

# MUNICIPAL ORDINANCES

## Town of Butner

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**TOWN OF BUTNER**  
**MUNICIPAL ORDINANCES**

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## **ARTICLE I**

### **GARBAGE AND REFUSE COLLECTION AND DISPOSAL**

#### **Section 101. Definitions**

For the purpose of this article certain terms and words are defined as follows:

- 101.1 “Building material scraps.” Scrap building material from the construction, reconstruction, remodeling or repair of a building, walk-way, driveway, sign and other structure, including but not limited to, excavated earth, tree stumps, rocks, gravel, bricks, plaster, concrete, lumber or any other similar material used in construction or the containers or wrappings therefore.
- 101.2 “Garbage.” All putrescible wastes, including animal and vegetable matter, animal offal and carcasses and recognizable Industrial by-products, but excluding sewage and human wastes.
- 101.3 “Refuse.” All nonputrescible wastes.
- 101.4 “Solid waste.” Garbage, refuse, rubbish, trash, and other discarded solid materials, including “solid waste” materials resulting from homes, businesses, industrial, commercial and agricultural operations and community activities, but not including solids or dissolved materials in domestic sewage or other significant pollutants in water resources, such as silt, dissolved or suspended solids in industrial waste, water effluents, dissolved materials in irrigation return flows or other common water pollutants.

#### **Section 102. Refuse Required to Be Deposited in Approved Containers**

It shall be unlawful for any person to throw, place or deposit any garbage or refuse of any kind on any public or private property except in approved containers or as otherwise provided in this article.

#### **Section 103. Burying Garbage and Refuse Regulated**

It shall be unlawful to burn or set fire to bury any garbage for the purpose of disposal. In addition, it shall be unlawful to bury any refuse for the purpose of disposal unless a permit therefore has been granted by town operations.

#### **Section 104. Accumulation of Garbage and Refuse Prohibited**

All garbage and refuse shall be collected and placed in containers as required by this article. It shall be unlawful for any person to permit garbage or refuse to



accumulate or remain on any premises longer than is reasonably necessary to remove and deposit same in approved containers as required herein.

**Section 105. Removal of Dead Animals**

Dead animals will be removed from any premises upon notice from the Town of Butner of the existence of such dead animals.

## ARTICLE II

### RECREATION BUSINESSES

#### **Section 201. Certain Prohibitions to be Observed by Recreational Business Operators and Employees**

No owner or operator of a recreational business, nor their employees, shall:

- 201.1 Suffer or permit any gambling on the licensed premises at any time;
- 201.2 Suffer or permit the licensed premise to become disorderly, or permit any profane, obscene or indecent language thereon;
- 201.3 Suffer or permit any intoxicating liquors (excluding malt beverages) or narcotic drugs to be sold, kept or consumed on the licensed premises;
- 201.4 Suffer or permit any person under the age of 16 years to enter or remain on the premises, unless the person is accompanied by a parent or guardian;
- 201.5 Employ in the establishment any person who has been convicted within the past two (2) years of a felony offense;
- 201.6 Suffer or permit any gambling devices to be on the premises.

#### **Section 202. Rules for Operation**

The following rules shall be observed by all operators of recreational businesses required to be licensed by Section 201 within the town.

- 202.1 All establishments shall close no later than 2:00 a.m. each morning Monday through Saturday, and no person other than the owner, operator or employees shall be permitted on the premises from that hour until 7:00 a.m. the following morning; provided, that when Daylight Savings Time is in effect all establishments covered herein shall close at 2:00 a.m.;
- 202.2 No play on any table, alley or machine shall be allowed during the times when the premises are required by this article to remain closed;
- 202.3 All establishments shall be operated only on the ground floor of a building and an unobstructed transparent plate glass window or windows shall be located in those parts of the building facing any street so that a clear view inside may be had from the street;

202.4 No screens, curtains, blinds, partitions, or other obstructions shall be placed between the entrance to the room where amusements or games are played and the rear wall of the room. A clear view of the interior premises from the entrance to the rear of the premises must be maintained at all times.

## **ARTICLE III**

### **PEDDLING AND SOLICITING**

#### **Section 301. Definitions**

For the purpose of this article the following terms shall have the meanings respectively ascribed:

- 301.1 “Peddler.” Any person who transports goods from place to place and sells or offers for sale the goods, or who, without traveling from place to place, sells or offers for sale any goods from any vehicle or device; provided, that any person who separates the acts of sale and delivery for the purpose of evading the provisions of this article shall be deemed a peddler.
- 301.2 “Solicitor.” Any person who travels from place to place taking or offering to take orders for the sale of goods for future delivery or for personal services to be performed in the future, whether or not samples are displayed or money is collected in advance, and any person who uses or occupies any building or premises for the sole purpose of taking or offering to take orders for the sale of goods for future delivery or for personal services to be performed in the future, whether or not samples are displayed or money is collected in advance.
- 301.3 “Transient vendor.” Any person who engages in a temporary business of selling and delivering goods and who, for this purpose, uses or occupies any building or premises; provided, that no person shall be relieved from complying with the provisions of this article merely by conducting a transient business in association with any permanently established merchant.

#### **Section 302. Temporary Sales Permit**

A temporary sales permit is required of each and every person doing business in the town as a peddler, solicitor or transient vendor obtained from the Town of Butner setting for the following information:

- 302.1 Name and address of individual filing the statement;
- 302.2 Name and address of principal or employer if individual is an agent or employee;
- 302.3 Credentials showing relationship of agent or employee;
- 302.4 Description of individual filing statement including height, weight, sex, age, color and distinguishing characteristics, if any;
- 302.5 The goods to be sold or offered for sale, or the type of services to be rendered;
- 302.6 The period of time during which the business will be carried on in the town; and,

302.7 Description of automobile or other vehicle to be used in the business, including the make, model, body style, color, and license number. Failure to provide the information required shall result in the denial of the permit. All requests for periods will be reviewed and approved by the Town of Butner.

**Section 303. Door-to-Door Activities Prohibited**

It shall be unlawful for any peddler, solicitor or transient vendor or other seller of merchandise to go in, or upon, private residences or the premises thereof, in the town without having been requested or invited to do so by the owner or occupant, for the purpose of advertising, peddling or selling merchandise.

## **ARTICLE IV**

### **STREET AND SIDEWALK USE AND REGULATION**

#### **Section 401. Assembly on Streets and Sidewalks**

Except as provided in Article VI, it shall be unlawful for crowds or assemblages of persons to congregate on the streets or sidewalks of the town in such a way as to unnecessarily interfere with pedestrian or vehicular traffic. Any person refusing to disperse upon being so ordered by a Public Safety officer shall be guilty of a misdemeanor.

#### **Section 402. Construction Near a Sidewalk**

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

#### **Section 403. Sheds and Awnings**

It shall be unlawful for any person, firm or corporation to construct or erect, or cause to be constructed or erected, any structure, and particularly any awning or similar structure, over any sidewalk or any part of any sidewalk of the town, unless the structure is at least seven (7) feet above the surface of the sidewalk.

#### **Section 404. Repair of Motor Vehicles**

It shall be unlawful for any person, firm or corporation to repair a motor vehicle on a paved street of the town, except in case of an emergency.

#### **Section 405. Gates Opening on Streets or Sidewalks**

It shall be unlawful to allow or permit any gate to open upon or otherwise encroach upon any street or sidewalk.

## ARTICLE V

### USE AND CLEANLINESS OF PUBLIC AREAS

#### **Section 501. Littering Prohibited**

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

#### **Section 502. Littering from Vehicles**

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

#### **Section 503. Maintenance of Public Areas**

Every owner, lessee, tenant, occupant or other person in charge of any commercial establishment or premises which maintains any paved or unpaved areas for the use of the public, either for parking or as access areas and incident to the carrying on of the principal business of any commercial establishment or premises and which parking or access areas abut or lie within ten (10) feet of any public street or other public way, shall keep and maintain the areas clean and free from trash, litter, rubbish and any materials liable to be blown, deposited or cast upon the street or other public way.

#### **Section 504. Receptacles**

Suitable receptacles may be provided in parking or access areas within the meaning of section 503. The receptacles shall be plainly marked and shall be constructed to prevent scattering of any trash, litter, rubbish or other materials deposited therein.

#### **Section 505. Drinking in Public Places**

It shall be unlawful for any person to consume any intoxicating beverages on or within the right-of-way of any street, boulevard, alley or sidewalk, in town parks and buildings, or on any other property owned or occupied by the town.

## ARTICLE VI

### PARADES AND DEMONSTRATIONS

#### Section 601. Definitions

For the purpose of this article the following terms shall have the definitions ascribed:

- 601.1 “Block.” That portion of any street lying between its intersections with other streets;
- 601.2 “Parade.” Any assemblage of two (2) or more persons participating in or operating any vehicle in any march, ceremony, show, exhibition or procession of any kind in or upon the public streets, sidewalks, alleys, parks or other public grounds or places;
- 601.3 “Person.” Any person, firm, corporation, partnership, association or other organization, whether formal or informal;
- 601.4 “Picket line.” Any two (2) or more persons formed together for the purpose of making known any position or promotion of the persons or on behalf of any organization or class of persons;
- 601.5 “Group demonstration.” Any assembly together or concert of action between or among two (2) or more persons for the purpose of protesting any matter or of making known any position or promotion of the persons, or of or on behalf of any organization or class of persons, or for the purpose of attracting attention of the assembly.

#### Section 602. Permit Required

It shall be unlawful for any person to organize, conduct or participate in any parade, picket line or group demonstration in or upon any street, sidewalk, alley or other public place within the town, unless a permit therefore has been issued in accordance with the provisions of this article. Permits may be obtained from the Town of Butner.

#### Section 603. Standards

Town Operations shall not issue a permit if he/she finds that:

- 603.1 The parades, picket lines or group demonstrations are to commence before 6:00 a.m. or terminate after 5:00 p.m.;
- 603.2 The parades or group demonstrations are to be held at the same time and place as those designated in a permit issued pursuant to a written application previously received by the Town;



- 603.3 The conduct of the parade will substantially interrupt the safe and orderly movement of other traffic contiguous to its route;
- 603.4 The conduct of the parade will require the diversion of so many Butner Public Safety Officers to properly police the line of movement of the parade and of contiguous areas that adequate police/fire protection cannot be provided the remainder of their areas of responsibility.
- 603.5 The conduct of the parade will require the diversion of such numbers of ambulances that adequate ambulance service to areas of the town not occupied by the parade and contiguous areas will be prevented;
- 603.6 The concentration of persons, animals and vehicles at assembly points of the parade will substantially interfere with adequate fire and police protection of, or ambulance service to, areas contiguous to the assembly areas;
- 603.7 The conduct of the parade is reasonably likely to result in violence to persons or property causing serious harm to the public;
- 603.8 The parade is to be held for the primary purposes of advertising a product, good or event, and is designed to be held primarily for private profit; or
- 603.9 The conduct of the parade will interfere with the movement of fire fighting equipment to such an extent that adequate fire protection cannot be provided to the town.

#### **Section 604. Requirements and Issuance of Permits**

The Town Manager or designee shall issue permits as required in the preceding section, and in the issuance thereof shall:

- 604.1 Require a written application for a permit to be filed not less than 24 hours in advance of the parade, picket line or group demonstration, which application shall specify the time and place for the commencement of any picket line and the time, place, route and duration of any parade or group demonstration;
- 604.2 Require that the application for a permit specify whether or not minors below the age of 18 years will be permitted to participate; and
- 604.3 Require that the application for a permit specify, and the permit shall designate, the person or persons in charge of the activity. The person shall be required to accompany the parade, picket line or group demonstration and shall carry the permit at that time. The permit shall not be valid in the possession of any other person.

604.4 Require that the applicant for a parade permit first obtain general liability insurance with policy limits of at least \$500,000 per person; \$1,000,000 aggregate; and property damage limits of \$500,000.00 from an insurance company licensed to do business in the State of North Carolina.

### **Section 605. Certain Activities Prohibited**

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

605.1 The carrying on or about the person any firearm, or any weapon or article, including but not limited to blackjacks, nightsticks, or flashlights, which by their use might constitute a deadly weapon.

605.2 The taking or keeping of any dog or vicious animal, whether leashed or unleashed.

### **Section 606. Revocation of Permit**

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

606.1 The violation by any participant of section 605;

606.2 The failure to comply with the terms and conditions of the permit.

### **Section 607. Interference Prohibited**

No person shall hamper, obstruct, impede or interfere with any parade, picket line or group demonstration being conducted under authority of a permit duly issued by the Town of Butner.

### **Section 608. Additional Regulations Applicable to Picketing**

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

608.1 Picketing may be conducted only on the sidewalks or other areas reserved for pedestrian movement, and may not be conducted on the portion of a street used primarily for vehicular traffic;

608.2 Not more than three (3) pickets promoting the same objective shall be permitted to use either of the two (2) sidewalks within a single block at any time; provided, if pickets promoting different objectives desire to use sidewalks in the same block for picketing and such use would result in the presence of more than three (3) pickets thereon, each group of pickets shall be allotted time for the use of the sidewalks on an equitable basis, but each group shall be permitted to picket, subject to the provisions of this article, at least once every two (2) hours;

608.3 Pickets may carry written or printed placards or signs not exceeding two (2) feet in width and two (2) feet in length promoting the objective for which the picketing is done; provided, the words used are not defamatory in nature, or would not tend to produce violence; and

608.4 Pickets must march in single file and not abreast and must not march closer together than 15 feet, except in passing one another.

**Section 609. Exceptions**

Sections 601 through 608 shall not apply to:

609.1 Funeral processions; or

609.2 Any governmental agency acting within the scope of its functions.

## ARTICLE VII

### MISCELLANEOUS DRIVING RULES

#### **Section 701. Spinning of Wheels Prohibited**

It shall be unlawful for any person, upon any street, highway, road, alley, drive or other public way, or upon the grounds and premises of any service station, store, restaurant or other business establishment providing parking or loading and unloading automobile space for customers, patrons or the public, to operate a motor vehicle from a standing or parked position by rapid acceleration or other mechanical means of operation so as to cause the wheels of the vehicle to spin in place prior to or during the initial forward movement of the vehicle; or to operate a vehicle so as to cause the vehicle in its initial movement from a standing or parked position to travel at a rate of speed greater than is reasonable and necessary for the normal operation of a motor vehicle according to accepted standard practices for vehicle operations; or at a rate of speed or in such manner as will endanger or likely endanger persons or property; or in a heedless manner disregarding the rights or others; or without due caution.

#### **Section 702. Operating Motor Vehicle on Sidewalk Prohibited**

It shall be unlawful for any individual to operate a motor vehicle upon any sidewalk in the town, except across a lawfully constructed driveway.

#### **Section 703. Operating Motorized Vehicles on Property**

Motorized vehicles shall not be allowed on any property without written permission from the owner.

#### **Section 704. Cruising Prohibited**

704.1 In order to provide for the general public safety, and to help prevent traffic congestion, obstruction of streets, sidewalks or parking lots, impediment of access of shopping centers or other buildings open to the public or the interference with the use of property, or the conduct of business in the area adjacent thereto, no person shall drive or permit a motor vehicle under his care, custody or control to be driven past a traffic control point three (3) or more times within a two-hour period from 6:00 p.m. to 4:00 a.m., Monday through Sunday, in or around a posted “no cruising” area.

704.2 At every point where a public street or alley becomes or provides ingress to a “no cruising” area, there shall be posted a sign which designates “no cruising” and gives the applicable time period. A “no cruising” area is an area designated where no person shall drive or permit a motor vehicle under his/her care, custody or control to be driven past a traffic control point three (3) or more times within a two-hour period.

- 704.3 A traffic control point, as used in this section, means any point or points within the “no cruising” area established by Butner Public Safety for the purpose of monitoring cruising.
- 704.4 No violations shall occur except upon the third passage by the same traffic control point within the aforementioned two-hour period.
- 704.5 No area shall be designated or posted as a “no cruising” area except upon the passage of a resolution by the Butner Town Council specifically mandating said designation and posting for a particular area.
- 704.6 This action shall not apply to in-service emergency vehicles, taxicabs for hire, buses and other vehicles being driven for business purposes.

## ARTICLE VIII

### STOPPING, STANDING OR PARKING PROHIBITED IN SPECIFIED PLACES

#### Section 801. Stopping, Standing or Parking Prohibited; No Signs Required

801.1 No person shall stop, stand or park a vehicle, except when necessary to avoid conflict with other traffic or in compliance with law or the directions of Butner Public Safety or traffic control device, in any of the following places:

801.1.1 On a sidewalk;

801.1.2 In front of a public or private driveway;

801.1.3 Within an intersection;

801.1.4 Within 15 feet of a fire hydrant;

801.1.5 On a crosswalk;

801.1.6 Within 25 feet of an intersection;

801.1.7 Within 30 feet upon the approach to any flashing beacon, stop sign or traffic control signal located at the side of a roadway;

801.1.8 Between a safety zone and the adjacent curb or within 30 feet of points on the curb immediately opposite the ends of a safety zone, unless signs or markings indicate a different length;

801.1.9 Within 50 feet of the nearest rail of a railroad crossing;

801.1.10 Within 30 feet of the driveway entrance to any fire station and on the side of a street opposite the entrance to any fire station within 75 feet of the entrance (when sign posted);

801.1.11 Along side or opposite any street excavation or obstruction when stopping, standing or parking would obstruct traffic;

801.1.12 On a roadway side of any vehicle stopped or parked at the edge or curb of a street.

801.1.13 Upon any bridge or other elevated structure upon a highway or within a highway tunnel; or

801.1.14 At any place where official signs prohibit stopping.

801.2 No person shall move a vehicle not lawfully under his control into any prohibited area or away from a curb any distance that is unlawful.

**Section 802. Parking Not to Obstruct Traffic**

No person shall park any vehicle upon a street, in a manner or under any conditions so as to leave available less than ten (10) feet of the width of the roadway for free movement of vehicular traffic.

**Section 803. Standing or Parking for Certain Purposes Prohibited**

It shall be unlawful for any person to stand or park a vehicle upon any street right-of-way of the town for the principal purposes of:

803.1 Displaying the vehicle for sale;

803.2 Washing, greasing or repairing such vehicle, except repairs made necessary by a bona fide emergency;

803.3 Storing by garages, dealers or other persons when the storing is not incident to the bona fide use and operation of the automobile or other vehicle; and

803.4 Storing of any trailer or van whether detached or not or for the purpose of transferring merchandise or freight from one (1) vehicle to another.

**Section 804. No Stopping, Standing or Parking Near Hazardous or Congested Places**

When official signs are erected at hazardous or congested places, no person shall stop, stand or park a vehicle in any designated place.

**Section 805. Stopping, Standing or Parking for Primary Purpose of Advertising Prohibited**

No person shall stand or park on any street any vehicle for the primary purpose of advertising.

## **ARTICLE IX**

### **STOPPING, STANDING OR PARKING RESTRICTED OR PROHIBITED ON CERTAIN STREETS AND PUBLIC PROPERTY**

#### **Section 901. Application of Article**

The provisions of this article prohibiting the standing or parking of a vehicle shall apply at all times or at those times herein specified or as indicated on official signs, except when it is necessary to stop a vehicle to avoid conflict with other traffic or in compliance with the directions of Butner Public Safety or official traffic control device.

#### **Section 902. Regulations Not Exclusive**

The provisions of this article imposing a time limit on parking shall not relieve any person from the duty to observe other and more restrictive provisions prohibiting or limiting the stopping, standing or parking of vehicles in specified places or at specified times.

#### **Section 903. Parking Prohibited at All Times on Certain Streets and Public Property**

When signs are erected giving notice thereof, no person shall park a vehicle at any time upon any of the streets or public property designated.

#### **Section 904. Parking Time Limited on Certain Streets**

When signs are erected in each block giving notice thereof, no person shall park a vehicle for longer than the times specified within the district or upon any of the streets or public property.

