBFM), for Johnston County dated December 2, 2005, which, with accompanying supporting data, and any revision thereto, including Letters of Map Amendment or Revision, are adopted by reference and declared to be a part of this chapter. The special flood hazard areas also include those defined through standard engineering analysis for private developments or by governmental agencies, but which have not yet been incorporated in the FIRM. This includes, but is not limited to:

- (1) Detailed flood data generated as a requirement of Article 4, Section C (11 & 12) of this chapter;
- (2) Preliminary FIRMs where more stringent than the effective FIRM; or
- (3) Post-disaster Flood Recovery Maps.

(B) In addition, upon annexation to the Town of Benson or inclusion in the Extra-Territorial Jurisdiction (ETJ), the special flood hazard areas identified by the Federal Emergency Management Agency (FEMA) and/or produced under the Cooperating Technical State Agreement between the State of North Carolina and FEMA as stated above, for the unincorporated areas of Johnston County, with accompanying maps and other supporting data, and any revision thereto, are adopted by reference and declared to be a part of this chapter. (This Municipal paragraph may be omitted entirely if adopting countywide FIRMs).  
(Ord. passed 11-8-2005)

**§ 151.023 ESTABLISHMENT OF FLOODPLAIN DEVELOPMENT PERMIT.**

A floodplain development permit shall be required in conformance with the provisions of this chapter prior to the commencement of any development activities within special flood hazard areas as determined in § 151.041.  
(Ord. passed 11-8-2005)

**§ 151.024 COMPLIANCE.**

No structure or land shall hereafter be located, extended, converted, altered or developed in any way without full compliance with the terms of this chapter and other applicable regulations.  
(Ord. passed 11-8-2005)

**§ 151.025 ABROGATION AND GREATER RESTRICTIONS.**

This chapter is not intended to repeal, abrogate or impair any existing easements, covenants or deed restrictions. However, where this chapter and another conflict or overlap, whichever imposes the more stringent restrictions shall prevail.  
(Ord. passed 11-8-2005)

**§ 151.026 INTERPRETATION.**

In the interpretation and application of this chapter, all provisions shall be:

(A) Considered as minimum requirements;

(B) Liberally construed in favor of the Board of Commissioners; and

(C) Deemed neither to limit nor repeal any other powers granted under state statutes.

(Ord. passed 11-8-2005)

**§ 151.027 WARNING AND DISCLAIMER OF LIABILITY.**

The degree of flood protection required by this chapter is considered reasonable for regulatory purposes and is based on scientific and engineering consideration. Larger floods can and will occur. Actual flood heights may be increased by man-made or natural causes. This chapter does not imply that land outside the special flood hazard areas or uses permitted within the areas will be free from flooding or flood damages. This chapter shall not create liability on the part of the Town of Benson or by any officer or employee thereof for any flood damages that result from reliance on this chapter or any administrative decision lawfully made hereunder.  
(Ord. passed 11-8-2005)

***ADMINISTRATION***

**§ 151.040 DESIGNATION OF FLOODPLAIN ADMINISTRATOR.**

The Zoning Administrator, hereinafter referred to as the Floodplain Administrator, is hereby appointed to administer and implement the provisions of this chapter.  
(Ord. passed 11-8-2005)

**§ 151.041 FLOODPLAIN DEVELOPMENT APPLICATION, PERMIT AND CERTIFICATION REQUIREMENTS.**

(A) *Application requirements.* Application for a floodplain development permit shall be made to the Floodplain Administrator prior to any development activities located within special flood hazard areas. The following items shall be presented to the Floodplain Administrator to apply for a floodplain development permit:

(1) A plot plan drawn to scale which shall include, but shall not be limited to, the following specific details of the proposed floodplain development:

(a) The nature, location, dimensions and elevations of the area of development/disturbance, existing and proposed structures, utility systems, grading/pavement areas, fill materials, storage areas, drainage facilities and other development;

(b) The boundary of the special flood hazard area as delineated on the FIRM or other flood map, as determined in § 151.041 or a statement that the entire lot is within the special flood hazard area;

(c) Flood zone(s) designation of the proposed development area as determined on the FIRM or other flood map, as determined in § 151.041;

(d) The boundary of the floodway(s) or non-encroachment area(s), as determined in § 151.041;

(e) The base flood elevation (BFE) where provided as set forth in § 151.041; Article 4, Section C (11 & 12); or Article 5, Section D;

(f) The old and new location of any watercourse that will be altered or relocated as a result of proposed development; and

(g) Certification of the plot plan by a registered land surveyor or professional engineer: (OPTIONAL).

(2) Proposed elevation and method thereof, of all development within a special flood hazard area including but not limited to:

(a) Elevation in relation to mean sea level of the proposed reference level (including basement) of all structures;

(b) Elevation in relation to mean sea level to which any non-residential structure in Zone AE, A or AO will be flood-proofed; and

(c) Elevation in relation to mean sea level to which any proposed utility systems will be elevated or floodproofed.

(3) If floodproofing, a floodproofing certificate (FEMA Form 81-65), along with detailed backup computations and operational plans that specify the location on a FIRM panel of floodproofing measures, the entity responsible for transportation and installation according to the design within the warning time available,

and maintenance of floodproofing measures assuring their effectiveness when installed. Floodproofing certificate and back-up computations and operational plans shall be certified by a registered professional engineer or architect to ensure that the non-residential floodproofed development will meet the floodproofing criteria in § 151.076;

(4) A Foundation Plan drawn to scale which shall include details of the proposed foundation system to ensure all provisions of this chapter are met. These details include but are not limited to:

(a) The proposed method of elevation, if applicable (i.e., fill, solid foundation perimeter wall, solid backfilled foundation, open foundation on columns, posts, piers, piles and shear walls); and

(b) Openings to facilitate equalization of hydrostatic flood forces on walls in accordance with § 151.76 when solid foundation perimeter walls are used in Zones A, AO, AE and AI-30.

(5) Usage details of any enclosed areas below the regulatory flood protection elevation;

(6) Plans and/or details for the protection of public utilities and facilities such as sewer, gas, electrical and water systems to be located and constructed to minimize flood damage;

(7) Copies of all other local, state and federal permits required prior to floodplain development permit issuance (wetlands, endangered species, erosion and sedimentation control, riparian buffers, mining and the like);

(8) Documentation for placement of recreational vehicles and/or temporary structures, when applicable, to ensure § 151.076 are met; and

(9) A description of proposed watercourse alteration or relocation, when applicable, including an engineering report on the effects of the proposed project on the flood-carrying capacity of the watercourse and the effects to properties located both upstream and downstream and a map (if not shown on plot plan) showing the location of the proposed watercourse alteration or relocation.

(B) *Permit requirements.* The floodplain development permit shall include, but not be limited to:

(1) A description of the development to be permitted under the floodplain development permit;

(2) The special flood hazard area determination for the proposed development per available data specified in § 151.041;

(3) The regulatory flood protection elevation required for the reference level and all attendant utilities;

(4) The regulatory flood protection elevation required for the protection of all public utilities;

(5) All certification submittal requirements with time lines; and

(6) A statement that no fill material shall encroach into the floodway or non-encroachment area of any watercourse, as applicable.

(C) *Certification requirements.*

(1) *Elevation certificates.*

(a) An elevation certificate (FEMA Form 81-31) is required prior to the actual start of any new construction. It shall be the duty of the permit holder to submit to the Floodplain Administrator a certification of the elevation of the reference level, in relation to mean sea level. Elevation certification shall be prepared by, or under direct supervision of, a registered land surveyor or professional engineer and certified by same. The Floodplain Administrator shall review the certificate data submitted. Deficiencies detected by the review shall be corrected by the permit holder prior to the beginning of construction. Failure to submit the certification or failure to make required corrections shall be cause to deny a floodplain development permit.

(b) An elevation certificate (FEMA Form 81-31) or floodproofing certificate (FEMA Form 81-65) is required after the reference level is established. Within seven calendar days of establishment of the reference level elevation, it shall be the duty of the permit holder to submit to the Floodplain Administrator a certification of the elevation of the reference level, in relation to mean sea level. Elevation certification shall be prepared by, or under the direct supervision of, a registered land surveyor or professional engineer and certified by same. Any work done within the seven-day calendar period and prior to submission of the certification shall be at the permit holder's risk. The Floodplain Administrator shall review the certificate data submitted. Deficiencies detected by the review shall be corrected by the permit holder immediately and prior to further work being permitted to proceed. Failure to submit the certification or failure to make required corrections shall be cause to issue a stop-work order for the project.

(c) A final as-built elevation certificate (FEMA Form 81-31) is required after construction is completed and prior to certificate of compliance/occupancy issuance. It shall be the duty of the permit holder to submit to the Floodplain Administrator, a certification of final as-built construction of the elevation of the reference level and all attendant utilities. Elevation certification shall be prepared by, or under the direct supervision of, a registered land surveyor or professional engineer and certified by same. The Floodplain Administrator shall review the certificate data submitted. Deficiencies detected by the review shall be corrected by the permit holder immediately and prior to certificate of compliance/occupancy issuance. In some instances, another certification may be required to certify corrected as-built construction. Failure to submit the certification or failure to make required corrections shall be cause to withhold the issuance of a certificate of compliance/occupancy.

(2) *Floodproofing.* If non-residential floodproofing is used to meet the regulatory flood protection elevation requirements, a floodproofing certificate (FEMA Form 81-65) is required prior to the actual start of any new construction. It shall be the duty of the permit holder to submit to the Floodplain Administrator, a certification of the floodproofed design elevation of the reference level and all attendant utilities, in relation to mean sea level. Floodproofing certification shall be prepared by or under the direct supervision of a professional engineer or architect and certified by same. The Floodplain Administrator shall review the certificate data submitted. Deficiencies detected by the review shall be corrected by the permit holder prior to the beginning of construction. Failure to submit the certification or failure to make required corrections shall be cause to deny a floodplain development permit. Failure to construct in accordance with the certified design shall be cause to withhold the issuance of a certificate of compliance/occupancy.

(3) *Manufactured home.* If a manufactured home is placed within Zone A, AO, AE or A1-30 and the elevation of the chassis is more than 36 inches in height above grade, an engineered foundation certification is required per § 151.076.

(4) *Watercourse*. If a watercourse is to be altered or relocated, a description of the extent of watercourse alteration or relocation, an engineering report on the effects of the proposed project on the flood-carrying capacity of the watercourse and the effects to properties located both upstream and downstream and a map showing the location of the proposed watercourse alteration or relocation shall all be submitted by the permit applicant prior to issuance of a floodplain development permit.

(5) *Certification exemptions*. The following structures, if located within Zone A, AO, AE or A1-30, are exempt from the elevation/floodproofing certification requirements specified in items in divisions (C)(1)(a) and (b) above:

(a) Recreational vehicles meeting requirements of § 151.076;

(b) Temporary structures meeting requirements of § 151.076; and

(c) Accessory structures less than 150 square feet meeting requirements of § 151.076.

(Ord. passed 11-8-2005)

#### **§ 151.042 DUTIES AND RESPONSIBILITIES OF THE FLOODPLAIN ADMINISTRATOR.**

The Floodplain Administrator shall perform, but not be limited to, the following duties:

(A) Review all floodplain development applications and issue permits for all proposed development within special flood hazard areas to assure that the requirements of this chapter have been satisfied;

(B) Advise permittee that additional federal or state permits (wetlands, endangered species, erosion and sedimentation control, riparian buffers, mining and the like) may be required, and require that copies of the permits be provided and maintained on file with the floodplain development permit;

(C) Notify adjacent communities and the North Carolina Department of Crime Control and Public Safety, Division of Emergency Management, State Coordinator for the National Flood Insurance Program prior to any alteration or relocation of a watercourse, and submit evidence of the notification to the Federal Emergency Management Agency (FEMA);

(D) Assure that maintenance is provided within the altered or relocated portion of the watercourse so that the flood-carrying capacity is not diminished;

(E) Prevent encroachments into floodways and non-encroachment areas unless the certification and flood hazard reduction provisions of Article 5, Section E are met;

(F) Obtain actual elevation (in relation to mean sea level) of the reference level (including basement) and all attendant utilities of all new or substantially improved structures, in accordance with § 151.061(C);

(G) Obtain the actual elevation (in relation to mean sea level) to which the new or substantially improved structures and all utilities have been floodproofed, in accordance with § 151.061(C);

(H) Obtain actual elevation (in relation to mean sea level) of all public utilities in accordance with § 151.061(C);

(I) When floodproofing is utilized for a particular structure, obtain certifications from a registered professional engineer or architect in accordance with § 151.061(C) and § 151.076;

(J) Where interpretation is needed as to the exact location of boundaries of the special flood hazard areas (for example, where there appears to be a conflict between a mapped boundary and actual field conditions), make the necessary interpretation. The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in this section;

(K) When base flood elevation (BFE) data has not been provided in accordance with § 151.041, review and reasonably utilize any base flood elevation (BFE) data, along with floodway data or non-encroachment area data available from a federal, state or other source, including data developed pursuant to Article 5, Section D(2)(b), in order to administer the provisions of this chapter;

(L) When base flood elevation (BFE) data is provided but no floodway nor non-encroachment area data has been provided in accordance with § 151.041 obtain, review and reasonably utilize any floodway data or non-encroachment area data available from a federal, state or other source in order to administer the provisions of this chapter;

(M) When the exact location of boundaries of the special flood hazard areas conflict with the current, natural topography information at the site, the property owner may apply and be approved for a Letter of Map Amendment (LOMA) by FEMA. Maintain a copy of the Letter of Map Amendment (LOMA) issued by FEMA in the floodplain development permit file;

