



Town Ordinance

Town of Biltmore Forest, North Carolina

*Adopted: May 19, 1976
Effective: May 19, 1976
Updated through April 9, 2013
(Printed April 10, 2013)*

Published by Order of the Mayor & Board of Commissioners

CHARTER

Editor's Note--House Bill No.252, Senate Bill No. 120, being an Act to Incorporate the Town of Biltmore Forest, adopted by the General Assembly of North Carolina and ratified on the 14th day of February, 1923, is set out herein in full, except for Section 10 which repealed all laws or parts of laws in conflict, and Section 11 which placed this Act in force from and after its ratification. Only the catchphrases are not a part of the original act.

These have been added for easy reference. This original act was signed by W. B. Cooper, President of the Senate, and John G. Dawson, Speaker of the House of Representatives.

Section I. [Incorporation; powers.]

That the town of Biltmore Forest, in Buncombe County, be and the same is hereby incorporated under the name and style of "Town of Biltmore Forest", and shall have and exercise all the powers, and be subject to all the provisions contained in Sub-chapter one, and Articles fifteen, sixteen, seventeen and nineteen of Chapter fifty-six of the Consolidated Statutes of North Carolina, and other general laws which are now or may hereafter be enacted for the organization and government of cities and towns in North Carolina. (H. B. 252, S. B. 120, 2-14-23)

Section 2. [Corporate limits.]

That the corporate limits of said Town shall be as follows: All of that area included within the lines, beginning at a point on the north bank of the Swannanoa River, where the west line of Biltmore Village intersects the same, and running down and with the north bank of said River to the center of the road leading through the Victoria Gate, or Entrance to the Biltmore Estate; thence running with the center of said road southeastwardly to the Approach Road of the Biltmore Estate; thence with the center line of the Approach Road to its intersection with the Overlook Road; thence with the center line of the Overlook Road to its intersection with the center line of the Busbee Road, near the Busbee Gate, or Entrance, of the Biltmore Estate; thence with the center line of the Busbee Road, eastwardly to the west line of the tract of land conveyed by the Trustees of the Estate of George W. Vanderbilt to the Biltmore Estate Company, by deed registered in the Office of the Register of Deeds for Buncombe County, in Book No.244, at page fifty-six; thence with the west line of said Tract to Station No.29 of the survey of said tract; thence eastwardly to the south-west corner of the J. M. Brown tract; thence with the west and North lines of said Brown Tract to a point in the western 'margin of the Asheville-Hendersonville Highway, northwardly to the northeast corner of the aforesaid Biltmore Estate Company Tract; thence with the north line of said Tract, South 87 deg. 48' East, 265 feet to a stake in the east line of the Biltmore Estate; thence with the east line of the Biltmore Estate, northwardly to the north-west corner of the Biltmore High School property; thence with the north line of the Biltmore High School property eastwardly to the center of the Ravine north of the Biltmore High School; thence down and with the center of said Ravine to its intersection with the south line of the corporate limits of Biltmore Village; thence with the South and West lines of the corporate limits of Biltmore Village, to the beginning. (H. B. 252, S. B. 120, 2-14-23)

Section 3. [Mayor and Commissioners.]

The following named persons shall fill the offices of Mayor and Commissioners, from their qualifications until an election to be held on the first Monday in May, nineteen hundred and twenty-three, and until their successors are elected and qualified, to-wit: Junius G. Adams, Mayor, and Charles E. Waddell, Edward M. Jones and Lloyd M. Jarrett, Commissioners. (H. B. 252, S. B. 120, 2-14-23)

Section 4. [Tenure in office.]

The officers of said town shall hold office until their successors are elected and qualified. (H. B. 252, S. B. 120, 2-14-23)

Section 5. [Appointment of clerk, treasurer and policemen.]

The clerk, treasurer and regular policemen shall be appointed by the commissioners, and all special policemen shall be appointed by the mayor. (H. B. 252, S. B. 120, 2-14-23)

Section 6. [Power to issue bonds and levy taxes.]