#### **Section 905. Parking Signs Required**

Whenever by this or any other article any parking time limit is imposed or parking is prohibited in designated streets or public property, there shall be appropriate signs giving notice thereof. No regulations shall be effective unless the signs are erected and in place at the time of any alleged offense, except that no parking or congregating is permitted at any business after business hours.



## **ARTICLE X**

### **RESTRICTIONS ON MOVEMENT OF TRUCKS**

#### **Section 1001. Trucks Restricted on Certain Streets**

1001.1 It shall be unlawful for any person to drive or operate a loaded truck over or upon any street designated by resolution of the Butner Town Council except when making a delivery.

1001.2 It shall be unlawful for any person to drive or operate a truck having a gross weight of greater than three-fourths (3/4) of one (1) ton over or upon any of the streets so designated by the Butner Town Council.

#### **Section 1002. Trucks Required to Follow Routes**

All trucks and trailers entering the town destined to any point outside of the town and not taking on or discharging any goods, wares or merchandise within the town limits, shall travel exclusively on the truck routes established by the Butner Town Council and over such part of such truck routes as shall constitute the shortest and most direct route from the point of entrance into the town and departure from the town.

#### **Section 1003. Trucks Required to be Covered**

All trucks and trailers entering or leaving the town carrying stone, gravel, rock, sand, building material scraps, garbage, or solid waste as defined by these ordinances shall be securely covered by tarpaulin or some other suitable covering to prevent its load from escaping from the vehicle.

## ARTICLE XI

### DISORDERLY CONDUCT

#### **Section 1101. Profanity and Boisterous Conduct**

It shall be unlawful for any person to use loud, boisterous or profane language in any public place in a manner creating a public disturbance.

#### **Section 1102. Discharge of Firearms and Other Weapons**

1102.1 It shall be unlawful to fire or discharge any rifle, gun, pistol, pellet gun, air gun, air pistol or air rifle within the town, whether on or off private property, in sport or amusement.

1102.2 Any person who shall knowingly and willfully permit his minor child under 18 years of age to discharge, fire, shoot, or operate, within the corporate limits of the town, any such air rifle, BB gun or pellet gun, shall be guilty of a misdemeanor.

#### **Section 1103. Disturbing Public Meetings**

It shall be unlawful to behave in a boisterous or indecent manner or to create any disturbance at or near any public entertainment or meeting.

#### **Section 1104. Injuring Property of Town**

It shall be unlawful to willfully injure, damage, deface, trespass upon, break or injure any property belonging to the town.

## **ARTICLE XII**

### **ANIMALS**

#### **Section 1201. Cruelty to Animals**

It shall be unlawful for any person to mistreat any animals or willfully frighten them, or to attend or stage any animal or fowl fight.

#### **Section 1202. Certain Animal to be Impounded**

Any domestic animal which is found running at large or staked, hitched or fastened in violation of the provisions of this article shall be seized and impounded by the Animal Control Officer. The impounder may demand the payment of fees to cover any costs of seizure and impoundment.

#### **Section 1203. Fowls Running at Large Prohibited**

It shall be unlawful for any person to permit ducks, geese or chickens to remain on or in any of the streets or public places at night, or to run at large in the daytime.

#### **Section 1204. Pigeons to be Confined**

It shall be unlawful for any person to keep pigeons, except when the pigeons are properly kept in a cage or enclosure at all times.

#### **Section 1205. Hogs Prohibited**

It shall be unlawful for any person to keep any pigs or hogs within the town limits. Each day's violation of this section shall constitute a separate offense.

#### **Section 1206. Stables; Cleanliness; Location**

Every stable and place where cattle, horses or other animals may be kept, shall be maintained at all times in a clean and healthful condition.

## **ARTICLE XIII**

### **ABANDONED AND JUNKED VEHICLES**

#### **Section 1301. Findings**

The Town Council finds that it is necessary by ordinance to regulate, restrain and prohibit the abandonment of motor vehicle and the abandonment of junked motor vehicles on public grounds and on private property within the Town's ordinance-making jurisdiction. The Council further finds that the regulations, restraints and prohibitions adopted herein are necessary and desirable to promote or enhance community, neighborhood or area appearance.

#### **Section 1302. Administration**

The Town Manager or the Town Manager's designee shall be responsible for the administration and enforcement of this Article. This Article shall govern the removal and disposition of vehicles determined to be abandoned on the public streets and highways within the Town and on property owned by the Town and the disposition of abandoned motor vehicles or junked motor vehicles located on private property. The Town shall contract with private tow truck operators or towing businesses to remove, store and dispose of abandoned motor vehicles and junked motor vehicles in compliance with this Article and applicable state laws. Nothing in this Article shall be construed to limit the legal authority or powers of officers of Butner Public Safety in enforcing other laws or in otherwise carrying out their duties.

#### **Section 1303 DEFINITIONS.**

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

1303.1 ABANDONED VEHICLE. As authorized and defined in G.S. § 160A-303, an abandoned motor vehicle is one that:

1303.1.1 Has been left upon a public street or highway in violation of a law or ordinance prohibiting parking; or

1303.1.2 Is left on property owned or operated by the Town for longer than 24 hours; or

1303.1.3 Is left on private property without the consent of the owner, occupant or lessee thereof for longer than 2 hours; or

1303.1.4 Is left on a public street or highway for longer than seven days;

1303.2 AUTHORIZING OFFICIAL. The Town Manager or the Town Manager's designee is designated by the Council to authorize the removal of vehicles under the provisions of this Article.

1303.3 JUNKED MOTOR VEHICLE. As authorized and defined in G.S. § 160A-303.2 the term Junked Motor Vehicle means a vehicle that does not display a current license plate lawfully upon that vehicle and that:

1303.3.1 Is partially dismantled or wrecked; or

1303.3.2 Cannot be self propelled or moved in the manner in which it originally was intended to move; or

1303.3.3 Is more than five years old and appears to be worth less than five hundred dollars.

1303.4 MOTOR VEHICLE OR VEHICLE. All machines designed or intended to travel over land or water by self-propulsion or while attached to any self-propelled vehicle.

#### **Section 1304. Abandoned Vehicles; Removal**

1304.1 If a motor vehicle is abandoned on a public street or highway, it shall be the duty and responsibility of the owner of the abandoned motor vehicle to cause the removal thereof immediately and to pay all costs incident to the removal. Unless subject to an exception from the requirements of this Article, no person or entity shall allow an abandoned motor vehicle to remain on premises owned or occupied by said person or entity.

1304.2 Any abandoned motor vehicle found to be in violation of this Article may be removed to a storage garage or area, but no such vehicle shall be removed from private property without the written request of the owner, lessee, or occupant of the premises unless the Town Manager or the Town Manager's designee has first declared the abandoned motor vehicle to be a health or safety hazard.

1304.3 The Town Manager or the Town Manager's designee may require any person requesting the removal of an abandoned motor vehicle from private property to indemnify the Town against any loss, expense, or liability incurred because of the removal, storage, or sale thereof.

1304.4 When an abandoned motor vehicle is removed, the Town shall give notice to the owner as required by N.C. Gen. Stat. §20-219.11(a) and (b) as the same may be from time to time amended.

1304.5 The owner of an abandoned motor vehicle whose abandoned motor vehicle has been removed or disposed as provided for in this Section shall have a right to a hearing as set out in Section 1310 below.

1304.6 As set out in N.C. Gen. Stat. §160A-303(f), no person shall be held to answer in any civil or criminal action to an owner or other person legally entitled to the possession of any abandoned, lost, or stolen motor vehicle for disposing of the vehicle as provided in this Section and as elsewhere set out in this Article.

### **Section 1305. Junked Vehicles; Removal**

1305.1 Unless subject to an exception from the requirements of this Article, no person or entity shall allow a junked motor vehicle to remain on premises owned or occupied by said person or entity.

1305.2 Any junked motor vehicle found to be in violation of this Article may be removed to a storage or garage area, but no such vehicle shall be removed from private property without the written request of the owner, lessee, or occupant of the premises unless the Town Manager or the Town Manager's designee finds in writing that the aesthetic benefits of removing the vehicle outweigh the burdens imposed on the private property owner. Such finding by the Town Manager or the Town Manager's designee shall be based on a balancing of the monetary loss of the apparent owner against the corresponding gain to the public by promoting or enhancing community, neighborhood or area appearance. The following, among other relevant factors, may be considered by the Town Manager or the Town Manager's designee:

- 1305.2.1 Protection of property values;
- 1305.2.2 Promotion of tourism and other economic development opportunities;
- 1305.2.3 Indirect protection of public health and safety;
- 1305.2.4 Preservation of the character and integrity of the community; and
- 1305.2.5 Promotion of the comfort, happiness, and emotional stability of area residents.

1305.3 The Town Manager or the Town Manager's designee may require any person requesting the removal of a junked motor vehicle from private property to indemnify the Town against any loss, expense, or liability incurred because of the removal, storage, or sale thereof.

1305.4 When a junked motor vehicle is removed, the Town shall give notice to the owner as required by N.C. Gen. Stat. §20-219.11(a) and (b) as the same may be from time to time amended.

1305.5 The owner of a junked motor vehicle whose junked motor vehicle has been removed or disposed as provided for in this Section shall have a right to a hearing prior to such removal or disposal as set out in Section 1310 below.

1305.6 The removal or disposal under this Section of any motor vehicle that is used on a regular basis for business or personal use is prohibited.

1305.7 As set out in N.C. Gen. Stat. §160A-303.2(a4), any person who removes a vehicle pursuant to this Section shall not be held liable for damages for the removal of the vehicle to the owner, lienholder or other person legally entitled to the possession of the vehicle removed; however, any person who intentionally or negligently damages a vehicle in the removal of such vehicle, or intentionally inflicts injury upon any person in the removal of such vehicle, may be held liable for damages.

### **Section 1306. Abandoned Motor Vehicles and Junked Vehicles; Pre-towing**

1306.1 Except as set forth herein, an abandoned motor vehicle or junked motor vehicle which is to be removed shall be towed only after notice to the last known registered owner of the vehicle. The notice required hereunder shall, if feasible, be given by telephone. Whether or not the owner is reached by telephone, notice shall be mailed to the last known address of the owner unless he or his agent waives this notice in writing. The person who mails the notice(s) shall retain a written record to show the name(s) and address(es) to which mailed, and the date mailed. If the names and addresses cannot be ascertained, notice shall be given by affixing it on the windshield or some other conspicuous place on the vehicle. The notice shall state that the vehicle will be removed by the Town on a specified date, no sooner than 7 days after the notice is affixed or mailed, unless the vehicle is moved by the owner or legal possessor prior to that time.

1306.2 With respect to abandoned motor vehicles on private property and junked motor vehicles to which notice is required to be given, if the registered owner or person entitled to possession does not remove the vehicle, but chooses to appeal the determination that the vehicle is an abandoned motor vehicle or, in the case of a junked motor vehicle, that the aesthetic benefits of removing the vehicle outweigh the burdens, the appeal shall be made to the Town Board in writing, heard at the next regularly scheduled meeting of the Town Board, and further proceedings to remove the vehicle shall be stayed until the appeal is heard and decided.

### **Section 1307. Exceptions to Prior Notice Requirement**

The requirement that notice be given prior to the removal of an abandoned motor vehicle may, as determined by the Town Manager or the Town Manager's designee pursuant to written findings maintained with the public records related to the towing, be omitted in those circumstances where the vehicle impedes the flow of traffic or otherwise jeopardizes the public welfare so that immediate towing is necessary.

### **Section 1308. Removal of Vehicles; Post-towing Requirements**

1308.1 Any abandoned motor vehicle or junked motor vehicle which has been ordered removed following the procedures set out in this Article, shall be removed to a storage garage or area by the tow truck operator or towing business contracting to

perform services for the Town. Whenever a vehicle is removed, the Town Manager or the Town Manager's designee shall immediately notify in writing the last known registered owner of the vehicle and, in the case of a junked motor vehicle, the owner, lessee or occupant of the real property upon which the vehicle was located prior to towing if the names and mailing addresses of the owner, lessee or occupant can be ascertained in the exercise of reasonable diligence. The written notice shall include the following:

- 1308.1.1 A description of the vehicle;
- 1308.1.2 The place where the vehicle is stored;
- 1308.1.3 The violation with which the owner is charged, if any;
- 1308.1.4 The procedure the owner must follow to have the vehicle returned to him; and
- 1308.1.5 The procedure the owner must follow to request a probable cause hearing on the towing.

1308.2 If the vehicle has a North Carolina registration plate or registration, notice shall be given to the owner within 24 hours; if the vehicle is not registered in North Carolina, notice shall be given to the owner within 72 hours. This notice shall, if feasible, be given by telephone. Whether or not the owner is reached by telephone, notice shall be mailed to his last known address unless he or his agent waives this notice in writing. In the case of vehicles towed from private property, notice shall be given in like manner and in like time to the owner, lessee or occupant of the real property upon which the vehicle was located prior to towing if the names and mailing addresses of the owner, lessee or occupant can be ascertained in the exercise of reasonable diligence.

1308.3 Whenever a vehicle with neither a valid registration plate nor registration is towed hereunder, the Town Manager or the Town Manager's designee shall make reasonable efforts, including checking the vehicle identification number, to determine the last known registered owner of the vehicle and to notify him of the information listed in subsection (A). Unless the owner has otherwise been given notice, it is presumed that the authorizing person has not made reasonable efforts, as required under this subsection, unless notice that the vehicle would be towed was posted on the windshield or some other conspicuous place at least seven days before the towing actually occurred; except, no pre-towing notice need be given if the vehicle impeded the flow of traffic or otherwise jeopardized the public welfare so that immediate towing was necessary.

### **Section 1309. Right to Probable Cause Hearing**

1309.1 As set out in N.C. Gen. Stat. §20-219.11, the owner or any other person entitled to claim possession of the vehicle may request in writing a hearing to determine if probable cause existed for the towing. The request shall be filed with a magistrate in Granville County. If there is more than one magistrate's office in that county, the request may be filed with the magistrate in the warrant-issuing office in the



county seat or in any other office designated to receive requests by the chief district court judge. The magistrate shall set the hearing within 72 hours of his receiving the request. The owner, the person who requested the hearing if someone other than the owner, the tower, and the Town Manager or the Town Manager's designee who authorized the towing shall be notified of the time and place of the hearing.

1309.2 The owner, the tower, the Town Manager or the Town Manager's designee who authorized the towing, and any other interested parties may present evidence at the hearing. The Town Manager or the Town Manager's designee who authorized the towing and the tower may submit an affidavit in lieu of appearing personally, but the affidavit does not preclude that person from also testifying.

1309.3 The only issue at this hearing is whether or not probable cause existed for the towing. If the magistrate finds that probable cause did exist, the tower's lien continues. If the magistrate finds that probable cause did not exist, the tower's lien is extinguished.

1309.4 Any aggrieved party may appeal the magistrate's decision to district court.

### **Section 1310. Redemption of Vehicles During Proceedings**

At any stage in the proceedings after the vehicle has been towed, including before the probable cause hearing, the owner may obtain possession of his vehicle by:

1310.1 Paying the towing fee, or

1310.2 Posting a bond for double the amount of the towing fee.

### **Section 1311. Sale and Disposition of Unclaimed Vehicles**

The Town may seek to enforce its lien or the owner may seek to contest the lien pursuant to Chapter 44A of the North Carolina General Statutes.

### **Section 1312. Removal of Vehicles from Private Property**

As a general policy, the Town will not remove a vehicle from private property if the owner, occupant or lessee of the property could have the vehicle removed under applicable state law procedures. In no case will a vehicle be removed by the Town from private property without a written request of the owner, occupant or lessee, except in those cases where a vehicle is a junked motor vehicle which has been ordered removed by the Town Manager or the Town Manager's designee.

### **Section 1313. Protection Against Criminal/Civil Liability**

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

#### **Section 1314. Exceptions**

Nothing in this Article shall apply to any vehicle:

1314.1 Which is located in a bona fide “automobile graveyard” or “junkyard” as defined in N.C. Gen. Stat. G.S. § 136-143, in accordance with the Junkyard Control Act, Article 12, Chapter 136 of the North Carolina General Statutes;

1314.2 Which is in an enclosed building;

1314.3 Which is on the premises of a business enterprise being operated in a lawful place and manner if the vehicle is necessary to the operation of the enterprise;

1314.4 Which is in an appropriate storage place or depository maintained in a lawful place and manner by the Town; or

1314.5 Which is covered by a bona fide car cover and is located to the rear of a residence within the applicable setback limits for an accessory structure as specified in the Butner Land Development Code; provided, however, that no more than two such vehicles may be maintained on any one property.

#### **Section 1315. Unlawful Removal of Impounded Vehicles**

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

## ARTICLE XIV

### PUBLIC NUISANCES

#### Section 1401. Conditions of Public Nuisance

**The existence of any of the following conditions on any property within the Town limits is hereby declared to be dangerous and prejudicial to the public health or safety and to constitute a public nuisance:**

- 1401.1 The uncontrolled growth of noxious weeds, early successional natural growth or grass to a height in excess of 12 inches within 200 feet of an occupied residence or commercial building or which uncontrolled growth of noxious weeds, early successional natural growth or grass to a height in excess of 12 inches is a focal point for any other nuisance enumerated herein.
- 1401.2 Any accumulation of garbage, refuse, or solid waste that is offensive by virtue of odors or vapors or which attracts or has the potential to attract rats, mice, snakes, buzzards or vermin of any kind.
- 1401.3 Any condition existing on property which is or may be dangerous or prejudicial to the public health by causing or contributing to blight, disease, vagrancy, fire or safety hazard, is or may be a danger to children, or which tends to attract persons intent on criminal activities or otherwise presents an unreasonably dangerous environment.
- 1401.4 The open storage or accumulation of any abandoned ice box, refrigerator, stove, appliance, glass, building material, tires, furniture, rubbish, paper, plastic, or similar items.
- 1401.5 Any leaning trees or unconnected structures such as old chimneys and any other structures or conditions likely to cause damage to the person or property of any member of the public.
- 1401.6 Any condition that the Town Council finds pursuant to a duly adopted resolution to be dangerous or prejudicial to the public health or safety.
- 1401.7 Any condition detrimental to the public health which violates the rules and regulations of the Granville-Vance District Health Department.

#### Section 1402. Complaint and Investigation

The Town Manager or the Town Manager's designee, upon notice from any person of the existence of any of the conditions described in Section 1401, shall cause to be made by the appropriate town employee such investigation as may be necessary to determine whether, in fact, a condition or conditions described in Section 1401 exists. For purposes of this Section, the

Town Manager or the Town Manager's designee will select the appropriate Town employee to conduct the investigation.

### **Section 1403. Notice to Abate Nuisance**

Upon a determination that the conditions constituting a public nuisance exist, the Town shall notify in writing the property owner and, if different, the occupant or person in possession of the premises in question of the conditions constituting the public nuisance and shall order the prompt abatement thereof within 15 days from the receipt of the written notice. The notice shall include the procedure to appeal the decision.

### **Section 1404. Service of Notice.**

Notices issued by the Town Manager or the Town Manager's designee shall be served either personally upon the owner or by certified mail, return receipt requested, to the last known address of the property owner and, if different, the occupant or person in possession of the premises. In cases where all owners cannot be identified or served after due diligence to do so has been exercised by the Town Manager or the Town Manager's designee, then notice (and an order) served on any one (1) owner will constitute notice (and an order) to all owners.

If the whereabouts of all owners are unknown and the same cannot be ascertained by the Town Manager or the Town Manager's designee in the exercise of reasonable diligence or where none of the owners can be served in the exercise of reasonable diligence by either personal service or by mail, the Town Manager or the Town Manager's designee shall make an affidavit to that effect and the notice and order may be served by publishing the same (identifying the property location and all known owners) two (2) times, with one publication each week for two consecutive weeks, in a newspaper of general circulation in the Town. Service shall be complete upon the second such publication and the person or persons served shall have fifteen days to abate the public health nuisance. Where service is made by publication, a copy of the notice and order shall be posted in a conspicuous place on the premises affected by the notice.