(N) Permanently maintain all records that pertain to the administration of this chapter and make these records available for public inspection;

(O) Make on-site inspections of work in progress. As the work pursuant to a floodplain development permit progresses, the Floodplain Administrator shall make as many inspections of the work as may be necessary to ensure that the work is being done according to the provisions of the local ordinance and the terms of the permit. In exercising this power, the Floodplain Administrator has a right, upon presentation of proper credentials, to enter on any premises within the jurisdiction of the community at any reasonable hour for the purposes of inspection or other enforcement action;

(P) Issue stop-work orders as required, whenever a building or part thereof is being constructed, reconstructed, altered or repaired in violation of this chapter, the Floodplain Administrator may order the work to be immediately stopped. The stop-work order shall be in writing and directed to the person doing the work. The stop-work order shall state the specific work to be stopped, the specific reason(s) for the stoppage and the condition(s) under which the work may be resumed. Violation of a stop-work order constitutes a misdemeanor;

(Q) Revoke floodplain development permits as required. The Floodplain Administrator may revoke and require the return of the floodplain development permit by notifying the permit holder in writing stating the reason(s) for the revocation. Permits shall be revoked for any substantial departure from the approved application, plans or specifications, for refusal or failure to comply with the requirements of state or local laws or for false statements or misrepresentations made in securing the permit. Any floodplain development permit mistakenly issued in violation of an applicable state or local law may also be revoked;



(R) Make periodic inspections throughout all special flood hazard areas within the jurisdiction of the community. The Floodplain Administrator and each member of his or her Inspections Department shall have a right, upon presentation of proper credentials, to enter on any premises within the territorial jurisdiction of the Department at any reasonable hour for the purposes of inspection or other enforcement action;

(S) Follow through with corrective procedures of § 151.062; and

(T) Maintain a current map repository to include, but not limited to, the FIS Report, FIRM and/or other official flood maps/studies adopted under § 151.041 of this chapter, including any revisions thereto including letters of map change, issued by state and/or FEMA. Notify state and FEMA of mapping needs.  
(Ord. passed 11-8-2005)

### **§ 151.043 CORRECTIVE PROCEDURES.**

(A) *Violations to be corrected.* When the Floodplain Administrator finds violations of applicable state and local laws, it shall be his or her duty to notify the owner or occupant of the building of the violation. The owner or occupant shall immediately remedy each of the violations of law pertaining to his or her property.

(B) *Actions in event of failure to take corrective action.* If the owner of a building or property shall fail to take prompt corrective action, the Floodplain Administrator shall give the owner written notice, by certified or registered mail, to the owner's last known address or by personal service, stating:

(1) That the building or property is in violation of the Flood Damage Prevention Ordinance;

(2) That a hearing will be held before the Floodplain Administrator at a designated place and time, not later than ten days after the date of the notice, at which time the owner shall be entitled to be heard in person or by counsel and to present arguments and evidence pertaining to the matter; and

(3) That following the hearing, the Floodplain Administrator may issue an order to alter, vacate or demolish the building or to remove fill as appears appropriate.

(C) *Order to take corrective action.* If, upon a hearing held pursuant to the notice prescribed above, the Floodplain Administrator shall find that the building or development is in violation of the Flood Damage Prevention Ordinance, he or she shall issue an order in writing to the owner, requiring the owner to remedy the violation within a specified time period, not less than 60 days, nor more than 90 days. Where the Floodplain Administrator finds that there is imminent danger to life or other property, he or she may order that corrective action is taken in the lesser period as may be feasible.

(D) *Appeal.* Any owner who has received an order to take corrective action may appeal the order to the local elected Board of Commissioners, by giving notice of appeal in writing to the Floodplain Administrator and the Town Clerk-Treasurer within ten days following issuance of the final order. In the absence of an appeal, the order of the Floodplain Administrator shall be final. The local Board of Commissioners shall hear an appeal within a reasonable time and may affirm, modify and affirm or revoke the order.

(E) *Failure to comply with order.* If the owner of a building or property fails to comply with an order to take corrective action for which no appeal has been made, or fails to comply with an order of the Board of Commissioners following an appeal, he or she shall be guilty of a misdemeanor and shall be punished at the discretion of the court.  
(Ord. passed 11-8-2005)

#### **§ 151.044 VARIANCE PROCEDURES.**

(A) The Board of Adjustment as established by the Town of Benson, hereinafter referred to as the Appeal Board, shall hear and decide requests for variances from the requirements of this chapter.

(B) Any person aggrieved by the decision of the Appeal Board may appeal the decision to the Court, as provided in G.S. Chapter 7A.

(C) Variances may be issued for:

(1) The repair or rehabilitation of historic structures upon the determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure, and that the variance is the minimum necessary to preserve the historic character and design of the structure;

(2) Functionally dependant facilities if determined to meet the definition as stated in §§ 151.020 through 151.027; and

(3) Any other type of development provided it meets the requirements stated in this section.

(D) In passing upon variances, the Appeal Board shall consider all technical evaluations, all relevant factors, all standards specified in other sections of this chapter and:

(1) The danger that materials may be swept onto other lands to the injury of others;

(2) The danger to life and property due to flooding or erosion damage;

(3) The susceptibility of the proposed facility and its contents to flood damage and the effect of the damage on the individual owner;

(4) The importance of the services provided by the proposed facility to the community;

(5) The necessity to the facility of a waterfront location as defined under §§ 151.020 through 151.027 as a functionally dependant facility, where applicable;

(6) The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use;

(7) The compatibility of the proposed use with existing and anticipated development;

(8) The relationship of the proposed use to the comprehensive plan and floodplain management program for that area;

(9) The safety of access to the property in times of flood for ordinary and emergency vehicles;

(10) The expected heights, velocity, duration, rate of rise and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site; and

(11) The costs of providing governmental services during and after flood conditions including maintenance and repair of public utilities and facilities such as sewer, gas, electrical and water systems, streets and bridges.

(E) A written report addressing each of the above factors shall be submitted with the application for a variance.

(F) Upon consideration of the factors listed above and the purposes of this chapter, the Appeal Board may attach the conditions to the granting of variances as it deems necessary to further the purposes of this chapter.

(G) Variances shall not be issued within any designated floodway or non-encroachment area if any increase in flood levels during the base flood discharge would result.

(H) Conditions for variances:

(1) Variances shall not be issued when the variance will make the structure in violation of other federal, state or local laws, regulations or ordinances;

(2) Variances shall only be issued upon a determination that the variance is the minimum necessary considering the flood hazard, to afford relief;

(3) Variances shall only be issued upon:

(a) A showing of good and sufficient cause;

(b) A determination that failure to grant the variance would result in exceptional hardship; and

(c) A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety or extraordinary public expense, create nuisance, cause fraud on or victimization of the public or conflict with existing local laws or ordinances.

(4) Any applicant to whom a variance is granted shall be given written notice specifying the difference between the base flood elevation (BFE) and the elevation to which the structure is to be built and a written statement that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced reference level elevation. The notification shall be maintained with a record of all variance actions; and

(5) The Floodplain Administrator shall maintain the records of all appeal actions and report any variances to the Federal Emergency Management Agency and the State of North Carolina upon request.

(I) A variance may be issued for solid waste disposal facilities, hazardous waste management facilities, salvage yards and chemical storage facilities that are located in special flood hazard areas provided that all of the following conditions are met:

(1) The use serves a critical need in the community;

(2) No feasible location exists for the use outside the special flood hazard area;

(3) The reference level of any structure is elevated or floodproofed to at least the regulatory flood protection elevation;

(4) The use complies with all other applicable federal, state and local laws; and

(5) The Town of Benson has notified the Secretary of the North Carolina Department of Crime Control and Public Safety of its intention to grant a variance at least 30 calendar days prior to granting the variance.

(Ord. passed 11-8-2005)

### ***PROVISIONS FOR FLOOD HAZARD REDUCTION***

#### **§ 151.060 GENERAL STANDARDS.**

In all special flood hazard areas the following provisions are required.

(A) All new construction and substantial improvements shall be anchored to prevent flotation, collapse or lateral movement of the structure.

(B) All new construction and substantial improvements below the regulatory flood protection elevation shall be constructed with materials and utility equipment resistant to flood damage.

(C) All new construction or substantial improvements shall be constructed by methods and practices that minimize flood damages.

(D) Electrical, heating, ventilation, plumbing, air conditioning equipment and other service facilities shall be designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding. These include, but are not limited to, HVAC equipment, water softener units, bath/kitchen fixtures, ductwork, electric/gas meter panels/boxes, utility/cable boxes, appliances (washers, dryers, refrigerators, freezers and the like), hot water heaters and electric outlets/switches.

(E) All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of floodwaters into the system.

(F) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of floodwaters into the systems and discharges from the systems into floodwaters.

(G) On-site waste disposal systems shall be located and constructed to avoid impairment to them or contamination from them during flooding.

(H) Any alteration, repair, reconstruction or improvements to a structure, which is in compliance with the provisions of this chapter, shall meet the requirements of new construction as contained in this chapter.

(I) Nothing in this chapter shall prevent the repair, reconstruction or replacement of a building or structure existing on the effective date of this chapter and located totally or partially within the floodway, non-encroachment area or stream setback, provided that the bulk of the building or structure below the regulatory flood protection elevation in the floodway, non-encroachment area or stream setback is not increased and provided that the repair, reconstruction or replacement meets all of the other requirements of this chapter.

(J) New solid waste disposal facilities, hazardous waste management facilities, salvage yards and chemical storage facilities shall not be permitted in special flood hazard areas, except by variance as specified in § 151.063. A structure or tank for chemical or fuel storage incidental to an allowed use or to the operation of a water treatment plant or wastewater treatment facility may be located in a special flood hazard area only if the structure or tank is either elevated or floodproofed to at least the regulatory flood protection elevation and certified according to § 151.061(C).

(K) All development proposals shall be consistent with the need to minimize flood damage.

(L) All development proposals shall have public utilities and facilities such as sewer, gas, electrical and water systems located and constructed to minimize flood damage.

(M) All development proposals shall have adequate drainage provided to reduce exposure to flood hazards. (Ord. passed 11-8-2005)

#### **§ 151.061 SPECIFIC STANDARDS.**

In all special flood hazard areas where base flood elevation (BFE) data has been provided, as set forth in § 151.41 or Article 4, Section C(11 & 12), the following provisions, in addition to § 151.075, are required.

(A) *Residential construction.* New construction or substantial improvement of any residential structure (including manufactured homes) shall have the reference level, including basement, elevated no lower than the regulatory flood protection elevation, as defined in §§ 151.020 through 151.027.

(B) *Non-residential construction.* New construction or substantial improvement of any commercial, industrial or other non-residential structure shall have the reference level, including basement, elevated no lower than the regulatory flood protection elevation, as defined in §§ 151.020 through 151.027. Structures located in A, AO, AE and A1-30 Zones may be floodproofed to the regulatory flood protection elevation in lieu of elevation, provided that all areas of the structure below the required flood protection elevation are watertight with walls substantially impermeable to the passage of water, using structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effect of buoyancy. A registered professional engineer or architect shall certify that the standards of this section are satisfied. The certification shall be provided to the official as set forth in § 151.061, along with the operational and maintenance plans.

(C) *Manufactured homes.*

(1) New or replacement manufactured homes shall be elevated so that the reference level of the manufactured home is no lower than the regulatory flood protection elevation, as defined in §§ 151.020 through 151.027.

(2) Manufactured homes shall be securely anchored to an adequately anchored foundation to resist flotation, collapse and lateral movement in accordance with the *State of North Carolina Regulations for Manufactured/Mobile Homes*, 1995 Edition, and any revision thereto adopted by the Commissioner of Insurance pursuant to G.S. § 143-143.15 or a certified engineered foundation. Additionally, when the elevation would be met by an elevation of the chassis 36 inches or less above the grade at the site, the chassis shall be supported by reinforced piers or engineered foundation. When the elevation of the chassis is above 36 inches in height, an engineering certification is required.

(3) All foundation enclosures or skirting shall be in accordance with § 151.076.

(4) An evacuation plan must be developed for evacuation of all residents of all new, substantially improved or substantially damaged manufactured home parks or subdivisions located within flood prone areas. This plan shall be filed with and approved by the Floodplain Administrator and the local Emergency Management Coordinator.

(D) *Elevated buildings.* Enclosed areas, of new construction or substantially improved structures, which are below the regulatory flood protection elevation:

(1) Shall not be designed or used for human habitation, but shall only be used for parking of vehicles, building access or limited storage of maintenance equipment used in connection with the premises. Access to the enclosed area shall be the minimum necessary to allow for parking of vehicles (garage door), or limited storage of maintenance equipment (standard exterior door) or entry to the living area (stairway or elevator). The interior portion of the enclosed area shall not be partitioned or finished into separate rooms, except to enclose storage areas;

(2) Shall be constructed entirely of flood resistant materials below the regulatory flood protection elevation;

(3) Shall include, in Zones A, AO, AE and A1-30, measures to automatically equalize hydrostatic flood forces on walls by allowing for the entry and exit of floodwaters. To meet this requirement, the openings must either be certified by a professional engineer or architect or meet the following minimum design criteria:

(a) Provide a minimum of two openings on different sides of each enclosed area subject to flooding;

(b) The total net area of all openings must be at least one square inch for each square foot of enclosed area subject to flooding;

(c) If a building has more than one enclosed area, each area must have openings to allow floodwaters to automatically enter and exit;

(d) The bottom of all required openings shall be no higher than one foot above the adjacent grade;

(e) Openings may be equipped with screens, louvers or other opening coverings or devices, provided they permit the automatic flow of floodwaters in both directions; and

(f) Foundation enclosures made of flexible skirting are not considered enclosures for regulatory purposes, and, therefore, do not require openings. Masonry or wood underpinning, regardless of structural status, is considered an enclosure and requires openings as outlined above.