The commissioners shall have the power to issue bonds of the town, and to levy and collect taxes, within the limits provided by law, on all real and personal property within the corporate limits of said town. (H. B. 252, S. B. 120, 2-14-23)

Section 7. [Elections.]

That an election shall be held in said town on the first Monday in November, every four years, for the purpose of electing a mayor and three commissioners, which said election shall be held under the laws of North Carolina regulating elections in cities and towns. (H. B. 252, S. B. 120, 2-14-23)

Section 8. [Officers to qualify.]

That the officers provided for in this Act shall qualify within ten days from its ratification before a Justice of the Peace, or Clerk of" the Superior Court and all officers thereafter elected or appointed by the Board shall qualify before the mayor of said town, a Justice of the Peace, or Clerk of the Superior Court. (H. B. 252, S. B. 120, 2-14-23)

Section 9. Liability for existing taxes.]

The incorporation of said town shall in no way release or relieve the persons and property therein from liability for the payment of any ordinary or special School Tax levied for the public schools of the district in which said property is situated. (H. B. 252, S. B. 120, 2-14-23)

CODE OF ETHICS

The purpose of this code of Ethics is to establish guidelines for ethical standards of conduct for the Town of Biltmore Forest Board of Commissioners and to help determine what conduct is appropriate in particular cases. It should not be considered a substitute for the law or for the Board member's best judgment.

The Town of Biltmore Forest Board of Commissioners is comprised of the Mayor and three Commissioners and all references in this Code of Ethics to 'Commissioners' is deemed to include the Mayor and the three Commissioners.

Commissioners Shall Obey the Law

All members of the Board of Commissioners for Town of Biltmore Forest should obey all laws applicable to their official actions as members of the Board. Board members should be guided by the spirit as well as the letter of the law in whatever they do.

Commissioners Shall Uphold the Integrity and Independence of the Office

All members of the Board of Commissioners for Town of Biltmore Forest should demonstrate the highest standard of personal integrity, truthfulness, honesty and fortitude in all public activities in order to inspire public confidence and trust in government. They should participate in establishing, maintaining, and enforcing, and should observe high standards of conduct so that the integrity and independence of the office may be preserved.

Commissioners Shall Avoid Impropriety and the Appearance of Impropriety in All His or Her Activities

It is essential that government attract those citizens best qualified and willing to serve. Commissioners have legitimate interests - economic, professional and vocational - of a private nature. A Commissioner should not be denied, and should not deny to other Commissioners or citizens, the opportunity to acquire, retain and pursue private interests- economic or otherwise, except when it conflicts with their responsibility to the public and cannot be avoided. Each member of the Board of Commissioners should exercise his/her best judgment to determine when this is the case. Members should respect and comply with the law and conduct themselves, at all times in a manner that promotes public confidence in the integrity of the office of commissioner and of government. Members should not allow family, social, or other relationships to unduly influence his/her conduct or judgment and should not lend the prestige of the office of Commissioner to advance the private interests of others; nor should he/she convey or permit others to convey the impression that he/she is in a special position to influence them. If a Commissioner believes that his/her actions, while legal and ethical, may be misunderstood, the member should seek the advice of the Attorney and should consider publically disclosing the facts of the situation and the steps taken to resolve it.

Commissioners Shall Faithfully and Diligently Perform the Duties of the Office

Commissioners should perform the duties of the office as prescribed by law and should give precedence to these duties over other activities. In the performance of these duties, the following standards shall apply:

Legislative Responsibilities.

Commissioners should actively pursue policy goals they believe to be in the best interests of their constituents within the parameters of orderly decision-making, rules of the Board of Commissioners and open government. Commissioners should respect the legitimacy of the goals and interests of other commissioners and shall respect the rights of others to pursue goals and policies different from their own.

Adjudicative Responsibilities.