### **Section 1405. Annual Notice to Chronic Violators**

The Town Manager or the Town Manager's designee may notify a chronic violator of this Article that, if the violator's property is found to be in violation of this Article, the Town shall, without further notice in the calendar year in which notice is given, take action to remedy the violation, and the expense of the action shall become a lien upon the property and shall be collected as unpaid taxes. The notice shall be sent by certified mail. A chronic violator is a person who owns property whereupon in the previous calendar year the Town gave notice of violation at least three times under any provision of this Article.

### **Section 1406. Appeal of Designation of a Nuisance**

Any person who has been ordered to abate a public nuisance shall have the right to appeal such order within five days of service of said notice and order as provided in this Article by giving written Notice of Appeal to the Town Manager by filing said Notice of Appeal with the Town

Clerk. The Town Manager will then schedule a hearing within five (5) days after receipt of the Notice of Appeal and inform the property owner and, if different, the occupant or person in possession of the premises in question, as well as any other citizen who has filed a complaint resulting in the investigation, of the date, time, and place of the hearing. The Rules of Evidence will not apply to the hearing. Anyone with relevant information may be allowed to give testimony. The Town Manager will issue a written decision to the parties involved no later than five (5) days after the hearing.

The property owner and, if different, the occupant or person in possession of the premises in question may then appeal the decision to the Town Council by filing a Notice of Appeal with the Town Clerk within five (5) days of the date the Town Manager's decision is personally delivered to the person or the date the notice is mailed by first class mail to said person's last known address. The Town Board will hold a hearing at the first regularly scheduled Board meeting which is at least three (3) days after receiving the Notice of Appeal or at any earlier meeting at least at three days after receiving the Notice of Appeal which is properly convened as allowed by Chapter 143, Article 33C of the North Carolina General Statutes provided the property owner and, if different, the occupant or person in possession of the premises are given actual notice of date and time of the meeting in person or by telephone at least three days in advance of the meeting or by notice mailed by first class mail at least seven days in advance of the meeting . The Town Clerk will send notice as required herein of the date, time and place of the hearing as soon as available to the property owner and, if different, the occupant or person in possession of the premises. To the extent practicable, notice shall also be provided in like manner to any other citizen who has filed a complaint resulting in the investigation.

The Town Council may consider all reliable evidence and shall not be bound by the strict rules of evidence applicable to courts of law, but all witnesses shall be sworn. The respondent may be represented by counsel and may present evidence. All parties may cross examine adverse witnesses. At the conclusion of the hearing, the Town Council shall make findings of fact, state its conclusions and enter an appropriate order. The Town Council's order shall be reduced to writing and a copy sent by first class mail to the last known address of, or delivered personally to, the property owner and, if different, the occupant or person in possession of the premises within three days of the hearing.

#### **Section 1407. Removal by Town**

If the person having been ordered to abate the public nuisance fails, neglects or refuses to abate or remove the condition constituting the nuisance within 15 days from receipt of the order (or within fifteen days after said order has been affirmed if an appeal was taken), then the Town Manager or the Town Manager's designee shall cause the condition to be removed or otherwise remedied by (1) having employees of the Town go upon the premises and remove or otherwise abate the nuisance under the supervision of an officer or employee designated by the Town or (2) contracting with an individual or firm to remove or abate the same on behalf of the Town. Any person who has been ordered to abate a public nuisance may, within the time allowed by the order, request in writing that the Town remove the public nuisance or cause the same to be removed, the cost of which shall be paid by the person making the request.

### **Section 1408. Cost Incurred by Owner**

The actual cost incurred by the Town in removing or otherwise remedying a public nuisance shall be charged jointly and severally to the owner of the lot or parcel of land and, if different, to the occupant or person in possession of the premises, and it shall be the duty of the Town to mail a statement of the charges to the owner with instructions that the charges are due and payable within 30 days from the receipt thereof.

### **Section 1409. Charges Become a Lien**

1409.1 In the event charges for the removal or abatement of a public nuisance are not paid within 30 days after the receipt of a statement of the charges, the expense of the action shall be paid by the person in default as set out in N.C. Gen. Stat. §160A-193(a). If the expense is not paid, it is a lien on the land or premises where the public nuisance occurred. A lien established pursuant to this subsection shall have the same priority and be collected as unpaid ad valorem taxes.

1409.2 As set out in N.C. Gen. Stat. §160A-193(b), the expense of any action under this Article is also a lien on any other real property owned by the person in default within the Town limits or within one mile of the Town limits, except for the person's primary residence. A lien established pursuant to this subsection is inferior to all prior liens and shall be collected as a money judgment. This subsection shall not apply if the person in default can show that the nuisance was created solely by the actions of another.

### **Section 1410. Procedure is in Addition to Other Authorized Procedures**

1410.1 The procedure set forth in this Article shall be in addition to any other remedies that may now or hereafter exist under law for the abatement of public nuisances. Nothing herein shall be read to limit the Town authority under N.C. Gen. Stat. §160A-193 to summarily remove, abate, or remedy everything in the city limits, or within one mile thereof, that is dangerous or prejudicial to the public health or safety; provided, however, that the procedures set out in this Article shall be used at all times unless the Town Manager or the Town Manager's designee makes a written finding that the condition in question poses an imminent threat to the safety of persons and property such that the procedures set forth in this Article, if followed, unreasonably delay necessary action to remove, abate, or remedy the condition.

1410.2 Any property owner or occupant or person in possession of any property who fails to comply with any order of the Town Manager or the Town Manager's designee to remove, abate, or remedy any public nuisances covered by this Article, within the time specified in the order, shall be subject to a civil penalty in the amount of two hundred dollars (\$200.00) per day after the seventh day of non-compliance (following the specified time period for compliance) until the property is brought into compliance with the order. The civil penalty may be recovered by the Town

in a civil action in the nature of a debt if the person who has been assessed the civil penalty does not pay the same within thirty (30) days after the civil penalty first became due and payable. Penalties assessed for continuing violations constituting a separate and distinct offense may be aggregated and collected in one action.

1410.3 As provided in N.C. Gen. Stat. §§160A-175 and 14-4, the violation of this Article is a Class 3 misdemeanor. The maximum fine for a violation of this Article is Five Hundred Dollars (\$500.00).

1410.4 This Article may be enforced by an appropriate equitable remedy issuing from a court of competent jurisdiction as set out in N.C. Gen. Stat. §160A-175. The Town may apply to the appropriate division of the General Court of Justice for a mandatory or prohibitory injunction and order of abatement commanding the defendant to correct the unlawful condition upon, or cease the unlawful use of, the property.

1410.5 Each day's continuing violation shall be a separate and distinct offense.

#### **Section 1411. Section Applicability**

While dwellings may constitute a public nuisance, the Town will follow the procedures in N.C.G.S.A. § 160A-443 as stated in Article XVI of these Ordinances whenever a dwelling is found to create a public nuisance. Whenever a nonresidential structure is found to be a nuisance, the Town will abide by the procedures set forth in N.C.G.S.A. § 160A-439 as stated in Article XVII of these Ordinances.

## ARTICLE XV

### OTHER GENERAL NUISANCES

#### Section 1501. Unnecessary Noise

It shall be unlawful for any person to create or assist in creating, permit, continue or permit the continuance of any unreasonably loud, disturbing and unnecessary noise in the town. Noise of such character, intensity and duration as to be detrimental to the life or health of any individual is prohibited. The following acts, among others, are declared to be loud, disturbing and unnecessary noises in violation of this section, but said enumeration shall not be deemed to be exclusive, namely:

- 1501.1 The sounding of any horn or signal device or any device on any automobile, motorcycle, bus or other vehicle while not in motion, except as a danger signal if another vehicle is approaching apparently out of control, or if in motion only as a danger signal after or as brakes are being applied and deceleration of the vehicle is intended; the creation by means of any such signal device of any unreasonably loud or harsh sound; and the sounding of such device for an unnecessary and unreasonable period of time;
- 1501.2 The use of any gong or siren upon any vehicle other than police, fire or other emergency vehicles;
- 1501.3 The use or operation of any piano, manual or automatic phonograph, radio, loudspeaker, or any other instrument, or sound amplifying, devices so loudly as to disturb persons in the vicinity thereof, or in such a manner as renders the same a public nuisance. However, upon application to the Town, permits may be granted to responsible organizations to produce programs in music, speeches or general entertainment;
- 1501.4 The keeping of any animal or bird which by causing frequent or long continued noise shall disturb the comfort and repose of any person in the vicinity;
- 1501.5 The use of any automobile, motorcycle or other vehicle so out of repair, so loaded or in such a manner as to create loud or unnecessary grating, grinding, rattling or other noise;
- 1501.6 The blowing of any steam whistle attached to any stationary boiler except to give notice of the time to begin or stop work or as a warning of danger;
- 1501.7 The discharge into the open air of the exhaust of any steam engine, stationary internal combustion engine or motor vehicle except through a muffler or other device which will effectively prevent loud or explosive noises there from;



- 1501.8 The use of any mechanical device operated by compressed air unless the noise created thereby is effectively muffled and reduced;
- 1501.9 The erection (including excavation), demolition, alteration or repair of any building in a residential or business district other than between the hours of 7 a.m. and 6 p.m. on weekdays, except in the case of urgent necessity in the interest of public safety and then only with a permit from the Town of Butner, which permit may be renewed for a period of three (3) days or less while the emergency continues;
- 1501.10 The creation of any excessive noise on any street adjacent to any school, institution of learning or court while the same are in session, or within 150 feet of any hospital, which unreasonably interferes with the working of such institution; provided conspicuous signs are displayed in such streets indicating that the same is a school, court or hospital street;
- 1501.11 The creation of any excessive noise on Sundays on any street adjacent to any church; provided conspicuous signs are displayed in such streets adjacent to churches indicating that the same is a church street;
- 1501.12 The creation of loud and excessive noise in connection with loading or unloading any vehicle or the opening and destruction of bales, boxes, crates and containers;
- 1501.13 The sounding of any bell or gong attached to any building or premises, which disturbs the quiet or repose of persons in the vicinity thereof;
- 1501.14 The shouting and crying of peddlers, barkers, hawkers and vendors which disturbs the quiet and peace of the neighborhood, or anyone shouting within the corporate limits so as to disturb the peace and quiet of the neighborhood;
- 1501.15 The use of any drum, loudspeaker or other instrument or device for the purpose of attracting attention by creation of noise to any performance, show or sale or display of merchandise;
- 1501.16 The use of any mechanical loudspeakers or amplifiers on trucks or other moving vehicles for advertising purposes or other purposes except where specific license is received from the Butner Town Council;
- 1501.17 The conducting, operating or maintaining of any garage or filling station in any residential district so as to cause loud or offensive noises to be emitted therefrom between the hours of 11 p.m. and 7 a.m.;
- 1501.18 The firing or discharging of a gun, squibs, crackers, gunpowder or other combustible substance in the streets or elsewhere for the purpose of making noise or disturbance, except by permit from the Butner Town Council.

### **Section 1502. Loitering and Loafing; Annoying Persons in Streets and Public Places**

It shall be unlawful for any person or persons to congregate, stand, loaf or loiter in any street or upon any sidewalk, bridge, crossing or other public place so as to obstruct the same, or to hinder, prevent or annoy persons passing or attempting to or desiring to pass therein or thereon; or to congregate, stand, loaf or loiter on or in front of any hall, lobby, doorway, passage or entrance of any public building, theater, public hall, hotel, eating or lodging house, office building, store, shop, office or factory or other like building or place of public assemblage so as to obstruct the same or hinder, prevent or annoy persons passing along or into the same or out of the same, or attempting to or desiring to do so; or by making remarks, gestures, noises, signs or the like to disturb, annoy or insult any person being upon or passing along any street, sidewalk, bridge, crossing or other public place, or along, into or out of the hall, lobby, passage, or entrance of any public building, theater, public hall, hotel, eating or lodging house, office building, store, shop or factory or like building or place of public assemblage or in any public carrier.

### **Section 1503. Breaking Police Lines**

At the time of any public parade, accident, riot, public peril or other circumstances causing people to congregate or assemble, it shall be unlawful for any person to enter, break through or remain within the danger lines or other bounds established by the police, or by or under the direction of any authorized town official, for the preservation of public safety, peace and order, unless such person is authorized to do so by an officer in charge.

### **Section 1504. Disturbances in Public Places or Assemblages**

It shall be unlawful for any person to make, aid or countenance, or assist in making, any improper noise, or to incite or engage in any riot or disturbance, or to indulge or engage in improper and disorderly conduct or conversation in any street, park or other public place, in any theater or place of amusement or in any room or building in which any number of persons are lawfully assembled.

### **Section 1505. Distribution of literature; Display of Signs**

It shall be unlawful for any person to print, sell, distribute, leave to be distributed or taken, or to aid, directly or indirectly, in printing, selling, distributing, circulating, leaving or displaying any bills, notices, signs, circulars or printed matter in any form which tends to disturb the public peace or morals, or which, directly or indirectly, advises, advocates, or urges the overthrow of the government of the United States of America or any state thereof, or any municipal corporation therein, by the use of violence, force or other unlawful methods, or which advises, advocates or urges the commission or any crime of any violation of law.

### **Section 1506. Filling Land**

It shall be unlawful for any person to fill any land or dump, upon any vacant lot within the town, with garbage, dead animals, decaying vegetable or animal matter or any offensive material.

## **Section 1507. Care of Residential and Commercial Premises**

1507.1 It shall be unlawful for the owner or occupant of a residential or commercial building, structure or property to utilize the premises of such residential property for the open storage of any abandoned motor vehicle, ice box, refrigerator, stove, glass, and building material, building rubbish or similar items. It shall be the duty and responsibility of every owner or occupant to keep the premises of the residential or commercial property clean and to remove from the premises all abandoned items as listed above, including but not limited to weeds, dead trees, trash, garbage and the like, upon notice from the Town of Butner.

1507.2 For the purpose of this section, an abandoned motor vehicle is defined as one that is in a state of disrepair and incapable of being moved under its own power.

## ARTICLE XVI

### MINIMUM HOUSING CODE

#### Section 1601. General Provisions

##### 1601.1 Findings; Purpose

1601.1.1 Pursuant to G.S. §§ 160A-441 et. seq., it is declared that there exist in the Town, dwellings which are unfit for human habitation due to dilapidation; defects increasing the hazards of fire, accidents and other calamities; lack of ventilation, light and sanitary facilities; and other conditions rendering 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.

1601.1.2 In order to protect the health, safety and welfare of the residents of the Town as authorized by G.S. Ch. 160A, Art. 19, Part 6, it is the purpose of this Article to establish minimum standards of fitness for the initial and continued occupancy of all buildings used for human habitation, as expressly authorized by G.S. § 160A-444.

##### 1601.2 Scope

1601.2.1 This Article is hereby declared to be remedial and shall be construed to secure the beneficial interests and purposes thereof-- which are public safety, health and general welfare--through structural strength, stability, sanitation, adequate light and ventilation and safety to life and property from fire and other hazards incident to the construction, alteration, repair, removal, demolition, use and occupancy of dwellings, apartment houses, rooming houses or buildings, structures or premises used as such.

1601.2.2 The provisions of this Article shall apply to all existing housing and to all housing hereafter constructed within the Town. Except as otherwise provided herein, portable, mobile or demountable buildings or structures, including trailers, when used or intended for use for housing within the Town, shall be subject to the applicable provisions of this Article. This Article establishes minimum requirements for the initial and continued occupancy of all buildings used for human habitation and does not replace or modify requirements otherwise established for the construction, repair, alteration or use of buildings, equipment or facilities except as provided in this Article.

## **Section 1602. Definitions**

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

- 1602.1 BASEMENT. A portion of a dwelling which is located partly underground, having direct access to light and air from windows located above the level of the adjoining ground.
- 1602.2 CELLAR. A portion of a dwelling which is located partly or wholly underground, having an inadequate access to light and air from windows located partly or wholly below the level of the adjoining ground.
- 1602.3 DETERIORATED. A dwelling that is unfit for human habitation and can be repaired, altered or improved to comply with all of the minimum standards established by this Article at a cost not in excess of 50% of its value, as determined by finding of the Public Officer.
- 1602.4 DILAPIDATED. A dwelling that is unfit for human habitation and cannot be repaired, altered or improved to comply with all of the minimum standards established by this Article except at a cost in excess of 50% of its value, as determined by finding of the Public Officer.
- 1602.5 DWELLING. Any building, structure, manufactured home or a 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. The term shall include within its meaning the terms "rooming house" and "rooming unit", as defined in this section.
- 1602.6 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.
- 1602.7 EXTERMINATION. The control and elimination of insects, rodents or other pests by removing or making inaccessible materials that may serve as their food; by poisoning, spraying, fumigating or trapping; or by any other recognized and legal pest elimination methods approved by the Public Officer.
- 1602.8 GARBAGE. The organic waste resulting from the handling, preparation, cooking and consumption of food.
- 1602.9 GENDER. Words having a masculine gender shall include the feminine and

neuter genders.

1602.10 **HABITABLE ROOM.** A room or enclosed floor space used or intended to be used for living, sleeping, cooking or eating purposes, excluding bathrooms, toilet compartments, laundries, heater rooms, foyers or communicating corridors, closets and storage spaces.

1602.11 **HOT WATER.** Hot water is potable water with a temperature between 90° and 130° Fahrenheit.

1602.12 **INFESTATION.** The presence within or around a dwelling, of any insects, rodents or other pests in such number as to constitute a menace to the health, safety or welfare of the occupants or the public.

1602.13 **MANUFACTURED HOME.** A structure, transportable in one or more sections, which in the traveling mode is eight body feet or more in width, or 40 body feet or more in length, or, when erected on site, is 320 or more square feet; and which is built on a permanent chassis and designed to be used as a dwelling, with or without permanent foundation when connected to the required utilities, including the plumbing, heating, air conditioning and electrical systems contained therein. "Manufactured home" includes any structure that meets all of the requirements of this subsection except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the Secretary of HUD and complies with the standards established under the Act.

For manufactured homes built before June 15, 1976, "manufactured home" means a portable manufactured housing unit designed for transportation on its own chassis and placement on a temporary or semi permanent foundation having a measurement of over 32 feet in length and over eight feet in width. "Manufactured home" also means a double-wide manufactured home, which is two or more portable manufactured housing units designed for transportation on their own chassis that connect on site for placement on a temporary or semi permanent foundation having a measurement of over 32 feet in length and over eight feet in width.

1602.14 **MOBILE HOME.** See definition of "Manufactured Home".

1602.15 **MULTIPLE DWELLING.** Any dwelling containing more than one dwelling unit.

1602.16 **OCCUPANT.** Any person living, sleeping, cooking or eating in or having actual possession of a dwelling.

1602.17 **OPERATOR.** Any person who has charge, care or control of a building, or part thereof, in which one or more dwelling units or rooming units are let.