(E) *Additions/improvements.*

(1) Additions and/or improvements to pre-FIRM structures when the addition and/or improvements in combination with any interior modifications to the existing structure are:

(a) Not a substantial improvement, the addition and/or improvements must be designed to minimize flood damages and must not be any more non-conforming than the existing structure; and

(b) A substantial improvement, both the existing structure and the addition and/or improvements must comply with the standards for new construction.

(2) Additions to post-FIRM structures with no modifications to the existing structure other than a standard door in the common wall shall require only the addition to comply with the standards for new construction.

(3) Additions and/or improvements to post-FIRM structures when the addition and/or improvements in combination with any interior modifications to the existing structure are:

(a) Not a substantial improvement, the addition and/or improvements only must comply with the standards for new construction; and

(b) A substantial improvement, both the existing structure and the addition and/or improvements must comply with the standards for new construction.

(4) Where a fire wall or independent perimeter load-bearing wall is provided between the addition and the existing building, the addition(s) shall be considered a separate building and only the addition must comply with the standards for new construction.

(F) *Recreational vehicles.* Recreational vehicles placed on-sites within a special flood hazard area shall either:

(1) Be on-site for fewer than 180 consecutive days and be fully licensed and ready for highway use (a recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities, and has no permanently attached additions); or

(2) Meet all the requirements for new construction, including anchoring and elevation requirements of this section and §§ 151.075 and 151.076.

(G) *Temporary non-residential structures.* Prior to the issuance of a floodplain development permit for a temporary structure, applicants must submit to the Floodplain Administrator a plan for the removal of the structure(s) in the event of a hurricane, flash flood or other type of flood warning notification. The following information shall be submitted in writing to the Floodplain Administrator for review and written approval:

- (1) A specified time period for which the temporary use will be permitted. Time specified should be minimal with total time on-site not to exceed one year;
- (2) The name, address and phone number of the individual responsible for the removal of the temporary structure;
- (3) The time frame prior to the event at which a structure will be removed (i.e., minimum of 72 hours before landfall of a hurricane or immediately upon flood warning notification);
- (4) A copy of the contract or other suitable instrument with a trucking company to ensure the availability of removal equipment when needed; and
- (5) Designation, accompanied by documentation of a location outside the special flood hazard area, to which the temporary structure will be moved.

(H) *Accessory structures.* When accessory structures (sheds, detached garages and the like) are to be placed within a special flood hazard area, the following criteria shall be met:

- (1) Accessory structures shall not be used for human habitation (including working, sleeping, living, cooking or restroom areas);
  - (2) Accessory structures shall not be temperature-controlled;
  - (3) Accessory structures shall be designed to have low flood damage potential;
  - (4) Accessory structures shall be constructed and placed on the building site so as to offer the minimum resistance to the flow of floodwaters;
  - (5) Accessory structures shall be firmly anchored in accordance with § 151.075;
  - (6) All service facilities, such as electrical, shall be installed in accordance with § 151.076;
  - (7) Openings to relieve hydrostatic pressure during a flood shall be provided below regulatory flood protection elevation in conformance with § 151.061(C); and
  - (8) An accessory structure with a footprint less than 150 square feet that satisfies the criteria outlined above does not require an elevation or floodproofing certificate. Elevation or floodproofing certifications are required for all other accessory structures in accordance with Article 4, Section B (3).
- (Ord. passed 11-8-2005)



**§ 151.062 STANDARDS FOR FLOODPLAINS WITHOUT ESTABLISHED BASE FLOOD ELEVATIONS.**

Within the special flood hazard areas established in § 151.041, where no base flood elevation (BFE) data has been provided by FEMA, the following provisions, in addition to § 151.075, shall apply.

(A) No encroachments, including new construction, substantial improvements or new development shall be permitted within a distance of 20 feet each side from top of bank or five times the width of the stream, whichever is greater, unless certification with supporting technical data by a registered professional engineer is provided demonstrating that the encroachments shall not result in any increase in flood levels during the occurrence of the base flood discharge.

(B) The BFE used in determining the regulatory flood protection elevation shall be determined based on one of the following criteria set in priority order:

(1) If base flood elevation (BFE) data is available from other sources, all new construction and substantial improvements within the areas shall also comply with all applicable provisions of this chapter and shall be elevated or floodproofed in accordance with standards in Article 4, Section C(11 & 12).

(2) All subdivision, manufactured home park and other development proposals located within special flood hazard areas shall provide base flood elevation (BFE) data if development is greater than five acres or has more than 50 lots/manufactured home sites. The base flood elevation (BFE) data shall be adopted by reference per § 151.041 to be utilized in implementing this chapter.

(3) When base flood elevation (BFE) data is not available from a federal, state or other source as outlined above, the reference level shall be elevated above the highest adjacent grade as required in the regulatory flood protection elevation definition.

(Ord. passed 11-8-2005)

**§ 151.063 STANDARDS FOR RIVERINE FLOODPLAINS WITH BFE BUT WITHOUT ESTABLISHED FLOODWAYS OR NON-ENCROACHMENT AREAS.**

Along rivers and streams where BFE data is provided but neither floodway nor non-encroachment areas are identified for a special flood hazard area on the FIRM or in the FIS report, the following requirements shall apply to all development within the areas:

(A) Standards outlined in §§ 151.075 and 151.076; and

(B) No encroachments, including fill, new construction, substantial improvements or other development, shall be permitted unless certification with supporting technical data by a registered professional engineer is provided, demonstrating that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any point within the community.

(Ord. passed 11-8-2005)

**§ 151.064 FLOODWAYS AND NON-ENCROACHMENT AREAS.**

(A) Areas designated as floodways or non-encroachment areas are located within the special flood hazard areas established in § 151.041.

(B) The floodways and non-encroachment areas are extremely hazardous areas due to the velocity of floodwaters that have erosion potential and carry debris and potential projectiles.

(C) The following provisions, in addition to standards outlined in §§ 151.075 and 151.076, shall apply to all development within the areas:

(1) No encroachments, including fill, new construction, substantial improvements and other developments shall be permitted unless it has been demonstrated through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that the proposed encroachment would not result in any increase in the flood levels during the occurrence of the base flood. The certification and technical data shall be presented to the Floodplain Administrator prior to issuance of floodplain development permit.

(2) If § 151.075 is satisfied, all development shall comply with all applicable flood hazard reduction provisions of this chapter.

(3) No manufactured homes shall be permitted, except replacement manufactured homes in an existing manufactured home park or subdivision, provided the following provisions are met:

(a) The anchoring and the elevation standards of § 151.076; and

(b) The no encroachment standard of § 151.075.

(Ord. passed 11-8-2005)

***LEGAL STATUS PROVISIONS***

**§ 151.075 EFFECT ON RIGHTS AND LIABILITIES UNDER EXISTING FLOOD DAMAGE PREVENTION ORDINANCE.**

This chapter in part comes forward by re-enactment of some of the provisions of the flood damage prevention ordinance enacted January 11, 2000, as amended, and it is not the intention to repeal but rather to re-enact and continue to enforce without interruption of the existing provisions, so that all rights and liabilities that have accrued thereunder are reserved and may be enforced. The enactment of this chapter shall not affect any action, suit or proceeding instituted or pending. All provisions of the Flood Damage Prevention Ordinance of the Town of Benson enacted on January 11, 2000, as amended, which are not reenacted herein are repealed.

(Ord. passed 11-8-2005)

**§ 151.076 EFFECT UPON OUTSTANDING FLOODPLAIN DEVELOPMENT PERMITS.**

Nothing herein contained shall require any change in the plans, construction, size or designated use of any development or any part thereof for which a floodplain development permit has been granted by the Floodplain Administrator or his or her authorized agents before the time of passage of this chapter; provided, however, that when construction is not begun under the outstanding permit within a period of six months subsequent to the date of issuance of the outstanding permit, construction or use shall be in conformity with the provisions of this chapter.

(Ord. passed 11-8-2005)

**§ 151.999 PENALTY.**

Violation of the provisions of this chapter or failure to comply with any of its requirements, including violation of conditions and safeguards established in connection with grants of variance or special exceptions, shall constitute a misdemeanor. Any person who violates this chapter or fails to comply with any of its requirements shall, upon conviction thereof, be fined not more than \$50 or imprisoned for not more than 30 days, or both. Each day the violation continues shall be considered a separate offense. Nothing herein contained shall prevent the Town of Benson from taking the other lawful action as is necessary to prevent or remedy any violation.

(Ord. passed 11-8-2005)



## CHAPTER 152: HISTORIC PRESERVATION COMMISSION

### Section

- 152.1 Purpose
- 152.2 Historic Preservation Commission
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- 152.4 Designation of landmarks
- 152.5 Alteration or demolition of designated landmark or historic district
- 152.6 Delay in demolition of landmarks and buildings within historic districts
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- 152.10 Ownership of property
- 152.11 Ordinance to apply to publically owned buildings and structures
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### § 152.01 PURPOSE.

The historical heritage of the Town of Benson is one of its most valued and important assets. Conservation of historic districts and landmarks will stabilize and increase the values in their areas and strengthen the overall economy of the county and state. By means of listing, regulation and acquisition of historic districts and landmarks, the Town of Benson seeks within its respective zoning jurisdiction:

(A) To safeguard its heritage by preserving any district or landmark therein that embodies elements of its culture, history, architectural history or prehistory; and

(B) To promote the use and conservation of the district or landmark for the education, pleasure and enrichment of the residents of the county and state as a whole.

(Ord. passed - -)

### § 152.02 HISTORIC PRESERVATION COMMISSION.

(A) *Creation.*

- (1) There is hereby established by authority of G.S. Chapter 160A, Article 19, Part 3C, the Town of Benson Historic Preservation Commission, hereafter referred to as the Historic Preservation Commission or Commission, to consist of up to seven members appointed by the Town of Benson Board of Commissioners. Five shall be appointed from within the town's corporate limits and two from with the Town of Benson's ETJ.

(2) The Historic Preservation Commission members shall serve without monetary compensation. In establishing the Historic Preservation Commission and making appointments to it, the Board of Commissioners may seek the advice of the state or local historical agencies, societies or organizations as it may deem necessary.

(B) *Representation.* All members of the Historic Preservation Commission shall be residents of the Town of Benson. A majority of the members shall have demonstrated special interest, experience or education in history, architecture, archaeology or related fields.

(C) *Tenure.* Members of the Historic Preservation Commission shall serve overlapping terms of four years. Initially, three shall be for two years. Thereafter, all appointments shall be for a term of four years. A member may be reappointed for a second consecutive term, but after two consecutive terms a member shall be ineligible for reappointment until one calendar year has elapsed from the date of termination of his or her second term. Appointments to any vacancy shall be for the remainder of the term of the vacant position for which the appointment is made. For purposes of reappointment to the Historic Preservation Commission, an initial two-year term, or serving the balance of an unexpired term of two years or less shall not be considered to be one of the two consecutive terms, and the person would be eligible to serve two consecutive full terms in addition to the partial term.

(D) *Attendance at meetings.* Any member of the Historic Preservation Commission who misses more than three consecutive regular meetings or one-half the regular meetings in a calendar year without excuse granted by the Historic Preservation Commission, shall lose his or her status as a member of the Historic Preservation Commission and shall be replaced or reappointed by the appropriate governing board or council to divisions (A) or (C) above.

(E) *Meetings.* The Historic Preservation Commission shall hold meetings regularly at least once each quarter, and more often as it shall determine and require. All meetings shall be held in accordance with the North Carolina Open Meetings Law, G.S. Chapter 143, Article 33C. Reasonable notice of the time and place thereof shall be given to the public.

(F) *Rules of procedure.* The Historic Preservation Commission shall adopt rules of procedure for the conduct of its business, and an annual written report shall be prepared and submitted to the Town of Benson Board of Commissioners. The report shall include a comprehensive and detailed review of the activities, problems and actions of the Historic Preservation Commission as well as any budget requests or recommendations. The Historic Preservation Commission shall keep a record of its members' attendance, and of its resolutions, findings and recommendations, which record shall be a public record.

(G) *Quorum and vote required for recommendation.* Four members of the Historic Preservation Commission shall constitute a quorum. The concurrence of at least a majority of those members present will be required before any recommendation or action is made on any matter considered.

(H) *Private interest of members.* No member of the Historic Preservation Commission may discuss, advocate or vote on any matter in which he or she has a separate, private or monetary interest, either direct or indirect, and no member may discuss before a Governing Board or Council any matter which has been, is or will be considered by the Historic Preservation Commission on which he or she serves, and in which he or she has a separate, private or monetary interest, either direct or indirect. Any member who violates this provision maybe subject to removal from the Historic Preservation Commission.