Commissioners should be faithful to the general and local laws pertaining to the office and strive for professional competence in them. They should be un-swayed by partisan interests, public clamor, or fear of criticism. Commissioners should demand and contribute to the maintenance of order and decorum in proceedings before the Board of Commissioners. Commissioners should be honest, patient, dignified and courteous to those with whom they deal in their official capacity, and should require similar conduct of staff. Commissioners should accord to every person who is legally interested in a proceeding before the Commission, full right to be heard according to law. Commissioners should dispose promptly of the business of the Town of Biltmore Forest.

Administrative Responsibilities.

Commissioners should clearly distinguish legislative, adjudicatory and administrative responsibilities and should refrain from inappropriate interference in the impartial administration of affairs by employees. Commissioners should diligently discharge those administrative responsibilities that are appropriate, should maintain professional competence in the administration of these duties and should facilitate the diligent discharge of the administrative responsibilities of fellow commissioners and other officials. Commissioner should conserve the resources of the Town and employ equipment, property, funds and personnel only-in legally permissible pursuits and in a manner that exemplifies excellent stewardship.

Commissioners Shall Conduct the Affairs of the Board in an Open and Public Manner

Commissioners must be aware of the letter and intent of the State's Open Meetings Law, and conduct the affairs of the Board of Commissioners consistent with the letter and spirit of that law and consistent with the need to inspire and maintain public confidence in the integrity and fairness of government and the office of commissioner. Consistent with this goal of preserving public trust, commissioners shall be aware of the need for discretion in deliberations when the lack of discretion would pose a threat to the resources of the Town, to the reputation of current or potential employees, to orderly and responsible decision making, to the integrity of other governmental processes or to other legitimate interests of the Town.

Commissioners should be informed concerning campaign finance, conflict of interest and other appropriate state and federal laws and should scrupulously comply with the provisions of such laws. Each member should refrain from financial and business dealings that tend to reflect adversely on the Board or on government or to interfere with the proper performance. Each member should manage his/her personal financial interests to minimize the number of cases in which he/she must ask to be excused from voting on matters coming before the Board. Each member should not disclose any information acquired in his/her official capacity as a Commissioner in financial dealings or for any other purpose not related to official duties.

**Commissioners Shall Refrain from Political Activity
Inappropriate to His/Her Office**

Commissioners have a civic responsibility to support good government by every available means, to continue to inform and educate the citizenry about the affairs and processes of government and to make themselves available to citizens of the so that they may ascertain and respond to the needs of the community. In doing so, each member may join or affiliate with civic organizations whether partisan or nonpartisan, may and should attend political meetings, may and should advocate and support the principles or policies of civic or political organizations consistent with the Constitution and laws of the United States and North Carolina. Each member should maintain the dignity appropriate to the office, and should encourage members of his/her family to adhere to the same standards of political conduct that apply to the Commissioners. Each member should refrain from making pledges or promises of conduct in office that he/she cannot or will not perform or which would be illegal if performed.

This Code of Ethics shall be effective upon its adoption.
Adopted this the 10th day of August, 2010.

CODE OF ORDINANCES

CHAPTER 1

GENERAL PROVISIONS

Section 1-1. How Code designated and cited.

The provisions in the following chapters and sections shall constitute and be designated as the "Code of Ordinances, Town of Biltmore Forest, North Carolina" and may be so cited.

State law reference--Pleading of ordinances and admission in evidence of printed codes. G. S. §160A-79; code of ordinances. G. S. §160A-77; ordinance book. G. S. §160A-78.

Section 1-2. Definitions and rules of construction.

In the construction of this Code and of all ordinances. the following definitions and rules of construction shall be observed unless inconsistent with the manifest intent of the board of commissioners or the context clearly requires otherwise.

Board of commissioners. The words "board of commissioners" shall mean the board of commissioners of the town of Biltmore Forest. North Carolina.

Bond. When a bond is required, an undertaking in writing shall be sufficient.