- 1602.18 OWNER. The holder of title in fee simple and every mortgagee of record.
- 1602.19 PARTIES IN INTEREST. All individuals, associations, and corporations who have interests of record in a dwelling, and any who are in possession thereof.
- 1602.20 PERSON. Any individual, corporation, firm, partnership, association, organization or other legal entity.
- 1602.21 PLUMBING. All of the following supplied facilities and equipment: gas pipes, gas burning equipment, water pipes, mechanical garbage disposal units (mechanical sink grinders), sewage disposal pipes, toilets, sinks, installed dishwashers, lavatories, bathtubs, shower baths, installed clothes washing machines, catch basins, drains, vents and any other similar supplied fixtures, together with all connections to water, sewer or gas lines.
- 1602.22 POTABLE WATER. Water which is safe for human consumption and meeting all applicable county, state, and federal standards for drinking water.
- 1602.23 PUBLIC AUTHORITY. Any housing authority or any officer who is in charge of any department or branch of the government of the Town, the county or the state relating to health, fire, building regulations or other activities concerning dwellings in the Town.
- 1602.24 PUBLIC OFFICER. The officer or officers who are authorized by this Article to exercise the powers prescribed by this Article and by Part 6 of Article 19 of Chapter 160A of the North Carolina General Statutes. The Public Officer shall be the Town Planner or other Town employee(s) designated by the Town Manager and may also include building inspectors working for or on behalf of the Town pursuant to a contract or agreement with another entity or political subdivision.
- 1602.25 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 or wife, son or daughter, mother or father, or brother or sister of the owner or operator.
- 1602.26 ROOMING UNIT. Any room or group of rooms forming a single habitable unit used or intended to be used for living and sleeping.
- 1602.27 RUBBISH. The term shall include paper, rags, cartons, boxes, wood, excelsior, rubber, leather, tree branches, yard trimmings, tin cans, metals, mineral matter, glass, dust, and similar items.
- 1602.28 SUPPLIED. Paid for, furnished or provided by or under the control of the owner or operator.

1602.29 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 or a total of 30 days in any 60 day period.

1602.30 UNFIT FOR HUMAN HABITATION. A dwelling is unfit for human habitation if the Public Officer finds that conditions exist in the dwelling that render it dangerous or injurious to the health, safety or morals of the occupants of the dwelling, the occupants of neighboring dwellings, or other residents of the Town. Defective conditions include those conditions specified in this Ordinance which constitute defects in the dwelling increasing the hazards of fire, accident or other calamities; lack of adequate ventilation, light or sanitary facilities; dilapidation; disrepair; structural defects; and uncleanness.

1602.31 WORDS HAVING CERTAIN MEANING. Whenever the words "dwelling," "dwelling unit", "rooming house", "rooming unit", or "premises" are used in this Article, they shall be construed as though they were followed by the words "or any part thereof."

### **Section 1603. Minimum Standards for Fitness for Dwellings and Dwelling Units**

1603.1 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 §§ 1604 through 1611.

1603.2 No person shall occupy as owner-occupant or let or sublet to another for occupancy for use as 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 §§ 1604 through 1611.

### **Section 1604. Minimum Standards for Structural Condition**

The following standards shall constitute the minimum standards for structural condition of a dwelling or dwelling unit:

1604.1 Walls or 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.

1604.2 Floors or roofs shall have adequate supporting members and strength to be reasonably safe for the purpose used.

1604.3 Foundations, foundation walls, piers or other foundation supports shall not be deteriorated or damaged, and shall be maintained in a safe manner capable of



supporting the normal load use.

1604.4 Steps, stairs, landings, porches or other parts or appurtenances shall be maintained in such condition that they will not fail or collapse.

1604.5 Adequate unobstructed, safe facilities for egress in case of fire or panic shall be provided.

1604.6 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 such a manner so as to enable the occupants to maintain reasonable privacy between various spaces.

1604.7 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 water-tight.

1604.8 There shall be no chimneys or parts thereof which are defective, deteriorated or in danger of falling or in such condition or location as to constitute a fire hazard.

1604.9 There shall be no use of the ground for floors or wood floors on the ground.

### **Section 1605. Minimum Standards for Basic Plumbing, Heating and Electrical Equipment and Facilities**

1605.1 Plumbing system.

1605.1.1 Each dwelling unit shall be connected to a potable water supply and to a public sewer or other approved sewage disposal system.

1605.1.2 Each dwelling unit shall contain not less than a kitchen sink, bathroom sink, tub or shower, toilet 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.

1605.1.3 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.

1605.1.4 All required plumbing fixtures shall be located within the dwelling unit and be accessible to the occupants of same. The toilet and tub or shower shall be located in a room or rooms affording privacy to the user.

1605.2 Heating system. Every dwelling and dwelling unit leased as rental property within the Town shall have facilities for providing heat in accordance with the following:

1605.2.1 Central and electric heating systems. Every central or electric heating system shall be of sufficient capacity to heat all habitable rooms, bathrooms and toilet compartments in every dwelling unit to which it is connected with a minimum temperature of 65°F measured at a point three feet above the floor during ordinary winter conditions.

1605.2.2 Other heating facilities. Where a central or electric heating system is not provided, each dwelling and dwelling unit shall be provided with sufficient fireplaces, chimneys, flues, gas vents or other facilities to which heating appliances may be connected to heat all habitable rooms with a minimum temperature of 65°F measured at a point three feet above the floor during ordinary winter conditions.

### 1605.3 Electrical system.

1605.3.1 Every dwelling unit shall be wired for electric lights and convenience receptacles. Every habitable room shall contain at least two floor or wall-type electric convenience receptacles, connected in such manner as determined by the State Electrical Code. There shall be installed in every bathroom, toilet 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 such habitable room shall contain at least three floor or wall-type electric convenience receptacles.

1605.3.2 Every public hall and stairway in every multiple dwelling shall be adequately lighted by electric lights at all times when natural daylight is not sufficient.

1605.3.3 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.

1605.3.4 Every dwelling and dwelling unit shall be connected to an approved and certified electrical service. Generator use shall be prohibited unless there is an interruption in service due to the service provided.

## **Section 1606. Minimum Standards for Light; Ventilation**

1606.1 General. Every habitable room shall have at least one window or skylight facing directly to the outdoors. The minimum total window area, measured between stops, for every habitable room shall be 10% of the floor area of the room. Whenever walls or other portions of such structures face a window of any such room and such 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.

1606.2 Habitable room. Every habitable room shall have at least one window or skylight which can easily be opened or such 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.

1606.3 Bathroom and toilet rooms. Every bathroom and toilet compartment shall comply with the light and ventilation requirements for habitable rooms, except that no window or skylight shall be required in adequately ventilated bathrooms and toilet rooms equipped with an approved ventilation system.

### **Section 1607. Minimum Standards for Space, Use and Location**

1607.1 **Room sizes.** Each dwelling unit shall contain at least 150 square feet of habitable floor area for the first occupant, at least 100 square feet of additional habitable area for each of the next three occupants and at least 75 square feet of additional habitable floor area for each additional occupant.

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

1607.2 **Ceiling height.** At least one-half of the floor area of every habitable room shall have a ceiling height of not less than seven feet and six inches. Non-habitable rooms shall have a minimum ceiling height of six feet, six inches measured from the finished floor to the finished ceiling; in all such rooms with low ceilings, all light fixtures and receptacles must be flush mounted. Ceiling heights are approved if they met the requirements of the Code at the time of construction or rehabilitation.

1607.3 **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 and one-half feet shall not be considered as part of the floor area for the purpose of determining maximum permissible occupancy.

1607.4 **Cellar.** No cellar shall be used for living purposes.

1607.5 **Basements.** No basement shall be used for living purposes unless:

- 1607.5.1 The floor and walls are substantially watertight;
- 1607.5.2 The total window area, total openable window area and ceiling height are equal to those required for habitable rooms;
- 1607.5.3 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.
- 1607.5.4 Otherwise meets all specifications for habitable rooms.

### **Section 1608. Minimum Standards for Safe and Sanitary Maintenance**

- 1608.1 Exterior foundation, walls and roofs. Every foundation wall, exterior wall and exterior roof shall be substantially weather tight and rodent-proof; shall be kept in sound condition and good repair; shall be capable of affording privacy; and shall be safe to use and capable of supporting the load which normal use would 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.
- 1608.2 Interior floors, walls and ceilings. Every floor, interior wall and ceiling shall be substantially rodent-proof, shall be kept in sound condition and good repair, and shall be safe to use and capable of supporting the load which normal use would cause to be placed thereon.
- 1608.3 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. Every window and exterior door shall be provided with proper hardware and maintained in good condition.
- 1608.4 Stairs, porches and appurtenances. Every outside and inside stair, porch and any appurtenances thereto shall be safe to use and capable of supporting the load that normal use would cause to be placed thereon and shall be kept in sound condition and good repair.
- 1608.5 Bathroom floors. In every bathroom, kitchen, toilet compartment or area that contains a hot water heater, the toilet compartment floor surface shall be constructed and maintained so that it will be reasonably impervious to water and will permit the floor to be easily kept in a clean and sanitary condition.

1608.6 Supplied facilities. Every supplied facility, piece of equipment or utility which is required under this Article shall be so constructed or installed that it will function safely and effectively and shall be maintained in a satisfactory working condition.

1608.7 Drainage. Every yard shall be properly graded in order to obtain thorough drainage and to prevent the accumulation of stagnant water.

1608.8 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.

1608.9 Egress. Every dwelling unit shall be provided with adequate means of egress as required by the State Building Code.

1608.10 Accessory structures. Garages, storage buildings and other accessory structures shall be maintained and kept in good repair and sound structural condition.

### **Section 1609. Minimum Standards for Control of Insects, Rodents and Infestations**

1609.1 Screens. In every dwelling unit, for protection against mosquitoes, flies and other insects, every door opening directly from a dwelling unit to outdoor space shall be equipped with screens and a self-closing device. Every window or other device with openings to outdoor space, used or intended to be used for ventilation, shall likewise be equipped with screens that are properly fitting, not damaged or torn, nor nailed to the window frame or sash. Dwelling or dwelling units containing central air and heating systems year round are not required to have screens on doors or windows.

1609.2 Rodent control. Every basement or cellar window used or intended to be used for ventilation, and every other opening to a basement which might provide an entry for rodents, shall be equipped with screens or such other approved device as will effectively prevent their entrance.

1609.3 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 such 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 or in the shared or public parts of any dwelling containing two or more dwelling units, extermination shall be the responsibility of the owner.

1609.4 Rubbish storage and 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.

### **Section 1610. Minimum Standards Applicable to Rooming Houses; Exceptions**

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

1610.1 Toilet, hand sink and bath facilities. At least one toilet, sink basin and bathtub or shower, properly connected to a potable water supply and sewer system or other sewage disposal system and in good working condition, shall be supplied for each four rooms within a rooming house wherever these facilities are shared. All such facilities shall be located within the residence building served and shall be directly accessible from a common hall or passageway and shall be not more than one story removed from any of the persons sharing the facilities. Every sink 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.

1610.2 Minimum floor area for sleeping purposes. Every room occupied for sleeping purposes by one occupant shall contain at least 70 square feet of floor area, and every room occupied for sleeping purposes by more than one occupant shall contain at least 50 square feet of floor area for every occupant 12 years of age and over and at least 35 square feet of floor area for each occupant under 12 years of age.

1610.3 Sanitary conditions. The operator of every rooming house shall be responsible for the sanitary maintenance of all walls, floors and ceilings and for the sanitary maintenance of every other part of the rooming house. 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 is leased or occupied by the operator.

1610.4 Sanitary facilities. Every toilet, flush urinal, sink basin and bathtub or shower required by subsection (A) of this Section shall be located within the rooming house and within a room or rooms which afford privacy, are separate from the habitable rooms, are accessible from a common hall and are accessible without going outside the rooming house or through any other room therein.

1610.5 Exits. Every rooming unit shall have safe, unobstructed means of egress leading to safe and open space at ground level, as required in accordance with the State Building Codes.

## **Section 1611. Responsibilities of Owners and Occupants**

- 1611.1 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.
- 1611.2 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.
- 1611.3 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.
- 1611.4 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.
- 1611.5 Care of facilities, equipment and structures. 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 such that the premises would constitute a violation of the minimum housing standards set forth in this Article.

## **Determination of Residential Buildings Being Unfit for Human Habitation**

### **Section 1612. Residential Buildings Unfit for Human Habitation.**

- 1612.1 The Public Officer shall determine that a residential dwelling is unfit or unsafe if one of the following below listed conditions exist:
- 1612.1.1 Interior walls or vertical studs which lean or buckle to such an extent as to render the building unsafe.
- 1612.1.2 Load bearing member or members which show thirty-three (33) percent or more damage or deterioration or (non load bearing) interior or exterior walls or coverings which show fifty (50) percent or more of damage or deterioration as determined by the State Building Code.
- 1612.1.3 Floors or roofs which have improperly distributed loads, or which have insufficient strength to be reasonably safe for the proposed use as required by the State Building Code.
- 1612.1.4 Damaged by fire, wind or other causes as to render the dwelling or

dwelling units unsafe.

1612.1.5 Dilapidated, decayed, unsanitary conditions or disrepair that is dangerous to the health, safety or welfare of the occupants or others within the Town.

1612.1.6 Inadequate facilities for egress in case of fire or panic.

1612.1.7 Defects increasing the hazards of fire, accident or other calamities.

1612.1.8 Lack of adequate ventilation, light, heating or sanitary facilities to endanger the health, safety or welfare of the occupants or others within the Town.

1612.1.9 Lack of adequate electrical, heating or plumbing facilities required by this Article that is dangerous to the health, safety or welfare.

1612.2 Irrespective of subsection (A), a residential dwelling or dwelling unit shall be construed by the Public Officer to be unfit for human habitation, if more than three (3) separate types of violations of any of the minimum housing code standards set forth in this Article

## **Administration and Enforcement**

### **Section 1613. Powers and Duties of Public Officer**

1613.1 The Public Officer shall have the following powers and duties:

1613.1.1 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 Article with respect to such dwellings and dwelling units;

1613.1.2 To take such action, together with other appropriate departments and agencies, public and private, as may be necessary to effect rehabilitation of housing which is deteriorated;

1613.1.3 To keep a record of the results of inspections made under this Article and an inventory of those dwellings that do not meet the minimum standards of fitness herein prescribed;

1613.1.4 To administer oaths and affirmations, examine witnesses and receive evidence;

1613.1.5 To enter upon premises for the purpose of making examinations



and inspections; provided, the entries shall be made in accordance with § 1636 and state law, and shall be made in such manner as will cause the least possible inconvenience to the persons in possession;

1613.1.6 To appoint and fix the duties of such officers, agents and employees as he or she deems necessary to assist in carrying out the purposes of this Article, and to delegate any of his or her functions and powers to other officers, agents and employees; and

1613.1.7 To perform such other duties as may be prescribed herein or by the Town Council.

#### **Section 1614. Inspections; Duty of Owners and Occupants**

1614.1 For the purpose of making inspections, the Public Officer and other appropriate Town employees working with or under the direction of the Public Officer are authorized to enter, examine and survey at all reasonable times all dwellings, dwelling units, rooming houses, rooming units and the premises associated therewith in accordance with sub-Section (C) of this Section, or upon the consent of the owner of the premises, or when the Public Officer determines that an emergency exists that poses an immediate threat to the health or safety of the public. No owner or occupant of any dwelling, dwelling unit, rooming house or rooming unit or the person in charge thereof shall interfere with an inspection conducted in accordance with this section.

1614.2 Every occupant of a dwelling, dwelling unit, rooming house or rooming unit shall give the owner thereof, or his or her agent or employee, access to any part of the dwelling or dwelling unit and its premises at all reasonable times for the purpose of making the repairs or alterations as are necessary to effect compliance with the provisions of this Article or with any lawful order issued pursuant to the provisions of this Article.

1614.3 When permission to inspect a dwelling or its premises is denied, the Public Officer must obtain a warrant to inspect. North Carolina General Statute § 15-27.2 provides for the issuance of warrants for the conduct of inspections authorized by law. The North Carolina Court of Appeals, in *In Re Dwelling*, 24 N.C. App. 17 (1974), has held that the consent of the tenant-occupant who was in actual possession and control of the premises was sufficient to authorize an inspection without a warrant, notwithstanding the fact that the owner had objected to the warrantless search. When faced with a situation where permission to inspect is denied, the Public Officer shall seek the advice of the Town Attorney.

#### **Section 1615. Procedure for Enforcement**

1615.1 Preliminary investigation; notice; hearing. Whenever a petition is filed with the

Public Officer by a public authority or by at least five (5) residents of the Town charging that any dwelling or dwelling unit is unfit for human habitation, or whenever it appears to the Public Officer, (on his own motion), that any dwelling or dwelling unit is unfit for human habitation, the Public Office shall, if his or her preliminary investigation discloses a basis for such charges, issue and cause to be served upon the owner of and parties in interest in such dwellings and dwelling units a complaint stating the charges in that respect and containing a notice that a hearing will be held before the Public Officer (or his or her designated agent) at a place within the Town limits, fixed, not less than 10 days nor more than 30 days after the serving of the complaint. The owner and parties 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. The rules of evidence prevailing in courts of law or equity shall not be controlling in hearings before the Public Officer. Any person desiring to do so may attend the hearing and give evidence relevant to the matter being heard.

1615.2 Procedure after hearing. After such notice and hearing, the Public Officer 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.

1615.2.1 If the Public Officer 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 or improve the dwelling or dwelling unit to comply with the minimum standards of fitness established by this Article 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; provided, however, no order that the property be vacated and closed shall be issued unless the Public Officer finds that continued occupancy during the time allowed for repair will present a significant threat of bodily harm, taking into account the nature of the necessary repairs, alterations, or improvements; the current state of the property; and any additional risks due to the presence and capacity of minors under the age of eighteen or occupants with physical or mental disabilities. The order issued hereunder shall state that failure to make timely repairs as directed in the order shall make the dwelling unit subject to the issuance of an unfit order as set out herein below and as set out in N.C. Gen. Stat. § 160A-443(4).

1615.2.2 If the Public Officer 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

remove or demolish such dwelling or dwelling unit within a specified period of time not to exceed ninety (90) days. However, notwithstanding any other provision of law, if the dwelling is located in a historic district of the Town and the Town Council determines, after a public hearing as provided by ordinance, that the dwelling is of particular significance or value toward maintaining the character of the district, and the dwelling has not been condemned as unsafe, the order may require that the dwelling be vacated and closed consistent with G.S. 160A-400.14(a)

### 1615.3 Failure to comply with order.

- 1615.3.1 If the owner fails to comply with an order to repair, alter or improve or to vacate and close the dwelling, the Public Officer may cause the dwelling to be repaired, altered or improved or to be vacated and closed. The Public Officer may cause to be posted on the main entrance of any dwelling so closed 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 Class 1 Misdemeanor as set forth in N.C. Gen. Stat. §160A-443(4). The duties of the Public Officer set forth in this subsection shall not be exercised until the governing body shall have by ordinance ordered the Public Officer to proceed to effectuate the purpose of this Article with respect to the particular property or properties which the Public Officer shall have found to be unfit for human habitation and which property or properties shall be described in the Ordinance. The Ordinance shall be recorded in the Office of the Register of Deeds of Granville County and shall be indexed in the name of the property owner in the Grantor Index.
- 1615.3.2 If the owner fails to comply with an order to remove or demolish the dwelling, the Public Officer may cause such dwelling to be removed or demolished. The duties of the Public Officer set forth in this subsection shall not be exercised until the governing body shall have by ordinance ordered the Public Officer to proceed to effectuate the purpose of this Article with respect to the particular property or properties which the Public Officer shall have found to be unfit for human habitation and which property or properties shall be described in the Ordinance. No such ordinance shall be adopted to require demolition of a dwelling until the owner has first been given a reasonable opportunity to bring it into conformity with the Housing Code. This Ordinance shall be recorded in the Office of the Register of Deeds of Granville County and shall be indexed in the name of the property owner in the Grantor Index.

1615.4 Town Board of Adjustment to Hear Appeals. All appeals, which may be taken from decisions or orders of the Public Officer pursuant to § 1617(E), shall be heard and determined by the Town Board of Adjustment. As the appeals body, the Board of Adjustment shall have the power to fix the times and places of its meetings to adopt necessary rules of procedure and any other rules and regulations which may be necessary for the proper discharge of its duties. The Board of Adjustment shall perform the duties prescribed by § 1617(E), and shall keep an accurate journal of all its proceedings.