(I) *Commission powers.* The Historic Preservation Commission is authorized and empowered to undertake the actions reasonably necessary to the discharge and conduct of its duties and responsibilities as outlined in this chapter:

(1) Undertake an inventory of properties of historical, prehistorical, architectural and/or cultural significance;

(2) Recommend to the Town of Benson Board of Commissioners, areas to be designated by ordinance as historic districts and individual structures, buildings, sites, areas or objects to be designated by ordinance as landmarks;

(3) Acquire by any lawful means the fee or any lesser included interest, including options to purchase, to properties within established districts or to any properties designated as landmarks, to hold, manage, preserve, restore and improve the same, and to exchange or dispose of the property by public or private sale, lease or otherwise, subject to covenants or other legally binding restrictions which will secure appropriate rights of public access and promote the preservation of the property;

(4) Restore, preserve and operate historic properties;

(5) Recommend to the Board or Council that designation of any area as a historic district or part thereof, or designation of any building, structure, site, area or object as a landmark, be revoked or removed for cause;

(6) Conduct an educational program with respect to historic properties and districts within its jurisdiction;

(7) Cooperate with the state, federal and local governments in pursuance of the purposes of this chapter. The Historic Preservation Commission, when authorized by the local governing board and councils may contract with the state, or the United States of America, or any agency of either, or with any other organization, provided the terms are not inconsistent with state or federal law;

(8) Enter solely in performance of its official duties and only at reasonable times, upon private lands for examination or survey thereof. However, no members, employee or agent of the Historic Preservation Commission may enter any private building or structure without the express consent of the owner or occupant thereof;

(9) Review and act upon proposals for alterations, demolitions or new construction within historic districts, or for the alteration or demolition of designated landmarks, pursuant to this chapter;

(10) Negotiate at any time with the owner of a building, structure, site, area or object for its acquisition or its preservation, when the action is reasonably necessary or appropriate;

(11) Accept funds granted to the Historic Preservation Commission for preservation purposes from private individuals and organizations;

(12) Organize itself and conduct its business; and

(13) Any other powers as allowed by law.

(Ord. passed - -)

**§ 152.03 DESIGNATION OF HISTORIC DISTRICTS.**

(A) *Amending historic districts.* Upon compliance with the procedures set out in division (C) below, the Town of Benson Board of Commissioners may, as part of a zoning or other ordinance enacted or amended pursuant to this chapter, designate and from time-to-time amend one or more historic districts within the area subject to the ordinance. The ordinance may treat historic districts either as a separate use district classification or as districts that overlay other zoning districts. Where historic districts are designated as separate use districts, the zoning ordinance may include as uses by right or as conditional or special uses those uses found by the Historic Preservation Commission to have existed during the period sought to be restored or preserved, or to be compatible with the restoration or preservation of the district.

(B) *Definition of character of a historic district.* Historic districts established pursuant to this chapter shall consist of areas which are deemed and found by the Historic Preservation Commission to be of special significance in terms of their history, prehistory architecture and/or culture, and to possess integrity of design, setting, materials, feeling and association.

(C) *Required procedures.*

(1) No historic district or districts shall be designated until:

(a) An investigation and report describing the significance of the buildings, structures, features, sites or surroundings located in any proposed district, and a description of the boundaries of the district has been prepared; and

(b) The Department of Cultural Resources, acting through the State Historic Preservation Officer or his or her designee, shall have made an analysis of and recommendations concerning the report and description of proposed boundaries. Failure of the Department to submit its written analysis and recommendations to the Governing Board within 30 calendar days after a written request for the analysis has been received by the Department of Cultural Resources shall relieve the Governing Board of any responsibility for awaiting the analysis, and the Board may at any time thereafter take any necessary action to adopt or amend its zoning ordinance.

(2) The Governing Board may also, in its discretion, refer the report and the proposed boundaries to any other interested body for its recommendation prior to taking action to amend the zoning ordinance. With respect to any changes in the boundaries of the district subsequent to its initial establishment, or the creation of additional districts within the jurisdiction, the investigative studies and reports required by division (C)(1)(a) above shall be prepared by the Commission and shall be referred to the local planning agency for its review and comments according to procedures set forth in the zoning ordinance. Changes in the boundaries of an initial district or proposal for additional districts shall also be submitted to the Department of Cultural Resources in accordance with the provisions of division (C)(1)(b) above.



(3) On receipt of these reports and recommendations, the Governing Board may proceed in the same manner as would otherwise be required for the adoption or amendment of any appropriate zoning ordinance provisions.  
(Ord. passed - -)

#### **§ 152.04 DESIGNATION OF LANDMARKS.**

(A) *Adoption of an ordinance of designation of landmarks.*

(1) Upon complying with the landmark designation procedures as set forth in this chapter, the Town of Benson Board of Commissioners may adopt, and from time to time amend or repeal an ordinance designating one or more historic landmarks. No property shall be recommended for designation as a landmark unless it is deemed and found by the Historic Preservation Commission to be of special significance in terms of its historical, prehistorical, architectural or cultural importance and to possess integrity of design, setting, workmanship, materials, feeling and/or association.

(2) The ordinance shall describe each property designated in the ordinance, the name or names of the owner or owners of the property, those elements of the property that are integral to its historical, architectural or prehistorical value, including the land areas of the property so designated and any other information the Governing Board deems necessary. For each building, structure, site, area or object so designated as a historic landmark, the ordinance shall require that the waiting period set forth in G.S. Chapter 160A, Article 19, Part 3C be observed prior to its demolition. For each designated landmark, the ordinance may also provide for a suitable sign on the property indicating that the property has been so designated. If the owner consents, the sign shall be placed upon the property. If an owner objects, the sign shall be placed on a nearby public right-of-way.

(B) *Inventory of landmarks.* As a guide for the identification and evaluation of landmarks, the Historic Preservation Commission shall undertake at the earliest possible time and consistent with the resources available to it, an inventory of properties of historical, architectural, prehistorical and culture significance within its jurisdiction. The inventories and any additions or revisions thereof shall be submitted as expeditiously as possible to the Division of Archives and History.

(C) *Required procedures.* No ordinance designating a historic building structure, site, area or object as a landmark nor any amendment thereto may be adopted, nor may any property be accepted or acquired by the Historic Preservation Commission or the Town of Benson Board of Commissioners, until all of the following procedural steps have been taken.

(1) The Historic Preservation Commission shall prepare and adopt rules of procedure and principles and guidelines for altering, restoring, moving or demolishing properties designated as landmarks.

(2) The Historic Preservation Commission shall make or cause to be made an investigation and report on the historic, architectural, prehistorical, educational or cultural significance of each building, structure, site, area or object proposed for designation or acquisition. The investigation and report shall be forwarded to the Division of Archives and History, North Carolina Department of Cultural Resources.

(3) The Department of Cultural Resources, acting through the State Historic Preservation Officer, shall either upon request of the Department or at the initiative of the Historical Preservation Commission be given an opportunity to review and comment upon the substance and effect of the designation of any landmark.

Comments shall be provided in writing within 30 days following receipt by the Department of the investigation and report. The Town of Benson Board of Commissioners shall be relieved of any responsibility to consider Department comments if the comments are not received within 30 days.

(4) The owners of the property proposed to be designated as a landmark shall have filed an application with the Historic Preservation Commission requesting that the property be designated as a landmark.

(5) The Historic Preservation Commission and the Board of Commissioners shall hold a joint public hearing or separate public hearings on the proposed ordinance. Notice of the time, place and purpose of the public hearing shall be mailed to all adjoining property owners (including the owners of properties located across any street or road from the property proposed to be a landmark) at least two weeks prior to the hearing, by first-class mail. Notice of the public hearing shall be published in a newspaper having general circulation in the area once a week for two successive weeks, the first notice to be published not less than ten days nor more than 25 days prior to the date established for the hearing. In computing the time, the date of publication is not to be included, but the date of the hearing shall be included.

(6) Following the public hearing, the local Board or Council may adopt the ordinance as proposed, adopt the ordinance with any amendments it deems necessary, or reject the proposed ordinance.

(7) Upon adoption of the ordinance, the owners and occupants of each designated landmark shall be given written notification of the designation insofar as reasonable diligence permits. One copy of the ordinance and all amendments thereto shall be filed by the Historic Preservation Commission in the office of the Register of Deeds for Johnston County. Each designated landmark shall be indexed according to the name of the owner of the property in the grantee and grantor indexes in the Register of Deeds office. The Historic Preservation Commission shall pay a reasonable fee for filing and indexing. In case of any property lying in the Town of Benson, a second copy of the ordinance and all amendments thereto shall be kept on file in the office of the Johnston County Clerk and shall be available for public inspection at any reasonable time. In case of any property lying within the Town of Benson, a second copy of the ordinance and each amendment thereto shall be kept on file in the office of the Town Clerk-Treasurer, and be made available for public inspection at any reasonable time. A third copy of the ordinance and all amendments thereto shall be given to the Town of Benson Building Inspector. The fact that a structure, site, area or building has been designated a landmark shall be clearly indicated on all tax maps maintained by Johnston County for the time as the designation remains in effect.

(8) Upon the adoption of the landmarks ordinance or any amendment thereto, it shall be the duty of the Historic Preservation Commission to give notice thereof to the tax supervisor of Town of Benson. The designation and any recorded restrictions upon the property limiting its use for preservation purposes shall be considered by the tax supervisor in appraising it for tax purposes.  
(Ord. passed - -) (Ord. 0-2002-46, passed 8-5-2002)

## **§ 152.05 ALTERATION OR DEMOLITION OF DESIGNATED LANDMARK OR HISTORIC DISTRICT.**

(A) *Certificate of appropriateness.*

(1) From and after the designation of a landmark or a historic district, no exterior portion of any building or other structure (including masonry walls, fences, light fixtures, steps and pavement, or other appurtenant features), nor any aboveground utility structures, nor any type of outdoor advertising sign shall be

erected, altered, restored, moved or demolished on the landmark (or within the districts) until after an application for a certificate of appropriateness as to exterior features has been submitted to and approved by the Commission. Such a certificate is required to be issued by the Commission prior to the issuance of a building permit or other permit granted for the purposes of constructing, altering, moving or demolishing structures, which certificate maybe issued subject to reasonable conditions necessary to carry out the purposes of this chapter. A certificate of appropriateness shall be required whether or not a building or other permit is requested.

(2) For purposes of this chapter, exterior features shall include the architectural style, general design and general arrangement of the exterior of a building or other structure, including the kind and texture of the building material, the size and scale of the building and the type and style of all windows, doors, light fixtures, signs and other appurtenant features. In the case of outdoor advertising signs, exterior features shall be construed to mean the style, material, size and location of all the signs. The exterior features may, in the discretion of the Town of Benson Board of Commissioners include historic signs, color and significant landscape, archaeological and natural features of the area.

(3) Except as provided in division (B) below, the Historic Preservation Commission shall have no jurisdiction over interior arrangements and shall take no action under this section except to prevent the construction, reconstruction, alteration, restoration, moving or demolition of buildings, structures, appurtenant features, outdoor advertising signs or other significant features in the district or the landmark which would be incongruous with the special character of the landmark or district.

(B) *Limitation on jurisdiction over interior spaces.* Notwithstanding division (A) above, the jurisdiction of the Historic Preservation Commission over interior spaces shall be limited to specific interior features of architectural, artistic or historical significance in publicly owned landmarks and of privately owned historic landmarks for which consent for interior review has been given by the owner. The consent of any owner for interior review shall bind future owners and/or successors in title, provided the consent has been filed in the office of the Register of Deeds of Johnston County and indexed according to the name of the owner of the property in the grantee and grantor indexes. The landmark designation shall specify the interior features to be reviewed and the specific nature of the Historic Preservation Commission's jurisdiction over the interior.

(C) *Application for certificate of appropriateness.* An application for a certificate of appropriateness shall be obtained from the Historic Preservation Commission, and when completed, filed with the Historic Preservation Commission.

(D) *Contents of an application for certificate of appropriateness.* The application for a certificate of appropriateness shall, in accordance with the Historic Preservation Commission's rules of procedure, contain data that is reasonably necessary to determine the nature of the application. An application for a certificate of appropriateness shall not be considered complete until all required data has been submitted.

(E) *Time for hearing applications of certificate of appropriateness.* Applications shall be considered by the Historic Preservation Commission at its next regular meeting, provided they have been filed, complete in form and content, at least 30 calendar days before the regularly scheduled meeting of the Commission. Otherwise, they shall be deferred until the next meeting or considered at a special called meeting of the Commission. Nothing shall prevent the applicant from filing with the application additional relevant information bearing on the application.

(F) *Notification by Historic Preservation Commission of affected property owners.* Upon receipt of an application for a certificate of appropriateness, the Historic Preservation Commission shall notify the owners of any property likely to be materially affected by the application, in writing at least ten days before the regularly

scheduled meeting at which the application is to be heard. Notice to property owners likely to be material affected by the application shall include all adjoining property owners and the owners of properties located across any roadway from the affected property. The owners shall be given an opportunity to be heard.

(G) *Public hearing.* When an application for a certificate of appropriateness is presented to the Historic Preservation Commission, a public hearing shall be held. All meetings of the Commission shall be open to the public in accordance with the North Carolina Open Meetings Law, G.S. Chapter 143, Article 33C.

(H) *Action on an application for a certificate of appropriateness.*

(1) The action on an application for a certificate of appropriateness shall be approval, approval with modification or denial.

(2) Prior to any final action on an application, the review criteria in division (I) below shall be used to make findings of fact indicating the extent to which the application for a certificate of appropriateness is or is not congruous with the historic aspects of the district or landmark.

(3) All applications for certificates of appropriateness shall be reviewed and acted upon within a reasonable time as defined by the rules of procedure, and not exceeding 60 days from the date the application is filed. As part of its review procedure, the Commission may view the premises and seek the advice of the Department of Cultural Resources or other experts as it may deem necessary under the circumstances.