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

County. The words "the county" or "this county" shall mean Buncombe County, State of North Carolina, as the case requires it.

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

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

Non-technical and technical words. Words and phrases shall be construed according to the common and approved usage of the language, but technical words and phrases and such others as may have acquired a peculiar and appropriate meaning in law shall be construed and understood according to such meaning.

Number. A word importing the singular number only may extend and be applied to several persons and things as well as to one person and thing.

Oath. The word "oath" shall be construed to include an affirmation in all cases in which, by law an affirmation may be substituted for an oath, and in such cases, the words "affirm" and "affirmed" shall be equivalent to the words "swear" and "sworn."

Officials boards commissions etc. Whenever reference is made to officials, boards, commissions, committees and the like, by title only, they shall be construed as if followed by the words "Of the Town of Biltmore Forest, North Carolina."

“Or, and. "Or" may be read "and" and "and" may be read "or" if the cause requires it.

Owner. The word "owner" when applied to buildings or land, shall include any part owner, joint owner, tenant in common, joint tenant or tenant by the entirety, Of the whole or part of such building or land.

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

Personal property. The words "personal property" shall include every species of property, except real property as herein defined.

Plural~ singular. Words importing the singular shall include the plural, and words importing the plural shall include the singular.

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

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

Real property. "Real property" shall include lands, tenements and hereditaments.

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

Signature or subscription. The words "signature" or "subscription" shall include a mark when a person cannot write.

State. The words "the state" or "this state" shall mean the State of North Carolina.

Statutes references. Whenever reference is made, for example to G. S. section 160A-101, it shall be construed to refer to General Statutes of North Carolina, Section 160A-101, as amended, or to whatever section is cited.

Street. The word "street" shall mean and include any public way, road, highway, street, avenue, boulevard, parkway, alley, lane, path, viaduct, bridge, or other public place and the approaches thereto, and the entire width thereof between abutting property lines, within the town

when any part, thereof is open to the use of the public and established for purposes of vehicular traffic.

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

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

Town. The words "the town" or "this town" shall mean the Town of Biltmore Forest in the County of Buncombe and the State of North Carolina.

Town Limits. The words "town limits" or "corporate limits" shall mean the legal boundary of the Town of Biltmore Forest, North Carolina.

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

State law reference - Similar definitions and rules of statutory construction, G. S. §12-3.

Section 1-3. Catch lines of sections.

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

Section 1-4. Amendments to Code.

All ordinances passed subsequent to this Code which amend, repeal or in any way affect this Code may be numbered in accordance with the numbering system of this Code and printed for inclusion herein. In the case of repealed chapters, sections and sub-sections or any part thereof, by subsequent ordinances, such repealed portions may be excluded from the Code by omission from reprinted pages affected thereby. The subsequent ordinances as numbered and printed, or omitted, in the case of repeal, shall be prima facie evidence of such subsequent ordinances until such time that this Code and subsequent ordinances numbered or omitted are re-adopted as a new Code by the board of commissioners.

Amendments to any of the provisions of this Code may be made by amending such provisions by specific reference to the section number of this Code in the following language: "That section ___ of the Code of Ordinances, Town of Biltmore Forest, North Carolina, is hereby amended to read as follows:" The new provisions shall then be set out in full as desired.

In the event a new section not heretofore existing in the Code is to be added, the following language may be used: "That the Code of Ordinances, Town of Biltmore Forest, North Carolina, is hereby amended by adding a section, to be numbered ____, which said section reads as follows: ..." This new section shall be then set out in full as desired.

State law references--Voting on ordinances, G. S. §160A-75; franchises, technical ordinances, G. S. §160A-76; amendment of charter by ordinance, G. S. §160A-102; general ordinance making power, G. S. §160A-174.

Section 1-5. Altering Code.

It shall be unlawful for any person to change or amend, by additions or deletions, any part or portion of this Code or to insert or delete pages, or any portions thereof, or to alter or tamper with such Code in any manner whatsoever except pursuant to ordinance or resolution or other official act of the board of commissioners which shall cause the law of the town to be misrepresented thereby.