1615.5 Appeals from Orders of Public Officer. An appeal from any decision or order of the Public Officer may be taken by any person aggrieved thereby or by an officer, board or commission of the Town. Any appeal from the Public Officer shall be taken within ten (10) days from the rendering of the decision or service of the order, and shall be taken by filing with the Public Officer and with the Board of Adjustment in care of the Town Clerk a notice of appeal, which shall specify the grounds upon which the appeal is based. Upon the filing of any notice of appeal, the Public Officer shall forthwith transmit to the Board of Adjustment all the papers constituting the record upon which the decision appealed from was made. When an appeal is from a decision of the Public Officer 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 Public Officer requiring the person aggrieved to do any act, the appeal shall have the effect of suspending the requirement until the hearing by the Board of Adjustment, unless the Public Officer certifies to the Board of Adjustment, 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 that case the requirement shall not be suspended except by a restraining order, which may be granted for due cause shown upon not less than one-day's written notice to the Public Officer, by the Board of Adjustment or by a court of record upon petition made pursuant to N.C. Gen. Stat. § 160A-446(f) and subsection (E) of this Section.

1615.6 Petition to Superior Court. Any person aggrieved by an order issued by the Public Officer or a decision rendered by the Board of Adjustment may petition the Superior Court for an injunction restraining the Public Officer from carrying out the order or decision and the Court may, upon such petition issue a temporary injunction restraining the Public Office pending a final disposition of the cause. The petition shall be filed within 30 days after the issuance of the order or rendering of the decision. The rights of a person so aggrieved are governed by North Carolina General Statutes §160A-446(f).

1615.7 Dwelling Constructed, Repaired in Violation of this Article. In case any dwelling is erected, constructed, altered, repaired, converted, maintained or used in violation of this Article or any valid order or decision of the Public Officer or Board of Adjustment made pursuant to this Article, the Public Officer or Board of Adjustment may institute any appropriate action or proceedings to prevent such

unlawful erection, construction, reconstruction, alteration or use, to restrain, correct or abate such violation, to prevent the occupancy of the dwelling, or to prevent any illegal act, conduct or use in or about the premises of the dwelling. State law references: Remedies, G.S. § 160A-446.

### **Section 1616. Methods of Service of Complaints and Orders**

Complaints issued by the Public Officer or orders issued by a hearing officer under this Article shall be served upon persons either personally or by registered or certified mail. When service is made by registered or certified mail, a copy of the complaint or order may also be sent by regular mail. Service shall be deemed sufficient if the registered or certified mail is unclaimed or refused, but the regular mail is not returned by the post office within ten (10) days after the mailing. If regular mail is used, a notice of the pending proceedings shall be posted in a conspicuous place on the premises affected.

If the identities of any owners or the whereabouts of persons are unknown and cannot be ascertained by the Public Officer in the exercise of reasonable diligence, or, if the owners are known but have refused to accept service by registered or certified mail, and the Public Officer shall make an affidavit to that effect, then the serving of such complaint or order upon such owners or other persons may be made by publication in a newspaper having general circulation in the Town at least once no later than the time at which personal service would be required under the provisions of this Article. When service is made by publication, a notice of the pending proceedings shall be posted in a conspicuous place on the premises thereby affected.

### **Section 1617. Costs a Lien on Premises**

The amount of the cost of repairs, alterations or improvements, or vacating and closing, or removal or demolition by the Public Officer shall be a lien against the real property upon which the cost was incurred, which lien shall be filed, have the same priority, and be collected as the lien for special assessment provided in Article 10 of Chapter 160A of the North Carolina General Statutes.

The amount of the costs is also a lien on any other real property of the owner located within the corporate limits of the Town or within one mile thereof except for the owner's primary residence. The additional lien provided in this subsection is inferior to all prior liens and shall be collected as a money judgment.

If the dwelling is removed or demolished by the Public Officer, he shall sell the materials of the dwelling and any personal property, fixtures or appurtenances found in or attached to the dwelling, and shall credit the proceeds of the sale against the costs of the removal or demolition and any balance remaining shall be deposited in the superior court by the Public Officer, shall be secured in a manner directed by the court, and shall be disbursed by the court to the persons found to be entitled thereto by final order or decree of the court. Nothing in this Section shall be construed to impair or limit in any way the power of the Town to define and declare nuisances and to cause the removal or abatement by summary proceedings, or otherwise.

**Section 1618. Lis Pendens**

Pursuant to the authority granted in N.C. Gen. Stat. §1-120.2, upon the issuance of a complaint and notice of hearing or order pursuant thereto (under the provisions of this Article), the issuing officer may file in the office of the Clerk of Superior Court of the County a Notice of Lis Pendens, with a copy of the complaint and notice of hearing attached thereto. From the date and time of the proper indexing of the same by the Clerk of Superior Court in accordance with the North Carolina General Statutes, the complaint and notice of hearing or order (and all further orders entered in said proceeding) shall be binding upon the successors and/or assigns of the owners and parties in interest in the dwelling. A copy of the Notice of Lis Pendens shall be served upon the owners and parties in interest in the dwelling at the time of filing in accordance with applicable law. The Notice of Lis Pendens shall remain in full force and effect until cancelled, which is authorized to be done by the Town Manager, Town Attorney, and the respective issuing officer (or his successor in office as such), upon full compliance with the order by the owner and upon the payment in full of any lien of the Town by reason of actions of the Town pursuant to said order; said persons are further authorized to subordinate the Notice of Lis Pendens to a Deed of Trust thereafter upon reasonable assurances by the owner or the lending party that the loan proceeds will be escrowed or otherwise used in the repairs or other expenses incurred in fulfilling the matters to be done by the property owner to comply with the matters alleged in the complaint.

**Section 1619. Alternative Remedies**

Neither this Article nor any of its provisions shall be construed to impair or limit in any way the power of the Town to define and declare nuisances and to cause their abatement by summary action or otherwise or to enforce this Article by criminal process as authorized by N.C. Gen. Stat. § 14-4, Section 1631 of this Article, and otherwise by applicable law, 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.

**Section 1620. Failure to Comply with Order**

It shall be unlawful for the owner of any dwelling to fail, neglect or refuse to repair, alter or improve the same or to vacate, close, demolish and remove the same, upon order of the Public Officer duly made and served as provided in this Article, within the time specified in such order.

**Section 1621. Removal, Etc. of Complaints, Notices, Etc.**

It shall be unlawful for any person, without written consent of the Public Officer, to remove or permit the removal of any complaint, notice or order posted in accordance with the provisions of this Article. When the Public Officer finds that a dwelling is unfit for human habitation within the meaning of this Article and has notified the owner to such effect and the time limit set by the Public Officer for the correction of the defects or vacating the same has expired, it shall be unlawful for any person to receive rentals, offer for rent or occupy such dwelling as a human habitation.

### **Section 1622. Certificate of Minimum Housing Compliance**

It shall be unlawful for any person to occupy, rent or offer to rent as a dwelling, any vacant dwelling, or any part thereof upon which an order to repair, alter or improve has been issued or upon which an order to vacate and close has been issued without such owner or agent first filing an application form securing a certificate of minimum housing compliance from the Town. The Public Officer shall issue a Certificate of Minimum Housing Compliance when, after examination and inspection, it is found that the structure conforms to the provisions of this Article. The owner or agent requesting a Certificate of Minimum Housing Compliance shall pay a fee of \$50.00 for each inspection required hereunder to determine whether the dwelling, vacant building or any part thereof is in compliance with this Article.

### **Section 1623. Failure to Vacate**

If any occupant fails to comply with an order to vacate a dwelling, the Public Officer may cause a civil action to be filed in the name of the Town to remove such occupant. The action to vacate the dwelling shall be in the nature of summary ejectment and shall be commenced by filing a complaint naming as parties-defendant any person occupying such dwelling. The clerk of superior court shall issue a summons requiring the defendant to appear before a magistrate at a certain time, date and place not to exceed ten (10) days from the issuance of the summons to answer the complaint. The summons and complaint shall be served as provided in G.S. § 42-29. The summons shall be returned according to its tenor, and if on its return it appears to have been duly served, and if at the hearing the Public Officer produces a certified copy of an ordinance adopted by the governing body pursuant to Section 1617(C) of this Article authorizing the officer to proceed to vacate the occupied dwelling, the magistrate shall enter judgment ordering that the premises be vacated and that all persons be removed. The judgment ordering that the dwelling be vacated shall be enforced in the same manner as the judgment for summary ejectment entered under G.S. § 42-30. An appeal from any judgment entered hereunder by the magistrate may be taken as provided in G.S. § 7A-228, and the execution of such judgment may be stayed as provided in G.S. § 7A-227. An action to remove an occupant of a dwelling who is a tenant of the owner may not be in the nature of a summary ejectment proceeding pursuant to this paragraph unless such occupant was served with notice at least thirty (30) days before the filing of the summary ejectment proceeding that the governing body has ordered the Public Officer to proceed to exercise his duties under Section 1617 of this Article to vacate and close or remove and demolish the dwelling.

### **Section 1624. Notice to Affordable Housing Organizations**

That whenever a determination is made pursuant to Section 1617 of this Article that a dwelling must be vacated and closed or removed or demolished under the provisions of this section, notice of the order shall be given by first class mail to any organization involved in providing or restoring dwellings for affordable housing that has filed a written request for such notices. A minimum period of forty-five (45) days from the mailing of such notice shall be given before removal or demolition by action of the Public Officer to allow the opportunity for any organization to negotiate with the owner to make repairs, lease, or purchase the property for the purpose of providing affordable housing. The Public Officer or clerk shall certify the mailing of

the notices, and the certification shall be conclusive in the absence of fraud. Only an organization that has filed a written request for such notices may raise the issue of failure to mail such notices, and the sole remedy shall be an order requiring the Public Officer to wait forty-five (45) days before causing removal or demolition.

**Section 1625. Conflict with Other Provisions**

In the event any provision, standard or requirement of this Article is found to be in conflict with any provision of any other ordinance or code of the Town, the provision which established 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.

**Section 1626. Application of Residential Building Code**

The North Carolina State Building Code shall govern all repairs, alterations and/or additions pursuant to this Article.

**Section 1627. Action Authorized.** If any dwelling is erected, constructed, altered, repaired, converted, maintained or used in violation of this Article or in violation of Article 19, Part 6, Chapter 160A of the North Carolina General Statutes or any valid order or decision of the Public Officer or Board of Adjustment made pursuant to any ordinance or code adopted pursuant to this Article, the Public Officer or Board of Adjustment may institute any appropriate action or proceeding to prevent the unlawful erection, construction, reconstruction, alteration or use, to restrain, correct or abate the violation, to prevent the occupancy of the dwelling, or to prevent any illegal act, conduct or use in or about the premises of the dwelling.

**Section 1628. Violations**

1628.1 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 Public Officer duly made and served as herein provided, within the time specified in such order. Each day that any such failure, neglect or refusal to comply with the order continues shall constitute a separate and distinct offense.

1628.2 It shall be unlawful for the owner of any dwelling or dwelling unit, with respect to which an order has been issued pursuant to § 1641 to occupy or permit the occupancy of the same after the time prescribed in the order for its repair, alteration or improvement or its vacation and closing. Each day that such occupancy continues after the prescribed time shall constitute a separate and distinct offense.

**Section 1629. Remedies**

1629.1 Civil Penalty. Any person cited for a violation of any provision of this Article shall be subject to a civil penalty in the amount of \$200.00 per day of non-



compliance from and after the date of citation until the property is brought into compliance with this Article. The penalty may be recovered by the Town in a civil action in the nature of a debt if the person who has been assessed a civil penalty does not pay the same within 30 days after first being cited by the Public Officer for a violation of this Ordinance. The penalties assessed for continuing violations constituting a separate and distinct offense may be aggregated and collected in one action.

- 1629.2 Misdemeanor; Fine. Except as specifically set out herein to the contrary, the violation of this Article is a Class 3 misdemeanor as set out in N.C. Gen. Stat. §§ 160A-175 and 14-4. The maximum fine for a violation of this Article is \$500.00.
- 1629.3 Equitable Relief; Abatement. This Article may be enforced by an appropriate equitable remedy issued from a court of competent jurisdiction as set out in N.C. Gen. Stat. § 160A-175. The Town may apply to the appropriate division of the General Court of Justice for mandatory or prohibitory injunction and order of abatement commanding the defendant(s) to correct the unlawful condition upon, or cease the unlawful use of, the property.
- 1629.4 Continuing Violation. Each day's continuing violation of any provision of this Article shall be a separate and distinct offense.

## **ARTICLE XVII**

### **NONRESIDENTIAL BUILDING AND STRUCTURE CODE**

#### **Section 1701. Findings**

1701.1 It is hereby found and declared that there exist nonresidential buildings and/or structures in the corporate limits of the Town which pose an unreasonable danger to the Town and its citizens. In order to protect the health, safety, and welfare of the Town and its citizens, it is the purpose of this Article to establish minimum standards of maintenance, sanitation, and safety relating to nonresidential buildings or structures, as expressly authorized by G.S. § 160A-439.

1701.2 This Article provides for the repair, closing, or demolition of nonresidential buildings or structures as a result of a public necessity caused by conditions that are dangerous and injurious to the public health, safety, and welfare.

#### **Section 1702. Definitions**

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

1702.1 **BASIC STRUCTURAL ELEMENTS.** The parts of a building which provide the principal strength, stability, integrity, shape and safety of the building, including, but not limited to plates, studs, joists, rafters, stringers, stairs, sub-flooring, flooring, sheathing, lathing, roofing, siding, window frames, door frames, porches, railings, eaves, chimneys, flashing, masonry and all other essential components.

1702.2 **BUILDING.** Any structure, place, or any other construction built for the shelter or enclosure of persons, animals, chattels or property of any kind or any part of such structure, shelter or property.

1702.3 **NONRESIDENTIAL BUILDING OR STRUCTURE.** Any building or structure or portion of a building or structure occupied or intended to be occupied, in whole or in part, for a use other than a dwelling, home, residing place, living space or sleeping space for one (1) or more human beings, either permanently or transiently.

1702.4 **OCCUPANT.** Any person who is a tenant or has actual possession of a nonresidential building or structure or part thereof.

1702.5 **OPERATOR.** Any person who has charge, care, or control of a nonresidential building or structure, or part thereof.

1702.6 **OWNER.** Any person who alone, or jointly, or severally with others:

- 1702.6.1 Shall have title in fee simple to any nonresidential building or structure, with or without accompanying actual possession thereof; or
- 1702.6.2 Shall have charge, care or control of any nonresidential building or structure as owner or agent of the owner, or as executor, executrix, administrator, administratrix, trustee or guardian of the estate of the owner. Any such person thus representing the actual owner shall be bound to comply with the provisions of this Article and of rules and regulations adopted pursuant thereto, to the same extent as if he were the owner.
- 1702.7 PARTIES IN INTEREST. All individuals, associations, and corporations who have interests of record in a nonresidential building or structure and any who are in possession thereof.
- 1702.8 PREMISES. Any lot or parcel of land inclusive of any building or improvements located thereon.
- 1702.9 PUBLIC OFFICER. The Officer or Officers who are authorized by this Article to exercise the powers prescribed by this Article and by Part 5, Article 19 of Chapter 160A of the North Carolina General Statutes. The Public Officer shall be the Town Planner or other Town Employee(s) designated by the Town Manager and may also include Public Officers working for or on behalf of the Town pursuant to a contract or agreement with another entity or political subdivision.
- 1702.10 SAFE. A condition which is not likely to do harm to humans or to real or personal property.
- 1702.11 STRUCTURE. Anything constructed or placed upon a property which is supported by the ground or which is supported by any other structure, except a currently operable licensed vehicle.
- 1702.12 STRUCTURALLY SOUND. Free from flaw, defect, decay or deterioration to the extent that the building or structure or structural member is capable of adequately or safely accomplishing the purpose for which it was intended or designed.
- 1702.13 UNSAFE. A condition which is reasonably likely to do harm to humans or to real or personal property if not corrected or stopped.
- 1702.14 VACANT INDUSTRIAL WAREHOUSE. Any building or structure designed for the storage of goods or equipment in connection with manufacturing processes, which has not been used for that purpose for at least one year and has not been converted to another use.

1702.15 VACANT MANUFACTURING FACILITY. Any building or structure previously used for the lawful production or manufacturing of goods, which has not been used for that purpose for at least one year and has not been converted to another use.

### **Section 1703. Applicability and Compliance**

1703.1 The provisions of this Article shall apply to all non-residential buildings or structures which are now in existence or which may be built within the corporate limits of the Town.

1703.2 Every non-residential building or structure and the premises on which it is situated shall comply with the provisions of this Article, whether or not such building or structure shall have been constructed, altered, or repaired before or after the enactment of this Article, and irrespective of any permits or licenses which have been issued for the use or occupancy of the building or structure or for the installment or repair of equipment or facilities. This Article establishes minimum standards for all non-residential buildings and structures and does not replace or modify standards otherwise established for the construction, repair, alteration, or use of the building or structure, equipment or facilities contained therein.

### **Section 1704. Maintenance Standards for Non-Residential Buildings and Structures**

All nonresidential buildings and structures shall be free of all conditions that are dangerous and injurious to the public health, safety, and welfare of occupants or members of the general public. Without limitation of the foregoing requirement, the existence of any of the following conditions shall be deemed to be dangerous to the public health, safety and welfare for which a public necessity exists for the repair, closing, or demolition of such building or structure and must be corrected in accordance with the provisions of this Article:

1704.1 Interior walls, vertical studs, partitions, supporting members, sills, joists, rafters, or other basic structural members that list, lean, or buckle to such an extent as to render the building unsafe, that are rotted, deteriorated or damaged, and that have holes or cracks which might admit rodents.

1704.2 Exterior walls that are not structurally sound, free from defects and damages, and capable of bearing imposed loads safely. Where a wall of a building has become exposed as a result of demolition of adjacent buildings, such wall must have all doors, windows, vents, or other similar openings closed with material of the type comprising the wall. The exposed wall shall be painted, stuccoed, or bricked and sufficiently weatherproofed to prevent deterioration of the wall.

- 1704.3 Floors or roofs which have improperly distributed loads, which are overloaded, or which have insufficient strength to be reasonably safe for the purpose used. Floors or roofs shall have adequate supporting members and strength to be reasonably safe for the purpose used. Roofs shall be kept structurally sound and shall be maintained in such a manner so as to prevent rain or other objects from penetrating into the interior of the building.
- 1704.4 Such damage by fire, wind, or other causes as to render the building unsafe.
- 1704.5 Dilapidation, decay, unsanitary conditions, or disrepair, which is dangerous to the health and safety of the occupants or members of the general public.
- 1704.6 Lack of adequate ventilation, light, heating, or sanitary facilities to such extent as to endanger the health, safety or general welfare of the occupants or members of the general public.
- 1704.7 Buildings and structures including their environs that have accumulations of garbage, trash, or rubbish, which creates health and sanitation problems. All garbage and solid waste shall be in approved containers or stored in a safe and sanitary manner.
- 1704.8 Buildings and structures that have loose and insufficiently anchored overhanging objects, which constitute a danger of falling on persons or property.
- 1704.9 Buildings and structures including their environs that have insufficiently protected holes, excavations, breaks, projections, obstructions, and other such dangerous impediments on and around walks, driveways, parking lots, alleyways, and other areas which are accessible to and generally used by persons on or around the premises.
- 1704.10 Buildings and structures that have cracked or broken glass, loose shingles, loose wood, crumbling stone or brick, loose or broken plastic, or other dangerous objects or similar hazardous conditions. Exterior surfaces shall be maintained in such material or treated in such a manner as to prevent deterioration and repaired or replaced with like or similar material according to its original use.
- 1704.11 Buildings and structures that have objects and elements protruding from building walls or roofs, which are unsafe or not properly secured or which can create a hazard such as abandoned electrical boxes and conduits, wires, sign brackets and other brackets, and similar objects.