(I) *Review criteria for certificates of appropriateness.*

(1) It is the intent of these criteria, and the design guidelines, to ensure, insofar as possible, that changes to a designated landmark (or structures in a historic district) shall be in harmony with the reasons for designation.

(2) When considering a certificate of appropriateness, the Historic Preservation Commission shall take into account the historic or architectural significance of the structure under consideration and the exterior form and appearance of any proposed additions or modifications to that structure, as well as the effect of the change or additions upon other structures in the vicinity. In a historic district, it is not the intention of these criteria or the guidelines to require the reconstruction or restoration of individual or original buildings or prohibit the demolition or removal of same or to impose architectural styles from a particular historic period. In considering new construction in a historic district, the Historic Preservation Commission shall encourage contemporary design which is harmonious with the character of the district.

(3) The following criteria shall be considered, when relevant, along with companion design guidelines and the guidelines of the Secretary of the Interior in reviewing for a certificate of appropriateness:

- (a) Lot coverage, defined as the percentage of lot area covered by primary structures;
- (b) Setback, defined as the distance from the lot lines the building;
- (c) Building height;
- (d) Spacing of buildings, defined as the distance between adjacent buildings;
- (e) Building materials;
- (f) Proportion, shape, positioning, location, pattern and sizes of any elements of fenestration;
- (g) Surface textures;

- (h) Roof shapes, form and materials;
- (i) Use of local or regional architectural traditions;
- (j) General form and proportions of buildings and structures, and relationship of any additions to the main structure;
- (k) Expression of architectural detailing, such as lintels, cornices, brick bond and decorative elements;
- (l) Orientation of the building to the street;
- (m) Scale, determined by the size of the units of construction and architectural details in relation to the human scale and also by the relationship of the building mass to adjoining open space and nearby buildings and structures;
- (n) Proportion of width to height of the total building facade;
- (o) Archaeological sites and resources associated with standing structures;
- (p) Major landscaping efforts that would impact known archaeological sites;
- (q) Appurtenant features and other features such as lighting; and
- (r) Structural condition and soundness.

(J) *Minor work.* A certificate of appropriateness application when determined to involve minor work, may be reviewed and approved by an administrative official according to specific review criteria and guidelines. **MINOR WORK** is defined as those exterior changed that do not involve substantial alterations, additions or removals that could impair the integrity of the property (and/or the district as a whole). The minor works shall be limited to those listed in the Commission's rules of procedure. No application involving a minor work may be denied without the formal action of the Historic Preservation Commission.

(K) *Certain changes not prohibited.* Nothing in this chapter shall be construed to prevent the ordinary maintenance or repair of any exterior architectural feature of a historic landmark or in a historic district which does not involve a change in design, materials or outer appearance therefore, not to prevent the construction, reconstruction, alteration, restoration or demolition of any feature which the Building Inspector or similar official shall certify is required by the public safety because of an unsafe or dangerous condition. Nothing herein shall be construed to prevent a property owner from making any use of this property non-prohibited by other statutes, ordinances or regulations. Nothing in this chapter shall be construed to prevent the maintenance or in the event of an emergency, the immediate restoration of any existing aboveground utility structure without approval by the Commission.

(L) *Appeals.* An appeal may be taken to the appropriate Board of Adjustment from the Historic Preservation Commission's actions in granting or denying any certificate. Appeals from decisions of the Historic Preservation Commission shall be submitted to the Town of Benson Board of Adjustment. The appeals may be taken by an aggrieved party, shall be taken within times prescribed by the Commission in the rules of procedures, and shall be in the nature of certiorari. Any appeal from the appropriate Board of Adjustment's decision in any case shall be heard by the Superior Court of Union County.

(M) *Submission of new applications.* If a certificate of appropriateness is denied, a new application affecting the same property may be submitted only if substantial change is made in plans for the proposed construction, reconstruction, alteration, restoration or moving.

(Ord. passed - -)

**§ 152.06 DELAY IN DEMOLITION OF LANDMARKS AND BUILDINGS WITHIN HISTORIC DISTRICTS.**

*(A) Delay by Historic Preservation Commission.*

(1) An application for a certificate of appropriateness authorizing the demolition or destruction of a designated landmark or a building, structure or site within the district may not be denied except as provided in division (C) below. However, the effective date of a certificate may be delayed for a period up to 180 days from the date of approval.

(2) The maximum period of delay authorized by this section shall be reduced by the Historic Preservation Commission where it finds that the owner would suffer extreme hardship or be permanently deprived of all beneficial use or return from the property by virtue of the delay. During the period, the Historic Preservation Commission shall negotiate with the owner and with any other parties in an effort to find a means of preserving the buildings or site. If the Historic Preservation Commission finds that a building or site within the historic district has no special significance or value toward maintaining the character of the district, it shall waive all or part of the period and authorize earlier demolition or removal.

*(B) Delay pending designation as district or landmark.* If the Historic Preservation Commission has voted to recommend designation of a property proposed by an owner to be so designated as a landmark or designation of an area as a district, and final destination has not been made by the Town of Benson Board of Commissioners take final action on the designation, whichever occurs first.

*(C) Prevention of demolition by neglect.* The Town of Benson Board of Commissioners may enact an ordinance to prevent the demolition by neglect of any designated landmark or any building or structure within an established historic district. The ordinance shall provide appropriate safeguards to protect property owners from undue economic hardship.

*(D) Structures having statewide significance.* An application for a certificate of appropriateness authorizing the demolition or destruction of a building, site or structure determined by the State Historic Preservation Office as having statewide significance as defined in the criteria of the National Register of Historic Places may be denied except where the Commission finds that the owner would suffer extreme hardship or be permanently deprived of all beneficial use or return by virtue of the denial.  
(Ord. passed - -)

**§ 152.07 RECORD OF ACTION TAKEN BY THE COMMISSION.**

The Historic Preservation Commission shall maintain a file containing records of all written notices of proposed actions submitted to the Historic Preservation Commission, reasons underlying all actions, drawings submitted for review and subsequent amendments.  
(Ord. passed - -)

**§ 152.08 RECEIPT AND EXPENDITURE OF FUNDS.**

The town Board of Commissioners is authorized to make appropriations to the Historic Preservation Commission established pursuant to this chapter in any amount that it may determine necessary for the expenses of the operation of the Historic Preservation Commission, and may make available any additional amounts necessary for the acquisition, restoration, preservation, operation and management of historic buildings, structures, sites, areas or objects designated as historic properties, or of land on which historic buildings or structures are located, or to which they may be removed.  
(Ord. passed - -)

**§ 152.09 STAFF AND TECHNICAL SERVICES.**

The Historic Preservation Commission may recommend to the local Governing Board suitable arrangements for the procurement or provision of staff or technical services to the Historic Preservation Commission.

(Ord. passed - -)

**§ 152.10 OWNERSHIP OF PROPERTY.**

All lands, buildings, structures, sites, areas or objects acquired by funds appropriated by the governing board shall be acquired in the name of the Governing board so long as owned by a city, town or the county. Historic properties may be maintained by or under the supervision and control of the city, town or the county. However, all lands, buildings or structures acquired by the Town of Benson Historic Preservation Commission from funds other than those appropriated by a city, town or the county, may be acquired and held in the name of the Town of Benson Historic Preservation Commission.

(Ord. passed - -)

**§ 152.11 ORDINANCE TO APPLY TO PUBLICALLY OWNED BUILDINGS AND STRUCTURES.**

All of the provisions of this chapter are applicable to the construction, alteration, moving and demolition by the State of North Carolina, its political subdivisions, agencies and instrumentalities, provided, however, that they shall not apply to interiors of buildings or structures owned by the State of North Carolina. The state and its agencies shall have a right of appeal to the North Carolina Historical Commission or any successor agency assuming its responsibilities under G.S. § 121-12(a) from any of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings shall be the sole principles and guidelines used in reviewing applications of the state for certificates of appropriateness. The decision of the Historical Commission shall be binding upon both the State and the Historic Preservation Commission.

(Ord. passed - -)

**§ 152.12 CONFLICTS WITH OTHER LAWS.**

(A) Whenever any ordinance adopted for the designation of landmarks or districts requires a longer waiting period or imposes higher standards with respect to a designated landmark (or district) than are established under any other statute, Charter provision or regulation, this chapter shall govern.

(B) Whenever the provisions of any other statute, Charter provision or regulation require a longer waiting period or impose higher standards than are established under this chapter, the other statute, Charter provision, ordinance or regulation shall govern.

(Ord. passed - -)

**§ 152.13 REMEDIES.**

(A) Compliance with the terms of the certificate of appropriateness shall be enforced by the designated zoning enforcement officer of Town of Benson. Enforcement as to landmarks or districts in municipalities not having zoning ordinances shall be by the zoning enforcement officer of Town of Benson.

(B) Failure to comply with the certificate of appropriateness shall be a violation of the applicable zoning ordinance and is punishable according to established procedures and penalties for the violations. A certificate of appropriateness shall expire 12 months after the date of issuance if the work authorized by the certificate has not been commenced. If after commencement the work is discontinued or a period of six months, the permit

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

(C) In case any building, structure, site, area or objects designated as a historic property is about to be demolished whether as the result of deliberate neglect or otherwise, materially altered, remodeled or removed, except in compliance with an ordinance, a city, town or the county, may institute an appropriate action or proceedings to prevent the unlawful demolition, material alteration, remodeling or removal, and may restrain, correct or abate the violation, or to prevent the illegal act or conduct with respect to the historic property.

(D) In case any building, structure, site, area or objects designated as a historic landmark (or located within a historic district established) pursuant to this chapter is about to be demolished, whether as a result of deliberate neglect or otherwise, materially altered, remodeled, removed or destroyed, except in compliance with the ordinance, the Town of Benson may institute any appropriate action or proceeding to prevent the unlawful demolition, destruction, material alteration, remodeling or removal, to restrain, correct or abate the violation, or to prevent any illegal act or conduct with respect to a building structure, site, area or object. The remedies shall be in addition to any other authorized for violation of a county or municipal ordinance.

(Ord. passed - -)



## **Minimum Housing Standards**

Section

### *General Provisions*

#### **CHAPTER 153: MINIMUM HOUSING STANDARDS**

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#### *Minimum Standards for Dwellings and Dwelling Units*

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- 153.35 Application of regulations
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### **GENERAL PROVISIONS**

#### **§ 153.01 FINDINGS AND PURPOSE.**

(A) Pursuant to G.S. § 160A-441, it is hereby found and declared that there exists in the town, dwellings which are unfit for human habitation due to dilapidation, defects increasing the hazards of fire, accidents and other calamities, lack of ventilation, light and sanitary facilities and due to other conditions rendering the

dwellings unsafe or unsanitary, and dangerous and detrimental to the health, safety and morals, and otherwise inimical to the welfare of the residents of the town.

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

(1990 Code, § 153.01) (Ord. passed --)

## **§ 153.02 DEFINITIONS.**

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

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

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

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

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

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

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

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

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

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

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

## **Minimum Housing Standards**

**INSPECTOR.** A Building Inspector of the town or any agent of the Inspector who is authorized by the Inspector.

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

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

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

**OWNER.** Any person who alone, jointly or severally with others:

(a) Shall have title to any dwelling or dwelling unit, with or without accompanying actual possession thereof;

(b) Shall be a mortgagee of record for any dwelling, dwelling unit or rooming unit; or

(c) Shall have charge, care or control of any dwelling or dwelling unit, as owner or agent of the owner, or as executor, executrix, administrator, administratrix, trustee or guardian of the estate of the owner. Any person thus representing the actual owner shall be bound to comply with the provisions of this subchapter, and of rules and regulations adopted pursuant thereto, to the same extent as if he or she were the owner.

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

**PUBLIC AUTHORITY.** The Town Housing Authority or any officer who is in charge of any department or branch of the government of the town relating to health, fire, building regulations or other activities concerning dwellings in the town.

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

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

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

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

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

**UNFIT FOR HUMAN HABITATION.** Conditions existing in a dwelling which violate or do not comply with one or more of the minimum standards of fitness or one or more of the requirements established by this subchapter.

(B) *Meaning of certain words.* Whenever the words **DWELLING**, **DWELLING UNIT**, **ROOMING UNIT** and **PREMISES** are used in this subchapter, they shall be construed as though they were followed by the words “or any part thereof.”  
(1990 Code, § 153.02) (Ord. passed - -)

### **§ 153.03 RESPONSIBILITY OF OWNERS AND OCCUPANTS.**

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

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

(C) *Rubbish and garbage.* Every occupant of a dwelling or dwelling unit shall dispose of all his or her rubbish and garbage in a clean and sanitary manner by placing it in the supplied storage facilities. In all cases the owner shall be responsible for the availability of rubbish and garbage storage facilities.

(D) *Supplied plumbing fixtures.* Every occupant of a dwelling unit shall keep all supplied plumbing fixtures therein in a clean and sanitary condition and shall be responsible for the exercise of reasonable care in the proper use and operation of same.

(E) *Care of facilities, equipment and structure.* No occupant shall willfully destroy, deface or impair any of the facilities or equipment, or any part of the structure of a dwelling or dwelling unit.  
(1990 Code, § 153.03) (Ord. passed - -) Penalty, see § 153.99

## ***MINIMUM STANDARDS FOR DWELLINGS AND DWELLING UNITS***

### **§ 153.15 COMPLIANCE REQUIRED.**

(A) Every dwelling and dwelling unit used as a human habitation, or held out for use as a human habitation, shall comply with all of the minimum standards of fitness for human habitation and all of the requirements of this subchapter.