Section 1-6. Liability of corporate officers, agents and employees for violation of Code.

In the event of a violation of any provision of this Code or other ordinance of the town by a corporation, the officer, agent or employee thereof who performs the act, constituting the violation or procures, aids or abets the performance of such act shall be subject to the same penalties as if he himself had committed such violation.

Section 1-7. General penalty for violation of Code; continuing violations.

Whenever in this Code or in any ordinance of the town any act is prohibited or is made or declared to be unlawful or an offense or a misdemeanor, or whenever in such Code or ordinance the doing of any act is required or the failure to do such act is declared to be unlawful, where no specific penalty is provided therefore, the violation of any such provision of this Code or other ordinance shall be punished by a fine not exceeding fifty dollars (\$50.00) or by imprisonment for a term not exceeding thirty (30) days. Each day that any violation of this Code or of any ordinance shall continue shall constitute a separate offense.

State law reference--Violation of city or town ordinances declared a misdemeanor punishable by fine not exceeding \$50.00 or imprisonment not exceeding 30 days, G. S. §14-4.

Section 1-8. Severability of parts of Code.

It is hereby declared to be the intention of the board of commissioners that the sections, paragraphs, sentences, clauses and phrases of this Code are severable, and if any phrase, clause, sentence, paragraph or section of this Code shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect

any of the remaining phrases, clauses, sentences, paragraphs and sections of this Code, since the same would have been enacted by the board without the incorporation in this Code of any such unconstitutional phrase, clause, sentence, paragraph or section.

CHAPTER 2

ADMINISTRATION

State Law References--Administration of mayor-commissioner cities, G. S. §160A-155, et seq; authority to modify form of government, G. S. §160A-101.

Art. I. In General, §§2-1 ---2-20

Art. II. Personnel Rules and Regulations,
§§2-21 --- 2-26

ARTICLE I. IN GENERAL

Section 2-1. Committees.

The mayor shall appoint all committees except where the board of commissioners shall otherwise order.

Section 2-2. Vice mayor.

At the first meeting after each election, the board shall elect from their number a Vice mayor, who shall, in the absence or disability of the mayor, perform the duties of the mayor.

State law reference--Mayor pro tempore, G. S. §160A-70.

Section 2-3. Town clerk.

At said first meeting after each election, the board shall also elect a town clerk, which said town clerk need not be a member of the board.

Charter reference--Appointment of clerk, §5.

Section 2-4. Duties and compensation of town clerk.

The town clerk shall record all proceedings of the board, shall have charge of the archives of the town and shall be responsible for all documents, records, books, resolutions and other papers kept therein, and shall, in addition, perform all such duties as may be desired by the board. The town clerk shall receive such compensation as may be set from time to time by the board.

Section 2-5. Meetings of the mayor and board of commissioners.

The board of commissioners shall meet biennially. All meetings of the board shall be held, conducted and governed by, under and according to the rules of procedure prescribed herein and in the Roberts Rules of Order.

State law reference--Regular and special meetings, procedure, G. S. §160A-71.

Section 2-6. Quorum.

At the hour appointed for the meeting of the mayor and board, the mayor shall take the chair and direct a call of the members by the town clerk, who shall note the absentees. If a quorum, consisting of the mayor and two members of the board, or three commissioners, be not present, the mayor shall send for the absentees, and upon the appearance of a quorum, shall call the body to order and proceed with the order of business. If a quorum shall fail to attend, the meeting shall stand adjourned to a time agreed on by a majority of the members present.

Section 2-7. Order of business.

At all regular meetings of the mayor and board of commissioners, the order of business shall be as follows:

- (1) Roll call by the clerk.
- (2) Reading of minutes.
- (3) Correction and adoption of the minutes.
- (4) Complaints, grievances and suggestions from the public.
- (5) Reports of committees.
- (6) Reports of officers.
- (7) Communications.
- (8) Un-finished business.
- (9) New business.
- (10) Petitions, motions, resolutions, and ordinances.
- (11) Approving bills .for payment.