- 1704.12 Chimneys, flues, and vent attachments thereto which are not structurally sound. Chimneys, flues, gas vents, or other draft-producing equipment which are in use shall provide sufficient draft to develop the rated output of the connected equipment, shall be structurally safe, durable, smoke-tight, and capable of withstanding the action of flue gases.
- 1704.13 Cornices which are not structurally sound. Rotten or weakened portions shall be repaired and/or replaced. All exposed wood shall be treated or painted.
- 1704.14 Improperly attached gutters or down-spouts that are located so as to cause a hazard to pedestrian, vehicular traffic, or adjacent property.
- 1704.15 Advertising sign structures, attached or freestanding awnings, marquees and their supporting members, and other similar attachments and structures that cause a safety hazard to the occupants or members of the general public.
- 1704.16 All exterior surfaces that may cause unsafe conditions due to a lack of maintenance. Exterior surfaces shall be painted or sealed when necessary to protect the underlying surface from deterioration. All exterior surfaces that have been painted shall be maintained generally free of peeling and flaking. Where fifty percent (50%) or more of the aggregate of any painted surface shall have peeling or flaking or previous paint worn away, the entire surface shall be repainted in order to prevent further deterioration.
- 1704.17 Windows containing broken or cracked glass that could be in danger of falling or shattering. All windows must be tight-fitting and have sashes of proper size and design and free from rotten wood, broken joints, or broken or loose mullions.
- 1704.18 All openings originally designed as windows, doors, loading docks, or other means of egress or ingress which have been temporarily closed by boarding or other manner in a non-secure manner so as to allow unauthorized admittance. If an opening is temporarily closed by boarding to secure the building or structure, the boarding shall be trim fit, sealed to prevent water intrusion, and painted or stained to properly conform with the other exterior portions of the building and the building or structure shall be maintained in a state that secures the building or structure from any unauthorized admittance from humans, animals, or birds.
- 1704.19 Any combination of conditions which in the judgment of the code enforcement coordinator or officer renders any building or structure dangerous or injurious to the public health, safety, and general welfare.

## **Section 1705. Powers and Duties of Public Officer**

The Public Officer shall have the following powers and duties:

- 1705.1 To investigate the nonresidential building or structure conditions and to inspect nonresidential buildings or structures located in the Town in order to determine which nonresidential buildings or structures are unfit for occupation and use, and for the purpose of carrying out the objectives of this Article with respect to the repair, closing or demolition of the nonresidential buildings or structures;
- 1705.2 To take such action, together with other appropriate departments and agencies, public and private, as may be necessary to require an owner of a non-residential building or structure to repair, alter, or improve a non-residential building or structure in order to bring it into compliance with the minimum standards established by the governing body or to vacate and close a non-residential building or structure for any use;
- 1705.3 To administer oaths and affirmations, examine witnesses and receive evidence;
- 1705.4 To enter upon premises for the purpose of making examinations and inspections; provided, such entries shall be made in accordance with law and in such manner as to cause the least possible inconvenience to the persons in possession; and
- 1705.5 To appoint and fix duties of such officers, agents and employees necessary to carry out the purposes of this Article, and to perform such other duties as may be prescribed herein by the Town Council.

## **Section 1706. Inspections**

For the purposes of making inspections, the Public Officer is hereby authorized to enter, examine and survey at all reasonable times nonresidential buildings and structures. If entry upon the premises for purposes of investigation is necessary, such entry shall be made pursuant to a duly issued administrative search warrant in accordance with N.C. Gen. Stat. §15-27.2 or with permission of the owner, the owner's agent, a tenant, or other person legally in possession of the premises. When faced with a situation where permission to inspect is denied, the Public Officer shall, if necessary, seek the advice of the Town Attorney.

## **Section 1707. Procedure for Enforcement**

- 1707.1 Preliminary investigation; notice; hearing. Whenever it appears to the Public Officer that any nonresidential building or structure has not been properly maintained so that the safety or health of its occupants or members of the general

public are jeopardized for failure of the property to meet minimum standards established herein, the Public Officer shall undertake a preliminary investigation.

1707.2 Complaint and hearing. If the preliminary investigation discloses evidence of a violation in the minimum standards, the Public Officer shall issue and cause to be served upon the owner of and parties in interest in the nonresidential building or structure a complaint. The complaint shall state the charges and contain a notice that a hearing will be held before the Public Officer (or his or her designated agent) at a place within the corporate limits of the Town scheduled not less than 10 days nor more 30 days after the serving of the complaint; that the owner and parties in interest shall be given the right to answer the complaint and to appear in person, or otherwise, and give testimony at the place and time fixed in the complaint; and that the Rules of Evidence prevailing in courts of law or equity shall not be controlling in hearings before the Public Officer.

1707.3 Procedure after hearing.

1707.3.1 If, after notice and hearing, the Public Officer determines that the nonresidential building or structure has been maintained in that the property meets the minimum standards established by this Article, the Public Officer shall state in writing findings of fact in support of that determination and shall issue and cause to be served upon the owner thereof a copy of said determination.

1707.3.2 If, after notice and hearing, the Public Officer determines that the nonresidential building or structure has not been properly maintained so that the safety or health of its occupants or members of the general public is jeopardized for failure of the property to meet the minimum standards established in this Article, the Public Officer shall state in writing findings of fact in support of that determination and shall issue and cause to be served upon the owner thereof an order. The order may require the owner to take remedial action, within a reasonable time specified, subject to the procedures and limitations set out in subsection 3 and subsection 4 below and elsewhere in this Article.

1707.3.3 An order may require the owner to repair, alter, or improve the nonresidential building or structure in order to bring it into compliance with the minimum standards established by in this Article or to vacate and close the nonresidential building or structure for any use until the nonresidential building or structure is brought into compliance with this Article.

1707.3.4 An order may require the owner to remove or demolish the nonresidential building or structure if the cost of repair, alteration, or improvement of the building or structure would exceed fifty



percent (50%) of its then current value.

#### 1707.4 Failure to comply with order and ordinances.

1707.4.1 If the owner fails to comply with an order to repair, alter or improve, or to vacate and close the nonresidential building or structure, the Town Council may adopt an ordinance ordering the Public Officer to proceed to effectuate the purpose of this Article with respect to the particular property or properties that the Public Officer found to be jeopardizing the health or safety of its occupants or members of the general public. The property or properties shall be described in the ordinance. The ordinance shall be recorded in the Office of the Register of Deeds of Granville County and shall be indexed in the name of the property owner or owners in the Grantor Index. Following adoption of an ordinance, the Public Officer may cause the nonresidential building or structure to be repaired, altered, or improved or to be vacated and closed. The Public Officer may cause to be posted on the main entrance of any nonresidential building or structure so closed a placard with the following words: "This building is unfit for any use; the use or occupation of this building for any purpose is prohibited and unlawful." Any person who occupies or knowingly allows the occupancy of a nonresidential building or structure so posted shall be guilty of a Class 3 Misdemeanor.

1707.4.2 If the owner fails to comply with an order to remove or demolish the nonresidential building or structure, the Town Council may adopt an ordinance ordering the Public Officer to proceed to effectuate the purpose of this Article with respect to the particular property or properties that the Public Officer found to be jeopardizing the health or safety of its occupants or members of the general public. No ordinance shall be adopted to require demolition of a nonresidential building or structure until the owner has first been given a reasonable opportunity to bring it into conformity with the minimum standards established by the governing body. The property or properties shall be described in the ordinance. The ordinance shall be recorded in the Office of the Register of Deeds of Granville County and shall be indexed in the name of the property owner or owners in the Grantor Index. Following adoption of an ordinance, the Public Officer may cause the nonresidential building or structure to be removed or demolished.

**Section 1708. Limitations on Orders and Ordinances – Historic Landmark of Historic District**

Notwithstanding any other provision of this Article, if the nonresidential building or structure is a designated local historic landmark, listed in the National Register of Historic Places, or located in a locally designated historic district or in a district listed in the National Register of Historic Places and the Town Council determines, after a public hearing as provided by ordinance, that the nonresidential building or structure is of individual significance or contributes to maintain the character of the district, and the nonresidential building or structure has not been condemned as unsafe, the order may require that the nonresidential building or structure be vacated and closed until it is brought into compliance with the minimum standards established by the Town Council.

**Section 1709. Limitations on Orders and Ordinances – Vacant Manufacturing Facility or Vacant Industrial Warehouse**

An order may not require repairs, alterations, or improvements to be made to vacant manufacturing facilities or vacant industrial warehouse facilities to preserve the original use. The order may require such building or structure to be vacated and closed, but repairs may be required only when necessary to maintain structural integrity or to abate a health or safety hazard that cannot be remedied by ordering the building or structure closed for any use.

**Section 1710. Action by Town Council Upon Abandonment of Intent to Repair**

If the Town Council has adopted an ordinance or the Public Officer has issued an order requiring the nonresidential building or structure to be repaired or vacated and closed and the building or structure has been vacated and closed for a period of two years pursuant to the ordinance or order, the Town Council may make findings that the owner has abandoned the intent and purpose to repair, alter or improve the nonresidential building or structure and that the continuation of the building or structure in its vacated and closed status would be inimicable to the health, safety, and welfare of the Town in that it would continue to deteriorate, would create a fire safety hazard, would be a threat to children and vagrants, would attract persons intent on criminal activities, or would cause or contribute to blight and the deterioration of property values in the area. Upon such findings, the Town Council may, after expiration of the two year period, enact an ordinance and serve such ordinance on the owner, setting forth the following:

1710.1 If the costs of repair of the nonresidential building or structure to bring it into compliance with the minimum standards is less than or equal to 50% of its then current value, the ordinance shall require that the owner either repair or demolish and remove the nonresidential building or structure within 90 days; or

1710.2 If the costs of repair of the nonresidential building or structure to bring it into compliance with the minimum standards exceeds 50% of its then current value, the ordinance shall require the owner to demolish and remove the nonresidential building or structure within 90 days.

In the case of vacant manufacturing facilities or vacant industrial warehouse facilities, the building or structure must have been vacated and closed pursuant to an order or ordinance for a period of 5 years before the Town Council may take action under this subsection. The ordinance shall be recorded in the Office of the Register of Deeds of Granville County and shall be indexed in the name of the property owner or in the Grantor Index. If the owner fails to comply with the ordinance, the Public Officer shall effectuate the purpose of the ordinance.

### **Section 1711. Methods of Service of Complaints and Orders**

Complaints or orders issued by the Public Officer pursuant to this Article shall be served upon persons either personally or by registered or certified mail so long as the means used are reasonably designed to achieve actual notice. When service is made by registered or certified mail, a copy of the complaint or order may also be sent by regular mail. Service shall be deemed sufficient if the registered or certified mail is refused, but the regular mail is not returned by the post office within ten (10) days after the mailing. If regular mail is used, a notice of the pending proceedings shall be posted in a conspicuous place on the premises affected. If the identities of any owners or the whereabouts of persons are unknown and cannot be ascertained by the Public Officer in the exercise of reasonable diligence and the Public Officer makes an affidavit to that effect, then the serving of the complaint or order upon the owners or other persons may be made by publication in a newspaper having general circulation in the Town at least once no later than the time at which personal service would be required under the provisions of this Article. When service is made by publication, a notice of the pending proceeding shall be posted in a conspicuous place on the premises affected.

### **Section 1712. Costs a Lien on Premises**

- 1712.1 The amount of the cost of repairs, alterations or improvements, or vacating and closing, or removal or demolition by the Public Officer shall be a lien against the real property upon which the cost was incurred, which lien shall be filed, have the same priority, and be collected as the lien for special assessment provided in Article 10 of Chapter 160A of the North Carolina General Statutes.
- 1712.2 The amount of the costs is also a lien on any other real property of the owner located within the corporate limits of the Town except for the owner's primary residence. The additional lien provided in this subsection is inferior to all prior liens and shall be collected as a money judgment.
- 1712.3 If the nonresidential building or structure is removed or demolished by the Public Officer, he or she shall offer for sale the recoverable materials of the building or structure and any personal property, fixtures or appurtenances found in or attached to the building or structure, and shall credit the proceeds of the sale against the costs of the removal or demolition and any balance remaining shall be deposited in the superior court by the Public Officer, shall be secured in a manner directed by the court, and shall be disbursed by the court to the persons found to be entitled thereto by final order or decree of the court. Nothing in this Section shall be construed to impair or limit in any way the power of the Town

Council to define and declare nuisances and to cause the removal or abatement by summary proceedings, or otherwise.

### **Section 1713. Ejectment**

If any occupant fails to comply with an order to vacate a nonresidential building or structure, the Public Officer may cause a civil action to be filed in the name of the Town to remove such occupant. The action to vacate the building or structure shall be in the nature of summary ejectment and shall be commenced by filing a complaint naming as parties-defendant any person occupying such nonresidential building or structure. The clerk of superior court shall issue a summons requiring the defendant to appear before a magistrate at a certain time, date and place not to exceed ten (10) days from the issuance of the summons to answer the complaint. The summons and complaint shall be served as provided in G.S. § 42-29. The summons shall be returned according to its tenor, and if on its return it appears to have been duly served, and if at the hearing the Public Officer produces a certified copy of an ordinance adopted by the Town Council pursuant to Section 1617(C) of this Article authorizing the Public Officer to proceed to vacate the occupied building or structure, the magistrate shall enter judgment ordering that the premises be vacated and that all persons be removed. The judgment ordering that the nonresidential building or structure be vacated shall be enforced in the same manner as the judgment for summary ejectment entered under G.S. § 42-30. An appeal from any judgment entered under this Section by the magistrate may be taken as provided in G.S. § 7A-228, and the execution of such judgment may be stayed as provided in G.S. § 7A-227. An action to remove an occupant of a nonresidential building or structure who is a tenant of the owner may not be in the nature of a summary ejectment proceeding pursuant to this paragraph unless such occupant was served with notice at least thirty (30) days before the filing of the summary ejectment proceeding that the Town Council has ordered the Public Officer to proceed to exercise his or her duties under this Article to vacate and close or remove and demolish the nonresidential building or structure.

### **Section 1714. Lis Pendens**

Pursuant to the authority granted in N.C. Gen. Stat. §1-120.2, upon the issuance of a complaint and notice of hearing or order pursuant thereto (under the provisions of this Article), the issuing officer may file in the office of the Clerk of Superior Court of the County a Notice of Lis Pendens, with a copy of the complaint and notice of hearing attached thereto. From the date and time of the proper indexing of the same by the Clerk of Superior Court in accordance with the North Carolina General Statutes, the complaint and notice of hearing or order (and all further orders entered in said proceeding) shall be binding upon the successors and/or assigns of the owners and parties in interest in the nonresidential building or structure. A copy of the Notice of Lis Pendens shall be served upon the owners and parties in interest in the building or structure at the time of filing in accordance with applicable law. The Notice of Lis Pendens shall remain in full force and effect until cancelled, which is authorized to be done by the Town Manager, Town Attorney, and the respective issuing officer (or his successor in office as such), upon full compliance with the order by the owner and upon the payment in full of any lien of the Town by reason of actions of the Town pursuant to said order; said persons are further authorized to subordinate the Notice of Lis Pendens to a Deed of Trust thereafter upon reasonable assurances

by the owner or the lending party that the loan proceeds will be escrowed or otherwise used in the repairs or other expenses incurred in fulfilling the matters to be done by the property owner to comply with the matters alleged in the complaint.

### **Section 1715. Alternative Remedies**

Neither this Article nor any of its provisions shall be construed to impair or limit in any way the power of the Town to define and declare nuisances and to cause their abatement by summary action or otherwise or to enforce this Article by criminal process as authorized by N.C. Gen. Stat. § 14-4, and this Article, and the enforcement of any remedy provided herein or in other ordinances or laws.

### **Section 1716. Board of Adjustment to Hear Appeals; Appeals**

1716.1 Town Board of Adjustment to Hear Appeals. All appeals, which may be taken from decisions or orders of the Public Officer pursuant to this Article shall be heard and determined by the Town Board of Adjustment. As the appeals body, the Board of Adjustment shall have the power to fix the times and places of its meetings to adopt necessary rules of procedure and any other rules and regulations which may be necessary for the proper discharge of its duties.

1716.2 Appeals from Orders of Public Officer. An appeal from any decision or order of the Public Officer may be taken by any person aggrieved thereby or by an officer, board or commission of the Town. Any appeal from the Public Officer shall be taken within ten (10) days from the rendering of the decision or service of the order, and shall be taken by filing with the Public Officer and with the Board of Adjustment in care of the Town Clerk a notice of appeal, which shall specify the grounds upon which the appeal is based. Upon the filing of any notice of appeal, the Public Officer shall forthwith transmit to the Board of Adjustment all the papers constituting the record upon which the decision appealed from was made. When an appeal is from a decision of the Public Officer 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 Public Officer requiring the person aggrieved to do any act, the appeal shall have the effect of suspending the requirement until the hearing by the Board of Adjustment, unless the Public Officer certifies to the Board of Adjustment, 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 that case the requirement shall not be suspended except by a restraining order, which may be granted for due cause shown upon not less than one-day's written notice to the Public Officer, by the Board of Adjustment or by a court of record upon petition made pursuant to N.C. Gen. Stat. § 160A-446(f) and subsection (C) of this Article.

1716.3 Petition to Superior Court. Any person aggrieved by an order issued by the Public

Officer or a decision rendered by the Board of Adjustment may petition the Superior Court for an injunction restraining the Public Officer from carrying out the order or decision and the Court may, upon such petition issue a temporary injunction restraining the Public Office pending a final disposition of the cause. The petition shall be filed within 30 days after the issuance of the order or rendering of the decision. The rights of a person so aggrieved are governed by N.C. Gen. Stat. §160A-446(f).

### **Section 1717. Conflict with Other Provisions**

In the event any provision, standard or requirement of this Article is found to be in conflict with any provision of any other 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 citizens of the Town shall prevail.

### **Section 1718. Violations**

1718.1 It shall be unlawful for the owner of any nonresidential building or structure 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 Public Officer duly made and served in accordance with the provisions of this Article, within the time specified in such order, and each day that any such failure, neglect or refusal to comply with such order continues shall constitute a separate and distinct offense.

1718.2 It shall be unlawful for the owner of any nonresidential building or structure, with respect to which an order has been issued pursuant to this Article to occupy or permit the occupancy of the same after the time prescribed in such order for its repair, alteration, improvement, or its vacation and closing and each day that such occupancy continues after such prescribed time shall constitute a separate and distinct offense.

### **Section 1719. Penalties and Remedies.**

1719.1 Civil Penalty: Any person in violation of any provision of this Article shall be subject to a civil penalty in the amount of \$200.00 per day of non-compliance from and after the date a citation is issued to such person until the property is brought into compliance with this Article. The penalty may be recovered by the Town in a civil action in the nature of a debt if the person who has been assessed a civil penalty does not pay the same within 30 days after first being cited by the Public Officer for a violation of this Article. Penalties assessed for continuing violations constituting a separate and distinct offense may be aggregated and collected in one action.

1719.2 Misdemeanor; Fine: Except as specifically set out herein to the contrary, the violation of any provision of this Article is a Class 3 Misdemeanor as set out in N.C. Gen. Stat. §§ 160A-175 and 14-4. The maximum fine for a violation of this

Article is \$500.00.

1719.3 Equitable Relief; Abatement: This Article may be enforced by an appropriate equitable remedy issued from a court of competent jurisdiction as set out in N.C. Gen. Stat. § 160A-175. The Town may apply to the appropriate division of the General Court of Justice for mandatory prohibitory injunction and an order of abatement commanding the defendant(s) to correct the unlawful condition upon, or cease the unlawful use of, the property.

1719.4 Continuing Violation: Each day's continuing violation of any provision of this Article shall be a separate and distinct offense.

## **ARTICLE XVIII**

### **FIRE PREVENTION**

#### **Section 1801. Outdoor Burning**

It shall be unlawful to burn or set fire to any garbage or refuse. Fallen leaves and tree branches (less than 4 inches in diameter) may be burned. Fallen limbs greater than 4" in diameter, cut limbs of any size, fallen trees, felled trees, or any shrubs that have been cut or trimmed must be removed from the property and shall not be burned within the corporate limits of the Town of Butner. No person shall kindle or maintain any outdoor fire or authorize any fire to be kindled or maintained on any land unless the location of such fire is at least 50 feet from any dwelling, structure, or residence other than a dwelling, structure or residence owned or occupied by the person doing such burning and adequate provisions are made to prevent fire from spreading to within 50 feet of any dwelling, structure, or residence not owned or occupied by the person doing such burning. For the purposes hereof, "felled" shall mean a tree that is cut, pushed, or otherwise removed from its roots or the ground by human action.