(B) No person shall occupy as owner or occupant, or let to another for occupancy or use as a human habitation, any dwelling or dwelling unit which does not comply with all of the minimum standards of fitness for human habitation and all of the requirements of this subchapter.  
(1990 Code, § 153.15) (Ord. passed - -) Penalty, see § 153.99

### **§ 153.16 STRUCTURAL CONDITIONS.**

The following shall be the minimum standards for structural condition of dwellings or dwelling units:

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

## Minimum Housing Standards

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

(C) Foundations, foundation walls, piers or other foundation supports shall not be deteriorated or damaged;

(D) Steps, stairs, landings, porches or other parts or appurtenances shall be maintained in the condition that they will not fall or collapse;

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

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

(G) The roof, flashings, exterior walls, basement walls, floors and all doors and windows exposed to the weather shall be constructed and maintained so as to be weather and watertight;

(H) There shall be no chimneys or parts thereof which are defective, constitute a danger of falling or in the condition or location as to constitute a fire hazard; and

(I) There shall be no use of the ground floors, or wood floors on the ground.  
(1990 Code, § 153.16) (Ord. passed - -) Penalty, see § 153.99

### § 153.17 BASIC EQUIPMENT AND FACILITIES.

The following shall be the minimum standards for basic equipment and facilities in dwellings or dwelling units.

(A) *Plumbing system.*

(1) Each dwelling unit shall be connected to a potable water supply and to the public sewer or other approved sewage disposal system.

(2) Each dwelling unit shall contain not less than a kitchen sink, lavatory, tub or shower, water closet and adequate supply of both cold water and hot water. All water shall be supplied through an approved pipe distribution system connected to a potable water supply.

(3) All plumbing fixtures shall meet the standards of the State Plumbing Code and shall be maintained in a state of good repair and in good working order.

(4) All required plumbing fixtures shall be located within the dwelling unit and be accessible to the occupants of same. The water closet and tub or shower shall be located in a room or rooms affording privacy to the user.

(B) *Heating system.* Every dwelling and dwelling unit shall have facilities for providing heat. Facilities shall be permanently installed according to North Carolina State Building Codes. Each device used for heating shall be thermostatically controlled and able to heat all habitable rooms to a minimum temperature of 70°F, measured three feet above the floor during ordinary winter conditions. Each heating device shall be listed and labeled.

(C) *Electrical system.*

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

(2) Every public wall and stairway in every multiple dwelling shall be adequately lighted by electric lights at all times when natural daylight is not sufficient.

(3) All fixtures, receptacles, equipment and wiring shall be maintained in a state of good repair, safe, capable of being used and installed in accordance with the State Electrical Code. (1990 Code, § 153.17) (Ord. passed - -; Ord. passed 4-11-2000) Penalty, see § 153.99

**§ 153.18 VENTILATION.**

The following shall be the minimum standards for ventilation in dwellings or dwelling units.

(A) *Windows and skylights.* Every habitable room shall have at least one window or skylight facing directly to the outdoors. The minimum total window area, measured between stops for every habitable room shall be 8% of the floor area of the room. Whenever walls or other portions of structures face a window of any room and the light obstructing structures are located less than five feet from the window and extend to a level above that of the ceiling of the room, such a window shall not be deemed to face directly to the outdoors and shall not be included as contributing to the required minimum total window area. Whenever the only window in a room is a skylight type window in the top of the room, the total window area of the skylight shall equal at least 15% of the total floor area of the room.

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

(C) *Bathroom and water closet rooms.* Every bathroom and water closet compartment shall comply with the light and ventilation requirements for habitual rooms, except that no window or skylight shall be required in adequately ventilated bathrooms and water closet rooms equipped with an approved ventilation system. (1990 Code, § 153.18) (Ord. passed - -) Penalty, see § 153.99

**§ 153.19 SPACE, USE AND LOCATION.**

The following shall be the minimum standards for space, use and location applicable to dwellings and dwelling units.

(A) *Room size.*

(1) Every dwelling unit shall contain at least the minimum room size in each habitable room as required by the State Residential Building Code.

(2) Every dwelling unit shall contain at least 150 square feet of habitable floor area for the first

## Minimum Housing Standards

occupant, at least 100 square feet of additional habitable area for each of the next three occupants and at least 75 square feet of additional habitable floor area for each additional occupant.

(3) In every dwelling unit and in every rooming unit, every room occupied for sleeping purposes by one occupant shall contain at least 70 square feet of floor area, and every room occupied for sleeping purposes by more than one occupant shall contain at least 50 square feet of floor area for each occupant 12 years of age and over and at least 35 square feet of floor area for each occupant under 12 years of age.

(4) At least one-half of the floor area of every habitable room shall have a ceiling height of not less than seven feet, six inches.

(B) *Floor area calculation.* Floor area shall be calculated on the basis of habitable room area. However, closet area and wall area within the dwelling unit may count for not more than 10% of the required habitable floor area. The floor area of any part of any room where the ceiling height is less than four feet, six inches shall not be considered as part of the floor area in computing the total area of the room to determine maximum permissible occupancy.

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

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

(1) The floor and walls are substantially watertight;

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

(3) The required minimum window area of every habitable room is entirely above the grade adjoining the window area, except where the window or windows face a stairwell, window well or access way. (1990 Code, § 153.19) (Ord. passed - -; Ord. passed 4-11-2000) Penalty, see § 153.99

### § 153.20 SAFE AND SANITARY MAINTENANCE.

The following shall be the minimum standards for safe and sanitary maintenance applicable to dwellings and dwelling units.

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

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

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

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

be kept in sound condition and good repair.

(E) *Bathroom floors.* Every bathroom floor surface and water closet compartment floor surface shall be constructed and maintained so as to be reasonable impervious to water and so as to permit the floor to be easily kept in a clean and sanitary condition.

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

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

(H) *Noxious weeds.* Every yard and all exterior property areas shall be kept free of species of weeds or plant growth which are noxious or detrimental to health.

(I) *Egress.* Every dwelling unit shall be provided with adequate means of egress as required by the State Building Code.

(J) *Insulation.* Every dwelling unit constructed on or after January, 1978, shall meet the State Building Code requirements for insulation and energy utilization standards. (1990 Code, § 153.20) (Ord. passed - -) Penalty, see § 153.99

## **§ 153.21 CONTROL OF INSECTS, RODENTS AND INFESTATIONS.**

The following shall be the minimum standards for control of insects, rodents and infestations in dwellings and dwelling units.

(A) *Screens.* In every dwelling unit, for protection against mosquitoes, flies and other insects, every door opening directly from a dwelling unit to outdoor space shall have supplied and installed screens and a self-closing device, and every window or other device with openings to outdoor space, used, or intended to be used, for ventilation, shall likewise be supplied with screens installed.

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

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

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



## **Minimum Housing Standards**

(E) *Garbage storage and disposal.* Every dwelling and every dwelling unit shall be supplied with an approved garbage disposal facility, which may be an adequate mechanical garbage disposal unit/mechanical sink grinder in each dwelling unit or incinerator unit, to be approved by the Inspector, in the structure for the use of the occupants of each dwelling unit or an approved outside garbage can as required by town ordinances. (1990 Code, § 153.21) (Ord. passed - -) Penalty, see § 153.99

### ***MINIMUM STANDARDS FOR ROOMING HOUSES***

#### **§ 153.35 APPLICATION OF REGULATIONS.**

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

(1990 Code, § 153.35) (Ord. passed - -)

#### **§ 153.36 WATER CLOSET, LAVATORY AND BATH FACILITIES.**

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

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

(1990 Code, § 153.36) (Ord. passed - -) Penalty, see § 153.99

#### **§ 153.37 MINIMUM FLOOR AREA.**

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

(1990 Code, § 153.37) (Ord. passed - -) Penalty, see § 153.99

#### **§ 153.38 SANITARY CONDITIONS.**

The operator of every rooming house shall be responsible for the sanitary maintenance of all walls, floors and ceilings and for the sanitary maintenance of every other part of the rooming house, and he or she shall be further responsible for the sanitary maintenance of the entire premises where the entire structure or building within which the rooming house is contained in leased or occupied by the operator.

(1990 Code, § 153.38) (Ord. passed - -) Penalty, see § 153.99

## ***ADMINISTRATION AND ENFORCEMENT***

### **§ 153.50 DUTIES AND POWERS OF THE BUILDING INSPECTOR.**

(A) The Building Inspector is hereby designated as the officer to enforce the provisions of this subchapter and to exercise the duties and powers herein prescribed. It shall be the duty of the Building Inspector:

(1) To investigate the dwelling conditions and to inspect dwellings and dwelling units located in the town, in order to determine which dwellings and dwelling units are unfit for human habitation and for the purpose of carrying out the objectives of this subchapter with respect to the dwellings and dwelling units;

(2) To take action, together with other appropriate departments and agencies, public and private, as may be necessary to effect rehabilitation of housing which is deteriorated;

(3) To keep a record of the results of inspections made under this subchapter and an inventory of those dwellings that do not meet the minimum standards of fitness herein prescribed; and

(4) To perform the other duties as may be herein prescribed.

(B) The Building Inspector is authorized to exercise the powers as may be necessary or convenient to carry out and effectuate the purpose and provisions of this subchapter, including the following powers in addition to others herein granted:

(1) To investigate the dwelling conditions on the town in order to determine which dwellings therein are unfit for human habitation;

(2) To administer oaths and affirmations, examine witnesses and receive evidence;

(3) To enter upon premises for the purpose of making examinations and inspections; provided, the entries shall be made in the manner as to cause the least possible inconvenience to the persons in possession; and

(4) To appoint and fix the duties of the officers, agents and employees as he or she deems necessary to carry out the purpose of this subchapter.

(1990 Code, § 153.50) (Ord. passed --)

### **§ 153.51 RIGHT OF ENTRY OF BUILDING INSPECTOR.**

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

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

## Minimum Housing Standards

(1990 Code, § 153.51) (Ord. passed - -) Penalty, see § 153.99

### § 153.52 ENFORCEMENT PROCEDURE.

(A) *Filing a petition.* Whenever a petition is filed with the Inspector by a public authority or by at least five residents of the town charging that any dwelling or dwelling unit is unfit for human habitation, or whenever it appears to the Inspector, upon inspections, that any dwelling or dwelling unit is unfit for human habitation, he or she shall, if his or her preliminary investigation discloses a basis for the charges, issue and cause to be served upon the owner of and parties in interest in the dwelling or dwelling unit a complaint stating the charges and containing a notice that a hearing will be held before the Inspector at a place therein fixed, not less than ten nor more than 30 days after the serving of the complaint. The owner or any party in interest shall have the right to file an answer to the complaint and to appear in person, or otherwise, and give testimony at the place and time fixed in the complaint. Notice of the hearing shall also be given to at least one of the persons signing a petition relating to the dwelling. 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 controlled in hearing before the Inspector.

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

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

(2) If the Inspector determines that the dwelling is dilapidated, he or she shall state in writing his or her findings of fact to support the determination, and shall issue and cause to be served upon the owner thereof, an order directing and requiring the owner to vacate and close the dwelling, and to remove or demolish the same within a specified period of time, not to exceed 90 days.

(C) *Failure to comply with order.*

(1) *In personam remedy.* If the owner of any deteriorated dwelling or dwelling unit shall fail to comply with an order of the Inspector issued pursuant to this subchapter, the Inspector shall secure the issuance of a warrant charging such as provided in § 153.58 and shall cause to be served upon the owner another order directing the owner to repair, alter or improve the same within a specified period of time, not to exceed 90 days. If the owner shall fail to comply with the order within the time specified therein, the Inspector shall submit to the Board of Commissioners a resolution directing the Inspector to cause the dwelling or dwelling unit to be repaired, altered or improved to comply with the minimum standards of fitness established by this subchapter.

(2) *In rem remedy.* If the owner of a dilapidated dwelling shall fail to comply with an order of the Inspector to vacate and close, and remove or demolish the same within the time specified in the order, the Inspector shall secure the issuance of a warrant charging the owner with a violation of the minimum standards of fitness established by this subchapter, as provided in § 153.58 and shall submit to the Board of Commissioners an ordinance ordering the Inspector to cause the dwelling to be vacated and closed, and removed or demolished, and pending the removal or demolition, to placard the dwelling as provided by G.S. § 160A-443(4) and § 153.54.

(D) *Appeals from orders of Inspector.*

(1) An appeal from any decision or order of the Inspector may be taken by any person aggrieved thereby. Any appeal from the Inspector shall be taken within ten days from the rendering of the decision or service of the order, and shall be taken by filing with the Inspector and with the Zoning Board of Adjustment, a notice of appeal which shall specify the grounds upon which the appeal is based. Upon the filing of any notice of appeal, the Inspector shall forthwith transmit to the Board all the papers constituting the record upon which the decision appealed from was made. When an appeal is from a decision of the Inspector refusing to allow the person aggrieved thereby to do any act, his or her decision shall remain in force until modified or reversed. When an appeal is from a decision of the Inspector requiring the person aggrieved to do any act, the appeal shall have the effect of suspending the requirement until the hearing by the Board, unless the Inspector certified to the Board, after the notice of appeal is filed with him or her, that by reason of the facts stated in the certificate (a copy of which shall be furnished the appellant), a suspension of his or her requirement would cause imminent peril to life or property, in which case the requirement shall not be suspended except for due cause shown upon not less than one-day's written notice to the Inspector, by the Board or by a Court of Record upon petition made pursuant to G.S. § 160A-446(f) and division (E) below.