If the board of commissioners shall so desire and direct, any matter may be designated as special business of a future meeting, when the same shall have precedence over all other business at such meeting; and no proposition, motion or resolution shall be entertained by the mayor until it has been seconded, and every proposition, motion or resolution shall, when required by the mayor or a commissioner, be reduced to writing.

Section 2-8. Limitation on discussion.

No subject shall be discussed by any person who is not a member of the board of commissioners for more than five (5) minutes, nor shall such subject matter be discussed more than once, except by express permission of the board.

Section 2-9. Elections by board.

All elections by the board shall be by ballot if requested by any member present. A majority of the votes of all members present shall be necessary to an election or appointment; provided, that a quorum of at least a majority of the board shall be necessary to transact any business, including elections and appointments.

Cross reference--Quorum, 2-6.

Section 2-10. Compensation of mayor and board.

The mayor and each member of the board of commissioners shall receive compensation as may be set from time to time and fixed by ordinance duly passed.

Section 2-11. Procedures for Disposing of Personal Property Valued at Less Than \$500.

BE IT ORDAINED by the Town Board of the Town of Biltmore Forest:

Section 1. The town clerk is hereby authorized, pursuant to G.S. 160A-266(c), to dispose of any surplus personal property owned by the Town of Biltmore Forest, whenever he determines, in his discretion, that:

- (a) the item or group of items has a fair market value of less than \$500;
- (b) the property is no longer necessary for the conduct of public business; and
- (c) sound property management principles and financial considerations indicate that the interests of the Town would best be served by disposing of the property.

Section 2. The town clerk may dispose of any such surplus personal property by any means which he judges reasonably calculated to yield the highest attainable sale price in money or other consideration, including but not limited to the methods of sale provided in Article 12 of G.S. Chapter 160A. Such sale may be public or private, and with or without notice and minimum waiting period.

Section 3. The surplus property shall be sold to the party who tenders the highest offer, or exchanged for any property or services useful to the Town if greater value may be obtained in that manner, and the Town Clerk is hereby authorized to execute and deliver any applicable title documents. If no offers are received within a reasonable time, the town clerk may retain the property, obtain any reasonably available salvage value, or cause it to be disposed of as waste material. No surplus property may be donated to any individual or organization except by resolution of the Town Board.

Section 4. The town clerk shall report monthly in writing to the town board on any property disposed of under these provisions. The written report shall generally describe the property sold or exchanged, to whom it was sold, or with whom exchanged, and the amount of

money or other consideration received for each sale or exchange since the last such report was submitted.

Section 5. This ordinance is effective upon adoption, this 15th day of November 1988.

Sections. 2-12 ---2-20. Reserved.

ARTICLE II. PERSONNEL RULES AND REGULATIONS

State law reference--Authority to adopt personnel regulations, G.S. 160A-164.

Section 2-21 Compensation of officers and employees.

All officers and employees of the town shall receive such compensation as may be set from time to time by the board of commissioners.

State law reference--Compensation of personnel, G.S. 160A-162.

ADMINISTRATION

Section 2-22. Holidays. (Personnel Manual adopted 6/27/88 except Public Safety Department)

All town employees will receive full pay for the following holidays:

- (1) New Year's Day
- (2) July Fourth
- (3) Labor Day
- (4) Thanksgiving Day and the following Friday. Auth. 2/83
- (5) Christmas Day and Christmas Eve
- (6) Such other day or days as may be declared by the board of commissioners.

Employees required to work on an observed holiday shall receive compensatory time off. Holidays observed by the town shall not be counted as vacation leave.

Section 2-23. Vacation leave.

Each employee with one year's continuous service in the employ of the town shall receive ten (10) working days of vacation each year.