The foregoing shall not apply to any bona fide farm 10 acres or more in size or to any property in timber production 20 acres or more in size provided, however, no burning on such properties shall be done in such a manner as to constitute a nuisance as determined in the sole discretion of the Town Manager or his designee.

#### **Section 1802. Requirement of Fire Supervision**

Bonfires, rubbish fires or other outdoor fires shall be constantly attended by a competent person until the fire is extinguished. The person shall have a garden hose connected to the water supply or other fire extinguishing equipment readily available for use.

#### **Section 1803. Authority to Temporarily Ban Outdoor Fires**

1803.1 The Town Manager or his designee may prohibit any or all bonfires, rubbish fires and other outdoor fires when atmospheric conditions or local circumstances make the fires hazardous. Whether such conditions or circumstances exist is in the sole discretion of the Town Manager or his designee.

1803.2 If any outdoor burning or smoke from the burning shall cause a nuisance the Town Manager or his designee shall order that the burning be extinguished. Whether an outdoor burning constitutes a nuisance is in the sole discretion of the Town Manager or his designee called to the scene. Without limiting the generality of the foregoing; for the purposes hereof, a reasonable belief on the part of the Town Manager or his designee that the burning is having or will have an adverse impact upon the health of one or more individuals shall constitute a nuisance.



## **Section 1804. Violations**

It shall be unlawful for any person to start or maintain a fire in violation of any provision of this Article.

## **Section 1805. Remedies**

- 1805.1 Civil Penalty. Any person cited for a violation of any provision of this Article shall be subject to a civil penalty in the amount of \$200.00 per violation. The penalty may be recovered by the Town in a civil action in the nature of a debt if the person who has been assessed a civil penalty does not pay the same within 30 days after first being cited by the Public Officer for a violation of this Ordinance. The penalties assessed for continuing violations constituting a separate and distinct offense may be aggregated and collected in one action.
- 1805.2 Misdemeanor; Fine. Except as specifically set out herein to the contrary, the violation of this Article is a Class 3 misdemeanor as set out in N.C. Gen. Stat. §§ 160A-175 and 14-4. The maximum fine for a violation of this Article is \$500.00.
- 1805.3 Equitable Relief; Abatement. This Article may be enforced by an appropriate equitable remedy issued from a court of competent jurisdiction as set out in N.C. Gen. Stat. § 160A-175. The Town may apply to the appropriate division of the General Court of Justice for mandatory or prohibitory injunction and order of abatement commanding the defendant(s) to correct the unlawful condition upon, or cease the unlawful use of, the property.
- 1805.4 Continuing Violation. Each day's continuing violation of any provision of this Article shall be a separate and distinct offense.

**ARTICLE XIX**

**BUSINESS LICENSE FEE ORDINANCE**

**SECTION 1901. Definitions**

The following words whenever used in this Ordinance shall be deemed to have the following meanings:

1901.1 “Business.” Any trade, occupation, profession, franchise, or commercial enterprise or establishment that buys or sells goods, makes products, or provides services for the purpose of gain or profit. Not-for-profit organizations that provide services or sell products for profit are included for the portion of the operation that is for gain or profit.

1901.2 “Person.” Any individual, trustee, executor, other fiduciary, corporation, unincorporated association limited liability corporation, general or limited partnership, sole proprietorship, company, firm, or other legal entity representing a business is defined above and used herein.

1901.3 “Itinerate business.” A business which is conducted for profit six months out of the year or less.

1901.4 “Engaged (or engaging) in business within the Town.” Engaging in business activity of any type, either as owner or operator of such business:

1901.4.1 By maintaining a business location within the Town;

1901.4.2 By soliciting business within the Town; or

1901.4.3 By picking up or delivering merchandise or performing services within the Town.

**Section 1902. Construction of This Ordinance**

This Ordinance is enacted for revenue purposes only. Therefore, it should be construed to require payment of the maximum fee permitted under its terms. In addition, issuance of a privilege license in accordance with this Ordinance does not excuse a licensee from compliance with the applicable ordinance or statute. This Ordinance does not prevent the Town from imposing fees on additional businesses, from increasing or decreasing the amount of any business license fee or from regulating any business taxed.

**Section 1903. Levy**

1903.1 Levy of Fee

An annual business license fee (“Business License Fee”) is hereby levied on each business conducted with the Town of Butner Corporate Limits. Business License Fees are determined annually by the Butner Town Council in accordance with the State of

North Carolina Revenue Laws and are stated in the Town of Butner Business License Fee Schedule.

#### 1903.2 Who Must Pay Fee

Each person, except those otherwise exempt by the Ordinance, that conducts business within the Town of Butner Corporate Limits is subject to the Business Licenses Fees. A person “conducts business” when he engages in one act of business taxed under this Ordinance. One conducts the business “within the Town” if he (she) maintains a business location within the Butner Corporate Town Limits, or if, either personally or through agents (1) solicits business within the Butner Corporate Town Limits or (2) picks up or delivers goods within the Butner Corporate Town Limits.

#### 1903.3 Period of License; Due Date

A license issued in accordance with this Ordinance is good for a twelve-month period beginning July 1 and ending June 30. To avoid any late charges penalties, all Business License Fees are due and payable to the Town by July 1 each year. In the event a business begins operation after July 1 of a year, the Business License Fee for that year is due before the business is begun.

#### 1903.4 Proration of Business License Fee

If a business is begun after January 31 and before July 1, the amount of the Business License Fee due is half the amount otherwise due.

#### 1903.5 Refunds

If for any reason a licensee discontinues his (her) business during the license year, he (she) is not entitled to a refund.

#### 1903.6 Separate Businesses

A separate Business License Fee is required and a separate Business License Fee must be paid for each place of business unless two or more places of business under common ownership are contiguous to each other, communicate directly with each other and open into each other, and are operated as a unit. In addition, a separate Business License Fee must be paid for each business taxable under this Ordinance conducted by the business at any one location; however, the Town may issue a single license for all taxable business conducted at any one location by a single business.

#### 1903.7 Exemptions

- 1903.7.1 Generally. Except as otherwise provided in this section or by state law, no person is exempt from the payment of a Business License Fee levied by this Ordinance.

- 1903.7.2 Charitable Organizations. A person, who operates a business for religious, educational, civic, patriotic, or fraternal purposes, when the entire gross income of the business is used for a charitable purpose and the business's income is exempt from taxation under the Internal Revenue Code as evidenced by appropriate documentation from the Internal Revenue Service, the business is exempt from paying any Business License Fee levied by this Ordinance.
- 1903.7.3 Blind persons and members of the armed forces and merchant marine. Blind persons and persons who serve in the United States armed forces or the merchant marine are exempt from paying any privilege tax levied by this ordinance except as provided by G.S. 105-249 and G.S. 105-249.1.
- 1903.7.4 Must obtain license. A person exempt from paying a Business License Fee levied by this Ordinance shall nevertheless obtain a license. The license shall state that the licensee is exempt from paying the privilege license tax.

#### **Section 1904 Application**

A person shall apply to the Town of Butner for each business license required by this Ordinance no less than thirty days before the fee is due. The application, which shall be submitted on forms provided by the Town, shall contain:

- 1904.1 The name of the applicant and whether the applicant is an individual, a partnership, corporation, limited liability company, or some other entity.
- 1904.2 The nature of the business.
- 1904.3 Where the business is conducted.
- 1904.4 An address where notices and statements may be mailed as required by this Ordinance.
- 1904.5 Whether the business is regulated by a state occupational licensing board subject to Chapter 93B of the North Carolina General Statutes, and if so, the serial number of the state license the applicant currently holds.
- 1904.6 Any other information the Town determines to be necessary to compute the amount of business license fee due.
- 1904.7 Emergency business contact information to be supplied to Butner Public Safety.
- 1904.8 Zoning Compliance certificate (to be completed by the Town of Butner's Planning Director).

1904.9 The name and telephone number of a business representative who may be contacted regarding Business License Fee questions.

1904.10 Physical location including street number and address where the business is to be conducted.

### **Section 1905 Reasons for Refusal or Revocation of a Business License**

The Town shall refuse to issue a business license and shall revoke a business license for either of the following reasons:

1905.1 The applicant misrepresents a fact relevant to the amount of fee due or his or her qualifications for a business licenses.

1905.2 The applicant refuses to provide information necessary to compute the amount of the business license fee due.

### **Section 1906 Unqualified Applicants; Right to Conference**

After receipt of the completed application, if the Town believes that a reason exists for refusing a license under Section 11 of this Ordinance, the Town shall refuse to accept payment of the fee and shall not issue the license. At the applicant's request the Town shall, in accordance with Section 21 of this Ordinance, give the applicant in writing a statement of reason for refusing the license. The applicant may, within ten days after the statement is received, request a conference to discuss the refusal. In the request the applicant shall specify why the application for a license should not be refused. The Town shall arrange a conference within a reasonable time. If the Town refuses to issue a license, the applicant may reapply for a privilege license at any time thereafter. If the reason for which the application was refused no longer exists, and if no other reason exists for refusing to issue the license, the Town shall issue the license in compliance with Section 13 of this Ordinance.

### **Section 1907 Town to Issue License, Payment of Fee a Prerequisite**

After receipt of the completed application, if the Town believes that no reason exists for refusal of a business license under Section 12 of this Ordinance, the Town shall determine the amount due and notify the applicant of that amount. The Town shall not issue a license until the fee is paid.

### **Section 1908 Amount of Business License Fee Disputed**

If disputes arise over the amount the Town determines the license to be, the applicant may request a conference to discuss the right to a refund. If a conference is requested, the Town shall arrange it within a reasonable time.

## **Section 1909 Revocation**

The Town shall revoke a business license if a reason exists to revoke it as set forth in Section 11 of this Ordinance. Before revoking a license, the Town shall give the licensee written notice of the grounds for revocation, in accordance with Section 21 of this Ordinance. The licensee may within ten days after the day on which the notice is served request a conference with the Town in writing. The request shall specify the reason why the privilege license should not be revoked. The Town shall arrange a conference within a reasonable time.

If the licensee fails to request a conference within ten days after the day on which the notice is served, the Town shall revoke the license. If the licensee requests a conference, the Town may not revoke the license until after the conference.

If the Town revokes the business licenses, the former licensee may apply for a new business license any time thereafter. If the reason for which the license was revoked no longer exists and if no other reason exists for refusing to issue a license, the Town shall issue a license in accordance with Section 14 of this Ordinance.

## **Section 1910 Form and Content of Business License**

A business license shall show the name of the person licensed, the place where the business is conducted (if it is to be conducted at one place), the nature of the business licensed, the period for which the license is issued, and the amount of the fee paid. In addition, if a machine is licensed, the business license shall show the serial number of the machine. The Town shall keep a copy of each business license issued for at least three (3) years from the date it is first issued.

## **Section 1911 Assignments**

A license may be assigned if (1) a business licensed under this Ordinance and carried on at a fixed place is sold as a unit to any person, and (2) the purchaser is to carry on the same business at the same place. Such a change shall be reported to the Town in accordance with Section 18 of this Ordinance. Otherwise, each business license issued under this Ordinance is not assignable.

## **Section 1912 Changes in the Business Conducted by Licensee During the Privilege License Fee Year**

A licensee or an assignee shall report a change in the information contained in the license application to the Town within ten days after the change occurs. If information shown on the license itself is affected, the licensee or assignee shall surrender the license to the Town when reporting the change.

1912.1 Changes affecting the amount of fee due. If there are no reasons for revoking the license under Section 11 of this Ordinance and the change results in the imposition of a separate or additional Business License Fee; the Town shall reissue a license reflecting the change upon payment of the separate or additional Business License Fee.

1912.2 Changes not affecting the amount of the fee due. If there are no reasons for revoking the license under Section 11 of this Ordinance and the change does not result in the imposition of a separate or additional Business License Fee, the Town shall reissue a license reflecting the change upon payment of a fee equal to the original cost of the license or \$5.00, whichever is less.

1912.3 Change requiring refusal of a license. If there is a reason for revoking the license under Section 11 of this Ordinance, the Town shall refuse to reissue a business license and shall take such steps as may be necessary to revoke the license in accordance with Section 6 of this Ordinance.

### **Section 1913 Town to Furnish Duplicates**

Upon satisfactory proof that a license has been lost or destroyed, the Town shall furnish a duplicate business license for a fee equal to the original cost of the license or \$5.00, whichever is less.

### **Section 1914 Record of Conference**

The Town shall maintain for three years a record of each conference held in accordance with this Ordinance. The record shall contain the applicant's or licensee's name, the date of the conference, and a brief statement of issues discussed and the result reached. After three years, the Town shall dispose of the record in accordance with G.S. §121-5.

### **Section 1915 Providing Notice to an Applicant or Licensee**

Whenever this Ordinance requires the Town to give a written statement of notice to an applicant or licensee, the Town may do so in three ways:

1915.1 By personally delivering the notice to the applicant or licensee;

1915.2 By mailing the statement or notice to the applicant or licensee by registered or certified mail, return receipt requested, to the address specified in the licensee application; or

1915.3 By causing the statement or notice to be served on the applicant or licensee in accordance with the procedures for service of process under Rule 4, North Carolina Rules of Civil Procedure.

### **Section 1916 Enforcement and Collection**

1916.1 Duty to Determine Whether Fee is due

Each person has the duty to determine whether the business he or she conducts is taxed under this Ordinance, and if so, whether that fee has been paid for the current year.

1916.2 Town to Investigate

If the Town has reason to believe that a person is conducting a business in the Town in violation of this Ordinance, the Town shall conduct an investigation to determine the person's business license fee liability.

### 1916.3 Duty to Permit Inspection

Each person who conducts business in the Town shall permit the Town to inspect the business premises and to examine the books and records during normal business hours to determine the nature of the business conducted there.

### 1916.4 Duty to Post License

A license shall post the privilege license or licenses conspicuously in the place of business licensed. If the licensee has no regular place of business, the license must be kept where it may be inspected at all times by the proper Town officials.

### 1916.5 Notice of Deficiency

If the Town determines that a person has not paid the full amount of the privilege license fee due under this Ordinance, either for the current license year or for a prior license year, the Town shall give the person written notice of deficiency, in accordance with Section 21 of this Ordinance. The notice of deficiency shall specify the amount of the privilege license fee due; the section of the Ordinance upon which the fee is based; the amount of fee paid; and interest due; the balance owed; the manner and time period in which the person may respond to the notice of deficiency; and the consequences of failing to respond as specified.

### 1916.6 Requests for a Conference

The person may, within ten days after the day on which the notice is served, request a conference in writing. The request shall specify the person's objectives to the notice of deficiency. By way of illustration, but not limitation, a person who received a notice of deficiency may object on the following grounds:

1916.6.1.1.1 That the fee has already been paid;

1916.6.1.1.2 That the Town miscalculated the amount due; or

1916.6.1.1.3 That the Town based the calculation on incorrect or insufficient information concerning either the nature of business conducted.

1916.6.1.1.4 That the Town based the determination on an erroneous interpretation of a section of this Ordinance that establishes a category of business subject to a particular tax.

### 1916.7 Deficiency to Become Final



If the taxpayer fails to request a conference under Section 27 of this Ordinance, the deficiency becomes final and the Town shall proceed to collect the deficiency.

#### 1916.8 Conference Held

If the taxpayer requests a conference, the Town shall not proceed to collect the deficiency until hearing the taxpayer's objections and determining that the deficiency should become final. The Town shall maintain a record of each conference held for three years in accordance with Section 27 of this Ordinance. The record shall contain the name of the taxpayer, the date of the conference, a brief statement of the issues discussed, and the results of the discussion. After three years the Town may dispose of the record in compliance with G.S. §121-5.

#### 1916.9 Collection of Deficiency

The Town may collect a deficiency in any manner authorized by law specifically including, but not limited to, the remedies of levy, sale, attachment and garnishment in accordance with G.S. §160A-207.

Any person who continues to conduct a business taxed under this Ordinance without payment of a privilege license fee is liable for the additional fee of five percent every thirty days as imposed by G.S. §105-109.

#### 1916.10 Enforcement of Ordinance

1916.10.1 Criminal Remedies. Conducting business within this Town without having paid the Business License Fee imposed by this Ordinance, or without a valid business license issued in accordance with the Ordinance, or without posting a license in accordance with Section 26 is a misdemeanor, punishable as provided in G.S. 105-109 or 14-4. Each day that a person conducts business in violation of this Ordinance is a separate offense. Payments of a fine imposed in criminal proceedings in accordance with this section does not relieve a person of the liability for business license fee imposed under this Ordinance.

1916.10.2 Equitable Remedies. In addition to the criminal remedies set forth in subsection (a) of this section and in compliance with G.S. 160A-175 (d), the Town may seek an injunction against any person who conducts a business in violation of this Ordinance.

## ARTICLE XX

### **Town of Butner State of Emergency Ordinance**

#### *An Ordinance Authorizing the Proclamation of a State of Emergency and the Imposition of Prohibitions and Restrictions During a State of Emergency*

Under the authority of Article 36A of Chapter 14, Chapter 166A and chapter 160A of the North Carolina General Statutes, the Town of Butner ordains:

#### **Section 2001 State of Emergency; Restrictions Authorized**

2001.1 A State of Emergency shall be deemed to exist whenever during times of public crisis, disaster, rioting, catastrophe, or similar public emergency, for any reason, public safety authorities are unable to maintain public order or afford adequate protection for lives, safety or property, or whenever the occurrence of any such condition is imminent.

2001.2 In the event of an existing or threatened State of Emergency endangering the lives, safety, health, and welfare of the people of the Town of Butner or any part thereof, or threatening damages to or destruction of property, the Mayor of the Town of Butner is hereby authorized and empowered under Section 14-288.12 and 166A-8 to issue a public proclamation declaring to all persons the existence of such a State of Emergency, and, in order to more effectively protect the lives and property of people within the County, to place in effect any or all of the restrictions hereinafter authorized.

2001.3 The Mayor is hereby authorized and empowered to limit by the proclamation the application of all or any part of such restrictions to any area specifically designated or described within the Town and to specific hours of the day or night; and to exempt from all or any part of such restrictions, while acting in the line of and within the scope of their respective duties, law enforcement officers, firemen and other public employees, rescue squad members, doctors, nurses, employees of hospitals and other medical facilities; on-duty military personnel, whether state or federal; on-duty employees of public utilities, public transportation companies, and newspaper, magazine, radio broadcasting, and television broadcasting corporations operated for profit; and such classes of persons as may be essential to the preservation of public order and immediately necessary to serve the safety, health and welfare needs of the people of Butner.

#### **Section 2002 Proclamation Imposing Prohibitions and Restrictions**

2002.1 The Mayor of the Town of Butner by proclamation may impose the prohibitions and restrictions specified in Section 3 through 8 of this Ordinance in the manner described in those sections. The Mayor may impose as many of those specified provisions and restrictions as he finds necessary, because of an emergency, to maintain an acceptable level of public order and services, and to protect lives, safety and property. The Mayor shall recite his findings in the proclamation.

2002.2 The proclamation shall be in writing. The Mayor shall take reasonable steps to give notice of the terms of the proclamation to those affected by it and shall post a copy of it in Town Hall. The Mayor shall send reports of the substance of the proclamation to the mass communications media which serves the affected area. The Mayor shall retain a text of the proclamation and furnish upon request, certified copies of it.

### **Section 2003 Evacuation**

The Mayor may direct and compel the evacuation of all or part of the population of the Town of Butner, to prescribe routes, modes of transportation, and destination in connection with the evacuation; and to control ingress and egress of a disaster area, the movement of persons within the area, and the occupancy of premises therein. Details of the evacuation may be set forth or amended in a subsequent proclamation which shall be well publicized.