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

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

(E) *Petition to Superior Court.* The owner or any other person affected by an order of the Inspector shall have the right, within 60 days following service of the order, to petition the Superior Court for a temporary injunction restraining enforcement of the order and for a hearing and determination of the validity thereof, as provided by G.S. § 160A-446.  
(1990 Code, § 153.52) (Ord. passed --)

**§ 153.53 METHODS OF SERVICE OF COMPLAINTS AND ORDERS.**

Complaints or orders issued by the Inspector shall be served upon persons either personally or by registers or certified mail, but if the whereabouts of the persons are unknown and the same cannot be ascertained by the Inspector in the exercise of reasonable diligence, the Inspector shall make an affidavit to that effect and the serving of the complaint or order upon the person may be made by publishing the same once each week for two successive weeks in a newspaper printed and published in the town. A copy of the complaint or order shall be posted in a conspicuous place on the premises affected by the complaint or order. A copy of the complaint or order shall also be filed in the proper office for the filing of lis pendens notices in the county, and the filing of the complaint shall have the same forces and effect as other lis pendens notices provided by law.  
(1990 Code, § 153.53) (Ord. passed --)

**§ 153.54 IN REM ACTION BY INSPECTOR; PLACARDING.**

## **Minimum Housing Standards**

After failure of an owner of a dwelling or dwelling unit to comply with an order of the Inspector issued pursuant to the provisions of this subchapter, and upon adoption by the Board of Commissioners of an ordinance authorizing and directing him or her to do so, as provided by G.S. § 160A-443 and § 153.52(C), the Inspector shall proceed to cause the dwelling or dwelling unit to be repaired altered or improved to comply with the minimum standards of fitness established by this subchapter, or to be vacated and closed and removed or demolished, as directed by the ordinance of the Board of Commissioners and shall cause to be posted on the main entrance of the dwelling or dwelling unit, a placard with the following words: "This building is unfit for human habitation; the use or occupation of this building for human habitation is prohibited and unlawful." Occupation of a building so posted shall constitute a misdemeanor.  
(1990 Code, § 153.54) (Ord. passed --)

### **§ 153.55 COST A LIEN IN PREMISES.**

As provided by G.S. § 160A-443(6), the amount of the cost of any repairs, alterations or improvements, or vacating and closing, or removal or demotion, caused to be made or done by the Inspector pursuant to § 153.54, shall be a lien against the real property upon which the cost was incurred. The lien shall be filed having priority and being collected in the same manner as the lien for special assessments established by G.S. Chapter 160A, Article 10.  
(1990 Code, § 153.55) (Ord. passed --)

### **§ 153.56 ALTERNATIVE REMEDIES.**

Neither this subchapter nor any of its provisions shall be construed to impair or limit in any way the power of the town to define and declare nuisances and to cause their abatement by summary action or otherwise, and the enforcement of and remedy provided herein shall not prevent the enforcement of any other remedies or remedial provided herein or in other ordinances or laws.  
(1990 Code, § 153.56) (Ord. passed --)

### **§ 153.57 CONFLICT WITH OTHER PROVISIONS.**

In the event any provision, standard or requirement of this subchapter is found to be in conflict with any provision of any other ordinance or code of the town, the provision which establishes the higher standard or more stringent requirement for the promotion and protection of the health and safety of the residents of the town shall prevail.  
(1990 Code, § 153.57) (Ord. passed --)

### **§ 153.58 VIOLATIONS.**

It shall be unlawful for the owner of any dwelling or dwelling unit to fail, neglect or refuse to repair, alter or improve the same, or to vacate and close and remove or demolish the same, upon order of the Inspector duly made and served as herein provided, within the time specified in the order, and each day that any failure, neglect or refusal to comply with the order continues shall constitute a separate and distinct offense. It shall be unlawful for the owner of any dwelling or dwelling unit, with respect to which an order has been issued pursuant to § 153.54, to occupy or permit the occupancy of the same after the time prescribed in the order for its repair, alteration or improvements or its vacation and closing, and each day that the occupancy continues after the prescribed time shall constitute a separate and distinct offense.  
(1990 Code, § 153.58) (Ord. passed --) Penalty, see § 153.99

**§ 153.99 PENALTY.**

(A) The violation of any provision of this chapter shall constitute a misdemeanor, as provided by G.S. § 14-4.

(B) In addition to the penalty established by division (A) above and the remedies provided by other provisions of this chapter, this chapter may be enforced by an appropriate equitable remedy issued by a court of competent jurisdiction.

(1990 Code, § 153.99) (Ord. passed --)

## Minimum Housing Standards

### CHAPTER 154: COMMERCIAL INCINERATION FACILITIES

#### Section

154.1	Title
154.2	Purpose
154.3	Incineration permit
154.4	Application and processing fees
154.5	Environmental impact statement required
154.6	Application procedures
154.7	Privilege license tax
154.8	Control of emissions

#### § 154.01 TITLE.

This chapter shall be known and may be cited as the town Regulations for the Operation and Management of Commercial Incineration Facilities.  
(1990 Code, § 154.01) (Ord. passed - -)

#### § 154.02 PURPOSE.

The purpose of this chapter is to:

(A) Regulate the operation and management of incineration facilities dealing with the storage, transfer, treatment or disposal of waste within the town where the total incinerator capacity is greater than 250 pounds per hour continuous burn or 400 pounds per each batch burn incinerator unit;

(B) Assure that the best available management practices are used in handling waste incineration;

(C) Assure that operation of the facilities within the town pose no threat to the water, land and air resources of the town; and

(D) Assure all applicable rules and regulations stipulated by state, federal and regulatory agencies are met.  
(1990 Code, § 154.02) (Ord. passed - -)

### **§ 154.03 INCINERATION PERMIT.**

A permit applicant shall prepare and file an incineration permit application with the Board of Commissioners. The permit application shall include all related documents submitted to the United States government and to the State of North Carolina.

(A) An application shall contain the following information:

(1) A description of the company, information on its financial capability and a detailed history of all its past activities in the field of incineration, including a synopsis of every other facility it has operated, and including a detailed account of all past and pending litigation, favorable and unfavorable. Include the record of any subsidiary or parent corporation having an interest greater than 5% of the outstanding shares of the applicant corporation. Also, include a list of all past and present litigation, favorable and unfavorable, the subsidiary or parent corporation has been involved in;

(2) Evidence of liability insurance in the amount of \$1,000,000 for sudden and \$10,000,000 for non-sudden coverage. Evidence of \$10,000,000 liability insurance to run for five years subsequent to closure to cover post-closure costs. Provide a history of any claims against the company at any site, including the record of any subsidiary or parent corporation as defined above. Also, tell about civil penalties imposed upon the company by state and federal agencies for any violation of state or federal regulation;

(3) Justification for and anticipated benefits from the project;

(4) A description of the scope of the proposed project, including an estimated schedule of how much and what kinds of waste the facility would accept, where the material would come from, what pretreatment will be required of wastes unacceptable to the facility without the pretreatment and how long the facility is expected to operate;

(5) Yearly site operation expenses and an estimate of the costs for the life time of the project;

(6) The proposed method of financing the project, including development, operation and closure stages;

(7) Provide resumés of management personnel and the proposed number of employees and types of positions, including information on the training and experience required for each position and safety precautions undertaken for the protection of personnel;

(8) The anticipated date to begin construction include a list of the financial institution names which will be funding construction;

(9) The anticipated date to begin operation;

(10) A detailed estimate of the types and amounts of local government services required by the operator in each year;

(11) A description of emergency procedures and safety and security precautions that will be in use at the facility. This information should include details on emergency assistance and emergency medical treatment that will be required from the area's medical facilities, town rescue squad and Fire Department;

(12) A description of the environmental protection measures to be taken by the applicant to prevent contamination in and around the facility site and the description of planned monitoring systems, with an estimated annual budget for each of these items;



(13) A description of environmental protection ensures to be used during transportation of materials to and from the facility, with an estimated annual budget for these arrangements and an estimate of the volume of material to be transported during each year of operation;

(14) A description of the site closure plan for the facility and the anticipated date of closure; and

(15) A description of anticipated need for post-closure care.

(B) A map or other written material attached to the application shall include but are not limited to the following information.

(1) *Ownership.*

(a) Name, address and telephone number of legal owner (and/or agent) of the subject property.

(b) Name, address and telephone number of professional persons responsible for plat or survey.

(c) Description of any existing rights-of-way or easements affecting the property.

(d) Reference to any existing restrictive covenants on the property.

(2) *Description.* Location of property by tax map and parcel number. This description should include a reference to the deed book and page or other evidence of title the current property owner may have.

(3) *Features.* Each map shall contain the following information:

(a) Drawn to a scale of not less than 200 feet to the inch;

(b) Location sketch map showing relationship of the project to the surrounding area;

(c) Graphic scale, date, north arrow and legend;

(d) Location of property with respect to surrounding property and roads, and the names and addresses of adjacent property owners according to town tax records;

(e) Zoning classification of proposed project and adjacent property;

(f) The location of all boundary lines of the property;

(g) The total acreage of land in the project;

(h) The location of existing and/or platted streets, easements, buildings, railroads, cemeteries, bridges, sewers, water mains, culverts, wells and gas and electric transmission lines;

(i) The location of water bodies, water courses, groundwater aquifers, spring and other pertinent features;

(j) The location, dimensions and acreage of all property proposed to be set aside for various uses on the applicant's property;

(k) The location of all test wells and/or borings;

(l) The location of the 500- and 100-year flood plain and records of flood, including inundation due to dam break; and

(m) The location of historic properties and grave sites, including any plans for relocation of graves and properties having a historic significance.

(4) *Geological map.* A map showing location of faults, dikes, sills and other pertinent geologic features including bedrock type and strike, and dip of any mapable bedding, the depth and degree of weathering (saprolite), identification and location of clay as to thickness, type and permeability and location of the water table as to approximate depth, gradient and surface configuration.

(5) *Topographic map.* A topographic map with contours at vertical intervals of not more than five feet at the same scale as the project site map shall be included. Date, method of preparation and preparer of the survey shall be stated.

(6) *Transportation route map.* A map showing proposed transportation routes to and from the facility site including location of cities and emergency and safety facilities. Include an estimate of the volume of material to travel on each route.

(C) The application shall address the following factors with regard to, but not limited to, on-site storage and/or disposal:

(1) Contaminant flow to the water table including leachate monitoring, collecting and withdrawal systems, clay and synthetic liners (extra thickness, multiple liners) spill prevention and containment measures;

(2) Contaminant movement with groundwater, including groundwater monitoring system at the site and in potentially affected area, subsurface slurry wall barriers control and other groundwater withdrawals in the area;

(3) Predictability of contaminant movement, based on preconstructed borings and groundwater modeling;

(4) Potential effect on surface water, planned collection systems for surface water run-off and planned exclusion systems for surface water run-on;

(5) Potential effect on aquifers, planned provisions for alternate water supply systems and facilities for immediate pumping and treatment of contaminated water;

(6) Potential effect on public water supply; planned run-off collection and treatment and provisions for alternate supply systems;

(7) Possibility of site flooding, planned special facility design, special control dikes and buffer zone setback in area of standard protect flood area;

(8) Potential human exposure to treated waste water, including planned safety procedures, clothing, instruction and practice for employees, planned oversized or redundant treatment capacity, effluent monitoring and automatic shutdown systems; and

(9) With respect to incineration, the nature and predictability of pollution movement, including planned stack height for incinerators with continuous stack and plume monitoring and recording, until emission levels are predictable, planned segregation of incompatible wastes.

(1990 Code, § 154.03) (Ord. passed --)

#### **§ 154.04 APPLICATION AND PROCESSING FEES.**

(A) The Town Board of Commissioners, upon the recommendation of the Planning Board, shall require a permit application fee in the amount of \$100,000 to reimburse the town for the costs of any needed professional assistance that may be required to evaluate the permit application and amendments, verify its contents and evaluate the impact of a permit on the community, public health and environment. This assistance may include, but shall not be limited to the assistance of lawyers, biologist, geologists, engineers, chemists, hydrologists, emergency response, transportation and public health experts, land appraisers and professional testing laboratories. Funds not so expended in the legitimate review of the permit application shall be returned to the applicant.

(B) Failure to provide these funds within 30 days of demand, therefore, shall result in termination of the permit process or cancellation of the permit. The Board of Commissioners may take legal action against the applicant for any costs incurred to the town up to the point of termination.

(1990 Code, § 154.04) (Ord. passed --)

#### **§ 154.05 ENVIRONMENTAL IMPACT STATEMENT REQUIRED.**

(A) Pursuant to G.S. § 113A-8, the applicant for a permit under this chapter is required to submit detailed statements, as defined in G.S. § 113A-4(2), of the impact of the projects. These statements shall be part of an environmental impact statement (EIS) and no permit under this chapter shall be granted until the EIS is deemed a sufficient statement by the Town Board of Commissioners.