Section 2-24. When vacation leave may be taken.

Vacation leave may be taken as earned by an employee with the approval of his immediate supervisor. However, vacation leave is permissive and may be denied when conditions are

such that the ordinary work of the town could not be performed adequately if vacation leave were granted.

Section 2-25. Sick leave.

(a) Sick leave with pay is not a right, which an employee may demand, but is a privilege granted by the town.

(b) Leave from work with pay, up to two (2) weeks, may be charged as sick leave if the absence is due to sickness, bodily injury, quarantine, required physical or dental examinations or treatment, illness in the employee's immediate family which requires the care of the employee, or the funeral of a member of the employee's family. All such absences, except any resulting from intemperance or misuse of sick leave, shall be charged against the sick leave credit of the employee.

(c) Any extension of sick leave beyond the normal two (2) weeks must be reviewed and approved or disapproved at the discretion of the mayor and immediate supervisor.

(d) The employee may be required to submit a physician's certificate as to the nature of the illness and as to the employee's physical capacity to resume his duties. Such requirement shall be at the discretion of the mayor or immediate supervisor.

Section 2-26. Civil leave.

Any employee of the town called for jury duty, or as a court witness for the federal or state governments, or a subdivision thereof, shall be entitled to leave with pay for such duty, in addition to being allowed to keep fees received for such duty.

CHAPTER 3

ALCOHOLIC BEVERAGES

Section 3-1. Adoption of state laws.

The state law regulating intoxicating liquors, as expressly set out in the General Statutes of North Carolina, specifically, Sections 18A-1, et seq., and any and all other regulations governing the use and sale of intoxicating liquors, is hereby specifically adopted.

CHAPTER 4

ANIMALS AND FOWL

Cross Reference--Allowing dead animals to remain on property, §10-5.

State Law References--Regulation of domestic animals, G. S. §160A-186; license tax on privilege of keeping domestic animals, G. S. §160A-212.

Art. I. In General, §§4-1 ---4-18

Art. II. Bird Sanctuary, §§4-19 ---4-31

Art. III. Dogs, §§4-32 ---4-36

ARTICLE I. IN GENERAL

Section. 4-1. Cruelty to animals.

No person shall cruelly treat any animal in any way; any person who inhumanely beats, underfeeds, overloads, abandons or mistreats any animal in any way shall be deemed guilty of a violation of this Section punishable as provided by Section 1-7 of this Code.

State law references--Cruelty to animals, G. S. §14-301; city may define and prohibit abuse of animals, G. S. §160A-182.

Section. 4-2. Animals at large.

It shall be unlawful for any person to allow any cow, calf, horse, mule, sheep or any other such animal to run at large in the town. Any person 'II violating the provisions of this Section shall be subject to a penalty as provided in Section 1-7.

Cross reference--Dogs running at large, §4- 32.

Section. 4-3. Impoundment.

Any animal caught running at large may be picked up by the police, and, unless immediately claimed, such animals shall be disposed of as deemed best by the police or other designated official.

State law reference--Impoundment of stock, G. S. §68-24 ---68-29,68-37

Section. 4-4. Housing.

All pens or other enclosures where family pets of any kind are kept within the town limits

shall be kept clean and sanitary. If, in the opinion or the chief of police or other designated official, or upon complaint of any person, any such pen or enclosure is deemed to be unsanitary so as to create a health hazard of a nuisance from offensive odors, said official shall have the authority to close such pen or enclosure and require removal of any animal or fowl kept therein.

Cross reference--Health and Sanitation, Ch.10.

Section. 4-5. Limitation on number of household pets.,

It shall be unlawful for any person to keep on any lot or premises more than three (3) household pets unless written approval of the board has first been obtained.

Section. 4-6. Hogs and pigs expressly prohibited.

It shall be unlawful for any person to keep any hog or pig within the corporate limits.