### **Section 2004 Curfew**

2004.1 The proclamation may impose a curfew prohibiting in certain areas and during certain periods the appearance in public of anyone who is not a member of an exempted class. The proclamation shall specify the geographical area or areas and the period during each 24-hour day to which the curfew applies. The Mayor may exempt from some of or all of the curfew restrictions classes of people whose exemption the Mayor finds necessary for the preservation of the public health, safety or welfare. The proclamation shall state the exempted classes of the restrictions from which each is exempted.

2004.2 Unless otherwise specified in the proclamation, the curfew shall apply during the specified period each day until the Mayor by proclamation removes the curfew.

### **Section 2005 Restrictions on Possession, Consumption, or Transfer of Alcoholic Beverages**

The proclamation may prohibit the possession or consumption of any alcoholic beverage; including beer, wine, and spirituous liquor other than on one's own premises, and may prohibit the transfer, transportation, sale or purchases of any alcoholic beverage within the area of the Town described in the proclamation. The Prohibition, if imposed, may apply to transfers of alcoholic beverages by employees of the Alcoholic Beverage Control stores as well as by anyone else within the geographical area described.

## **Section 2006 Restriction on Possession, Transportation and Transfer of Dangerous Weapons and Substances**

2006.1 The proclamation may prohibit the transportation or possession off one's own premises, or the sale or purchase of any dangerous weapon or substance. The Mayor may exempt from some or all of the restrictions classes of people whose possession, transfer or transportation of certain dangerous weapons or substances is necessary to the preservation of the public's health, safety or welfare. The proclamation shall state the exempted classes and the restrictions from which each is exempted.

2006.2 "Dangerous weapon or substance" means:

2006.2.1 Any deadly weapon, ammunition, explosive, incendiary device, radioactive material or device as defined in G.S. 14-288.8 (c), gasoline, or other instrument or substance designed for a use that carries a threat of serious bodily injury or destruction of property.

2006.2.2 Any other instrument or substance that is capable of being used to inflict serious bodily injury or destruction of property, when the circumstances indicate that there is some probability that such instrument or substance will be so used.

2006.2.3 Any part or ingredient in any instrument or substance included above when the circumstances indicate a probability that such a part or ingredient will be so used.

2006.2.4 If imposed, the restrictions shall apply throughout the jurisdiction of the County or such part thereof as designated in the proclamation.

2006.2.5 A violation of this section shall be punishable as provided in G.S. 14-288.7.

## **Section 2007 Restrictions on Access to Areas**

2007.1 The proclamation may prohibit obtaining access or attempting to obtain access to any area, designated in the manner described in this section, in violation of any order, clearly posted notice, or barricade indicating that access is denied or restricted.

2007.2 Areas to which access is denied or restricted shall be designated by the Chief of Butner Public Safety and his subordinates or other law enforcement officer when directed in the proclamation to do so by the Mayor. When acting under this authority, the Chief of Butner Public Safety and his subordinates may restrict or deny access to any area, street, highway or location within the Town if that

restriction or denial of access or use is reasonably necessary to promote efforts being made to overcome the emergency or to prevent further aggravation of the emergency.

**Section 2008 The Proclamation may prohibit or restrict:**

2008.1 Movements of people in public places;

2008.2 The operation of offices, business establishments, and other places to or from which people may travel or at which they may congregate; and

2008.3 Other activities or conditions the control of which may be reasonably necessary to maintain order and protect lives or property during the State of Emergency, within area designated in the proclamation.

**Section 2009 Removal of Prohibitions and Restrictions**

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

**Section 2010 Superseding and Amendatory Proclamations**

The Mayor in his discretion may invoke the restrictions authorized by this ordinance in separate proclamations, and may amend any proclamation by means of a superseding proclamation in accordance with the procedures set forth in Section 2.

**Section 2011 Termination of Proclamation**

Any proclamation issued under this ordinance shall expire five days after its last imposition unless sooner terminated in writing under the same procedures set forth in Section 2 for proclamations.

**Section 2012 In Case of Absence or Disability of Chairperson**

In case of absence or disability of Mayor, the Mayor Pro-Tem of the Town Council, or such person as may be designated by the Town Council, shall have and exercise all of the powers herein given the Mayor.

**Section 2013 Penalty for Violation**

Except as provided in Section 6, any person violating any prohibition or restriction imposed by a proclamation authorized by this ordinance shall be guilty of a misdemeanor, punishable upon conviction by a fine not exceeding fifty dollars (\$50.00) or imprisonment not exceeding 30 days, as provided by G.S. 14-4.

#### **Section 2014 Repeal of Conflicting Ordinances**

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

#### **Section 2015 Territorial Applicability**

This ordinance shall not apply outside the corporate limits of the municipality, or outside of any area of the County over which the municipality has jurisdiction to enact general police-power ordinances, fully and to the same extent as elsewhere in the Town.

#### **Section 2016 Validity**

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

## ARTICLE XXI

### ORDINANCE ESTABLISHING A STORMWATER MANAGEMENT UTILITY FOR THE TOWN OF BUTNER

#### Section 2101 Findings

The Council does hereby find that:

- 2101.1 Water quality standards mandated by state and federal law are requiring that local governments develop more detailed, advanced, and costly stormwater programs.
- 2101.2 Effective stormwater management should be provided to protect, to the extent practicable, the citizens of the Town from the loss of life and property damage from flooding.
- 2101.3 The construction, operation, and maintenance of stormwater conveyance systems requires long term planning and stable and adequate funding.
- 2101.4 Chapter 160A, Article 16 of the North Carolina General Statutes, authorizes the Town to acquire, construct, establish, enlarge, improve, extend, maintain, own, operate, and contract for the operation of Stormwater Management Programs designed to protect water quality by controlling the level of pollutants in, and the quantity and flow of, stormwater and structural and natural stormwater and Drainage Systems of all types.
- 2101.5 The establishment of a Stormwater Management Utility that would be accounted for as a separate enterprise fund and would facilitate the provision of a Stormwater Management Program is reasonable and in the public interest.
- 2101.6 North Carolina General Statute §160A-314 authorizes the Town of Butner to establish and revise, from time to time, a schedule of rates and charges to fund the Stormwater Management Program activities including both structural and natural stormwater conveyance and Drainage System services provided by the Stormwater Management Utility.

#### Section 2102 Purpose

A Stormwater Management Utility is hereby created as an identified fiscal and accounting fund for the purpose of comprehensively addressing the Stormwater management needs of the Town. The Town 's Stormwater management needs are met herein (1) through programs designed to protect and manage water quality and quantity by controlling the level of pollutants in Stormwater runoff, and the quantity and rate of Stormwater received and conveyed by structural and natural Stormwater and Drainage Systems of all types, (2) by establishing a schedule of

charges, (3) by defining the control, collection, and disbursal of funds, and (4) by setting forth penalties, methods of appeals and exemptions.

### **Section 2103 Definitions**

For the purpose of this Article, the following words, terms, and phrases shall have the meanings given to them in this section, except where the context clearly indicates a different meaning:

2103.1 *Developed land* shall mean a land parcel altered from its Natural State.

2103.2 *Drainage System* shall mean natural and structural channels, swales, ditches, swamps, rivers, streams, creeks, wetlands, branches, reservoirs, ponds, drainage ways, inlets, catch basins, gutters, pipes, culverts, bridges, head walls, storm sewers, lakes, and other physical works, properties, and improvements that transfer, control, convey or otherwise influence the movement of storm water runoff.

2103.3 *Equivalent Residential Unit (ERU)* is a unit of measure of impervious surface (in square feet) that represents the impervious surface area on the average Single Family Residential Parcel in the underlying jurisdiction as a unit of comparison. ERU shall mean for the purposes of this Ordinance 3,100 square feet of impervious surface.

2103.4 *Gross Parcel Area* shall mean the property area contained within the legally described boundaries of a property or the total lot size of a property, in acres.

2103.5 *Impervious Surface* shall mean developed areas of land that prevent or significantly impede the infiltration of Stormwater into the soil. Typical Impervious Surfaces include, but are not limited to: roofs, sidewalks, walkways, patios, swimming pools, private driveways, parking lots, access extensions, alleys and other paved, engineered, compacted or gravel surfaces containing materials that prevent or significantly impede the natural infiltration of Stormwater into the soil. Impervious Surface Area is synonymous with *Built Upon Area* (“BUA”) as defined in the Falls Model Stormwater Ordinance for New Development as approved by the North Carolina Environmental Management Commission on March 10, 2011.

2103.6 *Natural State* shall describe existing Undeveloped Land where the soil and vegetation characteristics have not been substantially modified or disturbed by human activities and the hydrologic function is in an unaltered or natural condition.

2103.7 *Service Area* shall mean all land within the corporate limits of the Town of Butner.

2103.8 *Service Charge* shall mean a Stormwater management service charge, applicable to a land parcel, which generally reflects the impact on or demand for Stormwater



management services provided by the Town to properly control and manage Stormwater runoff quantity and/or quality associated with the land parcel. The Service Charge will vary from one land parcel to another based on the Impervious Surface and Gross Parcel Areas. The Service Charge may vary for the same class of service in different areas of the Service Area and may vary according to classes of service.

2103.9 *Single Family Residential Parcel* means a parcel with a single family residential structure used as a single family dwelling and whose primary use is as a single family residence.

2103.10 *Stormwater* shall mean the runoff from precipitation that travels over Natural State or Developed Land surfaces and enters a Drainage System.

2103.11 *Stormwater Services Utility Manager*. A person working for or on behalf of the Town to administer the Stormwater Management Program.

2103.12 *Stormwater Management Program* shall mean an identified set of measures and activities designed to protect, restore and/or manage stormwater quality by controlling and/or reducing pollutants and to reduce and/or manage stormwater quantity by controlling velocity, volume, and rate.

2103.13 *Stormwater Management Utility* shall mean an organizational structure that is responsible for funding, administering, and operating the Town's Stormwater Management Program, and that is supported through a rate structure based on the Impervious Surface Area and Gross Area found on land parcels located within the Service Area.

2103.14 *Undeveloped Land* shall mean all land that is not altered from its Natural State.

#### **Section 2104. Establishment of a Stormwater Management Utility and Stormwater Management Enterprise Fund.**

2104.1 There is hereby established a Town of Butner Stormwater Management Utility that shall be responsible for implementing, operating, and administering the Town's Stormwater Management Program as defined herein.

2104.2 There is hereby established a Town of Butner Stormwater Management Enterprise Fund for the purpose of dedicating and protecting funding applicable to the responsibilities of the Stormwater Management Utility including, but not limited to, rents, rates, fees, charges, and penalties as may be established after due notice having been given and a public hearing held by the Council as required by N.C. Gen. Stat. §160A-314(a1)(1). The hearing may be held concurrently with the public hearing on the proposed budget ordinance. Funding may also include other funds transferred or allocated to the Stormwater Management Utility by the Council. All revenues and receipts of the Stormwater Management Utility shall

be placed in the Stormwater Management Enterprise Fund and all expenses of the Stormwater Management Utility shall be paid from the Stormwater Management Enterprise Fund, except that other revenues, receipts, and resources not accounted for in the Stormwater Management Enterprise Fund may be applied to Stormwater management activities as deemed appropriate by the Council.

### **Section 2105. Jurisdiction.**

The jurisdiction of the Stormwater Management Utility shall extend throughout the Service Area.

### **Section 2106. Rate Structure.**

2106.1 Every parcel within the Service Area shall be subject to a Stormwater Management Utility Service Charge derived from the rate structure described below. The rate structure to distribute the cost of services associated with the operation, repair, improvement and maintenance of public Drainage Systems and facilities through a schedule of rates, fees, charges, and penalties related to the operation of a Stormwater Management Utility and Stormwater Management Enterprise Fund as established in Section 4 shall be based on the following parameters:

2106.1.1 *Fixed Charge Per Parcel* based on account existence which directly relates to certain administrative, billing, collections, public outreach, and other charges as may be allocated on a per parcel basis.

2106.1.2 *Gross Parcel Area* on a given land parcel, which is related to total pollutant loading of stormwater runoff discharged from that land parcel. The gross area blocks are as follows:

2106.1.2.1 A parcel of 0 to <2 acres in gross area is 1 block.

2106.1.2.2 A parcel of 2 to <10 acres in gross area is 2 blocks.

2106.1.2.3 A parcel of 10 to <100 acres in gross area is 3 blocks.

2106.1.2.4 A parcel of 100 or greater acres in gross area is 4 blocks.

2106.1.3 *Impervious Surface Area* on a given land parcel, which directly relates to the volume, rate and pollutant loading of Stormwater runoff discharged from that land parcel to the Town's structural and natural Drainage Systems and facilities. An Impervious Area Units Charge for stormwater costs shall be allocated to impervious area on an ERU basis. *Impervious Surface Area rates will apply to each unit or part thereof of impervious area.*

2106.1.4 Based on an analysis by the Town upon the enactment of this Ordinance of Impervious Surface Area on properties throughout the

Town, an Impervious Surface Area of 3,100 square feet is hereby designated as one (1) *ERU*.

2106.2 Each Single Family Residential Parcel shall be charged for one ERU of impervious area.

2106.3 Each residential unit in a townhome, condominium, or other multifamily structure with individual unit ownership and duplexes shall be billed for one (1) ERU of impervious area.

2106.4 There will be no Impervious Area Units Charge for land parcels with fewer than 500 square feet of Impervious Surface Area.

### **Section 2107. Schedule of Fees and Charges.**

The schedule of rates, fees, charges, and penalties related to this Ordinance shall be adopted after notice and a public hearing as required by N.C. Gen. Stat. §160A-314. As set out in N.C. Gen. Stat. §160A-314, the hearing may be held concurrently with the public hearing on the Town's proposed budget. The schedule of rates, fees, charges, and penalties shall apply to all land parcels within the Service Area, except as may be altered by credits or exemptions provided in this Article.

### **Section 2108. Billing and Collection**

2108.1 *Method of billing.* Billing and collection of the Stormwater Management Utility Service Charges for Stormwater management services and facilities shall be billed with property taxes under the general administration of the Town Manager and shall be payable in the same manner as property taxes.

2108.2 *Delinquencies.* Stormwater Management Utility Service Charge billings that are not paid within the time allowed for the payment of property taxes shall be collected by any remedy provided by law for collecting and enforcing private debts or in any other manner authorized by law.

2108.3 *Application of payment.* Payment will be applied to a customer's bill in the following order:

2108.3.1 Interest, to the extent allowed by law.

2108.3.2 Civil penalties assessed pursuant to this Ordinance.

2108.3.3 Stormwater Management Utility Service Charge.

2108.4 *Appeal of disputed bills and adjustments.* If any citizen wishes to dispute a Stormwater Utility Service Charge billing or any other rents, rates, fees, charges, or penalties adopted pursuant to this Article, that citizen must submit a written appeal within 60 days from the date of billing, stating the reasons for the appeal,

and providing information pertinent to the calculation of the billed charge. A timely appeal shall stay the penalty deadlines. An appeal of a disputed bill shall be filed with the Stormwater Utility Manager for review and disposition. If the citizen is not satisfied with the disposition of the appeal, the citizen may further appeal the disputed charge to the Town of Butner Manager or his designee who shall make the final ruling on the validity of the appeal.

### **Section 2109. Disposition of Service Charges and Fees.**

Stormwater Management Utility Service Charge and fee revenues shall be assigned and dedicated solely to the Stormwater Management Enterprise Fund in the Town budget and accounting system, which shall be and remain separate from other funds, and shall be used only to fund identified Stormwater Management Program activities. The services charges and fees paid to and collected by virtue of the provision of this Article shall not be used for general or other governmental or proprietary purposes of the Town, except to pay for costs incurred by the Town in rendering services associated with the Stormwater Management Utility.

### **Section 2110. Exemptions and Credits Applicable to Stormwater Management Service Charges.**

- 2110.1 *Statement of Policy.* Except as provided in this section, no public or private property shall be exempt from Stormwater Management Service Charges or receive a credit or offset against such Stormwater Management Service Charges. No exemption or reduction in Stormwater Management Service Charges shall be granted based on the age, tax or economic status, race, or religion of the customer, or other condition unrelated to the cost of providing stormwater services and facilities.
- 2110.2 *Exemptions.* No public or private property shall be exempt from Stormwater Management Utility Service Charges, with the following exceptions:
- 2110.2.1 Publically dedicated roads, streets, greenways, sidewalks and other publically dedicated rights of way and easements for vehicular or pedestrian traffic that are available for use by the general public for transportation purposes, shall be exempt from Town Stormwater Management Utility Service Charges. This exemption shall not apply to internal site roadways within public facilities.
- 2110.2.2 Railroad rights-of-way used or formerly used for trackage shall be exempt from Town Stormwater Management Utility Service Charges. This exemption shall not be construed to apply to railroad stations, maintenance buildings, or other developed land used for railroad purposes.
- 2110.3 *Credits.* The following credits may be allowed upon adoption of a Credit Application Instruction Manual by the Council:

- 2110.3.1 Non single family residential parcels that provide measures to mitigate the impacts of runoff on the Stormwater system may be eligible for one or more credits to the Impervious Area Units Charge portion of the Stormwater Management Utility Service Charge, proportional to the extent those measures address the impacts of peak discharge and total runoff volume from the site.
- 2110.3.2 The Credit Application Instruction Manual may be approved by the Council and placed on file with the Town Clerk at which time it shall be followed in establishing applicable credits to a customer's Impervious Area Units Charge portion of the Stormwater Management Utility Service Charge.
- 2110.3.3 Each credit allowed against a customer's Impervious Area Units Charge portion of the Stormwater Management Utility Service Charge shall be conditioned on continuing compliance with the performance standards set forth in the Credit Application Instruction Manual and/or the applicable standards set out in the Town's Land Development Ordinance existing at the time of construction of such facilities and may be rescinded for noncompliance with those standards.
- 2110.3.4 Each credit for which a customer applies shall be subject to review and approval by the Stormwater Utility Manager. The Stormwater Utility Manager may approve or reject any application for a credit in whole or in part.

**Section 2111. Miscellaneous.**

- 2111.1 This Ordinance supersedes all other Town ordinances, or parts of ordinances in conflict herewith.
- 2111.2 Any part or provision of this Ordinance found by a court of competent jurisdiction to be in violation of the Constitution or laws of the United States or of the State of North Carolina is hereby deemed severable and shall not affect the validity of the remaining provisions of the Ordinance.
- 2111.3 This Ordinance shall become effective upon adoption.

## ARTICLE XXII

### AN ORDINANCE AMENDING THE CHARTER OF THE TOWN OF BUTNER TO IMPLEMENT FOUR-YEAR STAGGERED TERMS FOR THE MEMBERS OF THE TOWN COUNCIL

Section 1. Pursuant to G.S.160A-101 and 160A-102, the Charter of the Town of Butner, as set forth in Session Law 2007-269 of the General Assembly of North Carolina, as amended, is hereby further amended to provide that the members of the Town Council shall hereafter be elected for four-year terms on a staggered basis as set forth in Section 2 below.

Section 2. At the regular municipal election to be held in 2013, the three candidates who receive the highest number of votes shall be elected for four-year terms, while the three candidates who receive the next highest number of votes shall be elected for two-year terms. At the regular municipal election to be held in 2015, and every four years thereafter, three members of the Council shall be elected to serve for four-year terms. At the regular municipal election to be held in 2017, and every four years thereafter, three members of the Council shall be elected to four-year terms.

Section 3. The Town Clerk shall cause a notice to be duly published, stating that an ordinance amending the Charter to implement four-year staggered terms for the members of the Town Council has been adopted. Subject to any referendum petitioned for and conducted pursuant to G.S. 160A-103, this ordinance shall be in full force and effect from and after May 16, 2012 subject, however, to approval of the amendment by the United States Department of Justice.