(B) In addition to the permit application described in § 154.03, the permit applicant shall submit to the Planning Board a proposed scope of the EIS to include specific issues relating to the following:

- (1) The environmental impact of the proposed action;
- (2) Any significant adverse environmental effects which cannot be avoided should the proposal be implemented;
- (3) Mitigation measures proposed to minimize the impact;
- (4) Alternatives to the proposed actions;
- (5) The relationship between the short-term uses of the environment involved in the proposed action and the maintenance and enhancement of long-term productivity;
- (6) Any irreversible and irretrievable environmental changes which would be involved in the proposed action should it be implemented; and
- (7) Other requirements for an EIS under G.S. § 113A-4 and 01 N.C.A.C. 25 .0107 *et seq.*

(C) The Planning Board shall hold a public hearing upon the scope of the EIS and the make the determination what issues relating to the factors above shall be included in the EIS. The Planning Board shall act in an advisory role to the applicant during the preparation of the EIS. Following the completion of a draft EIS, the Planning Board shall hold a public hearing to solicit public comments regarding the sufficiency of the document. This hearing may be held simultaneously with the hearing regarding the completed application.

The draft EIS shall also be submitted to the State Clearinghouse for review and comment following the process outlined in 01 N.C.A.C. 25 .0800. The comments by the public and agencies and the response by the applicant to the comments shall become part of the EIS. After consideration of the public and agency comments and the applicants response, the Planning Board shall make a recommendation to the Town Board of Commissioners that it accept the document as completed.

(D) The Town Board of Commissioners shall use the EIS, along with the permit application, in determining whether to accept, deny or accept with modifications a permit under this chapter. (1990 Code, § 154.05) (Ord. passed --)

#### **§ 154.06 APPLICATION PROCEDURES.**

(A) The permit applicant shall submit to the Board of Commissioners 12 copies of all information required by federal and state agencies for the facility for which it requests a town permit at the time the information is submitted to the state and federal government except facilities already located in the town. The review procedure shall not begin nor shall the application be designated as complete until the time as all required data are submitted and appropriate fees are paid, or suitable arrangements for payments have been approved by the Town Board of Commissioners.

(B) A designee of the Board of Commissioners shall compile copies of all reports, applications, minutes of the Planning Board meetings, report by consultants and similar materials. These shall be placed in one location with free access by the public and availability of copying any portion of all or any document at cost.

(C) Within 45 days of the submission of the application, the Commissioner's designee shall hold a public hearing so that the applicant can present his or her plans to the Planing Board and answer questions regarding the same.

(D) After the hearing, the Commissioner's designee, after consultation with the Planning Board, shall have 60 days in which to determine if the application is complete and shall mail notice of its determination to the applicant. If it is not complete, the applicant will have six months to complete the application. However, the applicant may, at the end of six months make a showing of cause to the Board of Commissioners, and if the Board of Commissioners finds that the delay is justified and in good faith, they can grant the applicant a maximum three-month extension.

(E) Each application shall require an analysis conducted by the town staff and a consultant selected by the Board of Commissioners upon the recommendation of the Planning Board. The analysis shall be completed within 90 days from the day the application is determined to be completed. In certain instances where the complexity of the application requires more than the usual 90 days, the town staff and/or consultant may request an additional 60 days from the Board of Commissioners, and the proponent has the option of requesting the Planning Board to extend the analysis period to allow time for responding to staff and/or consultant request for additional information on a completed application.

(F) The Board of Commissioners designee and each consultant shall make report on the application to the Planning Board at its meetings.

(G) The Planning Board shall call a public hearing for public comment on the completed application along with the analysis of town staff and consultants. The purpose of this meeting shall be for public review of the application. The staff shall give notice by regular mail of the time and place of the public meeting to the owner and adjacent property owners as specified on the map. The notice shall be mailed not less than 14 days prior to the date specified thereon. Notice of a public meeting shall be posted by the applicant on the proposed facility property on each and every street of access not less than 14 days prior to the date specified thereon. The posted

notices shall be at intervals of not greater than 1,500 feet. Notice shall also be placed by the applicant in the local newspaper not less than 14 days prior to the dates specified thereon.

(H) Within 45 days after receipt of the final analysis, completed application and public comment, the Planning Board shall make a recommendation to the Board of Commissioners at a public meeting whether to accept the application, deny it or accept it with modifications. This recommendation shall be made to the full Board of Commissioners, however, before making a recommendation to the Board of Commissioners to accept the proposal or accept it with modifications, the Planning Board shall make the following determinations:

(1) That the construction and operation of the facility will not pose an unreasonable health or environmental risk to the surrounding locality;

(2) That the applicant (or facility operator) has the capability and financial resources to construct, operate and maintain the facility;

(3) That the applicant or operator has taken or consented in writing to take any and all reasonable measures to comply with applicable federal, state and local regulations and ordinances; and

(4) That the applicant's plan represents the best available technology for handling the waste for which the applicant will be permitted, and that the applicant has demonstrated that he or she will employ the best management practices in handling the waste at the proposed facility.

(I) At its next scheduled meeting, the Board of Commissioners shall make its decision to grant the permit, deny it or grant it with specified conditions. Adequate procedural method shall be employed.

(J) A permit shall be valid for no more than 18 months from the date it is granted by the Board of Commissioners unless the applicant begins construction of the facility prior to the expiration of the permit and continues to operate the facility according to specified conditions. A permit becomes invalid and the application is unchanged from when the permit was granted, it shall follow the procedure of § 154.05 and the filing fee of § 154.04.

(1990 Code, § 154.06) (Ord. passed --)

#### **§ 154.07 PRIVILEGE LICENSE TAX.**

(A) A privilege license tax will be required and paid annually in conformity with G.S. § 160A-211.

(B) The privilege license tax will be in direct proportion to the costs incurred by the town to monitor the facility to ensure compliance with the regulations contained herein and the amount necessary to prepare the town to respond to emergencies which may result from any emergency caused by the facility.

(C) This fee will be calculated during the application fee process and updated annually.

(1990 Code, § 154.07) (Ord. passed --)

#### **§ 154.08 CONTROL OF EMISSIONS.**

(A) Emissions from all incinerators at a plant site shall meet the regulations governing the control of toxic air pollutants at 15A N.C.A.C. 02D .1100 and 15A N.C.A.C. 02H .0610, and comply with all other applicable air quality rules.

(B) Emissions from all incinerators at a plant site where the total incinerator capacity is greater than 250 pounds per hour continuous burn or 400 pounds batch burn shall not cause any of the following ambient levels

in milligrams per cubic meter at 77°F and 29.92 inches of mercury to be exceeded beyond the premises:

Acrylonitrile	$1.5 \times 10^{-4}$
Ammonium chromate	$8.3 \times 10^{-8}$
Ammonium dichromate	$8.3 \times 10^{-8}$
Benzene	$1.2 \times 10^{-4}$
1.3-butadiene	$1.7 \times 10^{-4}$
Calcium chromate	$8.3 \times 10^{-8}$
Carbon tetrachloride	$6.7 \times 10^{-3}$
Chloroform	$4.3 \times 10^{-3}$
Chromic acid	$8.3 \times 10^{-8}$
Chromium (IV)	$8.3 \times 10^{-8}$
Ethylene oxide	$2.7 \times 10^{-5}$
Lithium chromate	$8.3 \times 10^{-8}$
Methylene chloride	$2.3 \times 10^{-2}$
Perchloroethylene	$1.9 \times 10^{-1}$

Potassium chromate	$8.3 \times 10^{-8}$
Potassium dichromate	$8.3 \times 10^{-8}$
Sodium chromate	$8.3 \times 10^{-8}$
Sodium dichromate	$8.3 \times 10^{-8}$
Strontium chromate	$8.3 \times 10^{-8}$
Tetrachlorodibenzo-p-dioxin	$3.0 \times 10^{-9}$
Trichloroethylene	$5.9 \times 10^{-2}$

(C) Ambient air concentrations shall be determined by using appropriate Environmental Protection Agency dispersion modeling procedures or other methods specified by the Director. Ambient air concentrations are to be evaluated for an annual period over a calendar year, 24-hour periods from midnight to midnight, for on-hour periods beginning on the hour and for 15-minute periods, beginning on the hour of 15, 30 or 45 minutes after the hour. The identification of each toxic air pollutant emitted and its corresponding emission rate shall be determined using mass balancing analysis, source testing or other methods acceptable to the Director.

(D) For incinerators at a plant site where the total incinerator capacity is greater than 250 pounds per hour continuous burn or 400 pounds per each batch incinerator unit, the emissions of:

(1) Hydrogen chloride shall not exceed four pounds per hour unless the emission is reduced by at least 99% by weight; and

(2) Mercury shall not exceed seven pounds per 24-hour period.

(E) Any violation of these emission levels will involve a fine of \$100 per pollutant per day over specified level.

(F) The operator of the facility shall submit to the town copies of all reports and documents it is required to submit to the State Division of Environmental management or the United States Environmental Protection Agency.

(1990 Code, § 154.08) (Ord. passed --)

## CHAPTER 155: TELECOMMUNICATIONS TOWER REGULATIONS

### Section

- 155.1 Purpose
- 155.2 Definition
- 155.3 Districts in which permitted
- 155.4 Regulations
- 155.5 Application requirements

### § 155.01 PURPOSE.

The purpose of these recommendations is to establish specific regulations for the siting of telecommunications towers within the town and its ETJ. With the increasing number of towers being erected for television, radio and cellular communications there is a need for guidelines to protect areas in which the towers are located.

(1990 Code, § 155.01) (Ord. passed 3-10-1998)

### § 155.02 DEFINITION.

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

**TELECOMMUNICATIONS TOWERS.** Radio, television, cellular and PCS towers. (Privately operated and amateur radio towers shall comply with Chapter 156).

(1990 Code, § 155.02) (Ord. passed 3-10-1998)

### § 155.03 DISTRICTS IN WHICH PERMITTED.

Telecommunications towers shall be permitted as a special use in I-1, I-2 and B-3 zoning districts, contingent upon approval by the Town Board of Commissioners.

(1990 Code, § 155.03) (Ord. passed 3-10-1998)



## Telecommunications Tower Regulations

### § 155.04 REGULATIONS.

(A) Telecommunications towers shall comply with the following regulations.

(1) Radio or television or similar reception for adjoining properties will not be disturbed or diminished.

(2) The height of any tower shall not exceed 400 feet.

(3) The lighting of a tower shall not exceed the minimum standards of the Federal Aviation Administration (FAA) for red obstruction lighting system contained in Advisory Circular No. 70/7460-IF dated September 27, 1978, as the same may be amended.

(4) The minimum yard setback from the outside dimensions of the tower, not from guy anchors, are as follows: 50% of the tower height from any property line of any adjoining lot or public street in I-1, I-2 and B-3 zoning districts. (Note: setbacks for guy anchors shall comply with Chapter 156.)

(5) The output power from the tower shall not exceed federally approved levels for exposure to electronic magnetic force (EMF).

(6) The base of the tower and each guy anchor shall be surrounded by a fence or wall of at least eight feet in height unless the tower and all guy anchors are mounted entirely on a building over eight feet in height. Except for fence and wall entrances, all fences and walls shall be screened with plant material, so that no more than one-third of the surface of the fence or wall is visible, within five years of erection of the structure, from a public street or from any adjoining property in any permitted zoning district.

(7) If determined by the town that the proposed tower is situated in a location which will benefit the town's telecommunication systems, then the tower shall be engineered and constructed to accommodate the additional telecommunication equipment beneficial to the public system.

(8) The tower shall be either less than 100 feet in height or located no closer than 2,500 feet (determined by straight line and not street distance) to a tower greater than 100 feet in height.

(9) Any proposed tower shall be engineered and designed to accommodate co-location of future transmitting facilities and an affidavit shall be submitted attesting to such.

(10) Any applicant for a tower siting shall show the need for the tower and shall provide sufficient evidence that all alternatives to the construction of a new tower have been exhausted.

(11) No special use permit shall be required when co-locating on an existing tower. The only approval requirement shall be through the Inspections Department for any necessary equipment building.

(12) Any proposed tower shall be constructed of sufficient strength and height to accommodate at least one additional user for towers up to 180 feet in height and multiple additional users for towers exceeding 180 feet in height.

(13) The owner of any tower which shall provide the town with a copy of the notice to the Federal Communications Commission (FCC) of intent to cease operations and shall have no more than 12 months to remove the obsolete tower and accessory structures from the date the notice is received.

(B) Upon approval of a tower, as a special use, the owner shall file and maintain a bond for the disassembly and removal of the tower and accessory structures, with the town in an amount and manner

satisfactory to town policies and requirements.  
(1990 Code, § 155.04) (Ord. passed 3-10-1998)

**§ 155.05 APPLICATION REQUIREMENTS.**

(A) Any person, firm or corporation filing an application for a special use permit for the location of a telecommunications tower shall, at the time an application is filed, provide the following:

- (1) Site and landscape plans drawn to scale;
- (2) A report including a description of the tower with technical reasons for its design;
- (3) Documentation establishing the structural integrity for the tower's proposed uses;
- (4) The general capacity of the tower, and information necessary to assure that ANSI standards are met;
- (5) A statement disclosing conditions under which excess space will be leased;
- (6) Proof of ownership of the proposed site or authorization to utilize it;
- (7) Copies of any easements necessary;
- (8) An analysis of the proposed area containing existing topographical contours; and
- (9) A study depicting “where within a three-mile radius any portion of the proposed tower could be seen and where any other towers exist.”

(B) The processing of any application may be delayed if all requirements are not met.  
(1990 Code, § 155.05) (Ord. passed 3-10-1998)

## **Telecommunications Tower Regulations**

### **CHAPTER 156: UNIFIED DEVELOPMENT CODE**

*Note: The Town of Benson Unified Development Code (occasionally, “UDO”), passed and enacted as an act and ordinance of the Town by the Town of Benson Board of Commissioners, as amended and re-codified January 1, 2015, is fully incorporated as if fully set forth herein.*