Section 4-6a Pens for farm animals prohibited

It shall be unlawful for any person to maintain a pen within the corporate limits for cattle, horses, chickens or other animals or fowl commonly known as farm animals. Provided, however, pens for family pets may be permitted when maintained in a clean and sanitary condition as provided in

Section 4-7 Killing dangerous animals.

The members of the police department or any other designated persons are authorized to kill any dangerous animal of any kind when it may be necessary for the protection of any person or property in the town.

Sections 4-8 to 4-18 reserved.

ARTICLE II. BIRD SANCTUARY

Section 4-19 Designated

The area within the corporate limits of the town of Biltmore Forest and all lands owned or leased by the town outside the corporate limits is hereby designated as a bird sanctuary.

Section 4-20 Trapping, hunting or shooting wild birds prohibited; exceptions.

(a) It shall be unlawful to trap, hunt, shoot or otherwise kill, within the sanctuary established in Section 4-19, any native wild bird. Provided, however, that it shall be lawful to trap starlings or similar birds or fowl when such birds or fowl are found to be

congregating in such numbers in a particular locality that they constitute a nuisance or menace to health and property.

(b) Violation of this Section shall be a misdemeanor punishable as provided by Section 1-7.

Cross reference--Use of firearms in town, § 12-1; sling shots, missiles, air guns prohibited, §12-1.

Section 4-21. Erection of Signs

Artistic signs may be erected giving notice of the regulations herein provided. Such signs shall be of a design as may be approved by the board and shall be erected at such places as may be designated by the board.

Sections 4-22 through 4-31 Reserved.

ARTICLE III. DOGS

State Law Reference -- confinement or leashing of vicious dogs, G.S. §106-381.

State law Reference – Dogs running at large. G.S. §67-12.

Section 4-32. Identification of dogs, and inoculation of dogs.

(a) All persons owning, controlling, keeping or maintaining any dog within the Town of Biltmore Forest shall provide and keep on such dog a collar or harness containing an identification tag on which is inscribed the owner's, keeper's or controller's name, address and telephone number.

(b) All persons owning, controlling, keeping or maintaining any dog within said Town shall also insure that such dog has been currently inoculated against rabies and shall provide and keep on such dog's collar or harness a current rabies inoculation tag.

Section 4-33. Restraint of Dogs.

Every person owning or having possession, charge, care, custody or control of any dog shall keep such dog exclusively upon his or her premises. However, such dog may be off premises if it is under the physical control of a competent person and physically restrained by a chain, leash or harness, not to exceed eight feet in length and held in the hand of said person.

At all times dogs shall be under sufficient control so as not to disturb neighbors by barking excessively, and more particularly after dark. (Amended 5.11.05)

Section. 4-34. Impoundment of dogs.

Any dog seen violating or reported to have violated Section 4-33 shall be picked up and impounded by the police department. The impounding officer shall make reasonable

attempts to notify the owner or keeper of said dog of the dog's impoundment. As soon as possible after the expiration of forty-eight (48) hours from the time the dog is impounded such dog shall be turned over to the Buncombe County Animal Shelter for disposition according to the rules regulations and policies of said Buncombe County Animal shelter.

Section 4-35. Reclaiming impounded dogs.

(a) The owner of any dog impounded pursuant to Section 4-34 shall have the right to redeem said dog while said dog is in the custody of the police department by paying a fee of \$25.00 to the Town of Biltmore Forest.

(b) After any dog impounded pursuant to Section 4-34 is turned over to the Buncombe County Animal Shelter pursuant to Section 4-34 the owner of such dog shall have only those rights to redeem said dog afforded such owner by the rules regulations and policies of the Buncombe County Animal Shelter.

Section 4-36. Control of dangerous (very unruly) dogs.

No person shall own control keep or maintain in the Town of Biltmore Forest a dangerous (very unruly) dog unless said dog is confined within a secure building or enclosure which building or enclosure shall be clearly marked with a warning sign.

Section 4-37. Dangerous animal.

(a) An animal that:

1. Without provocation has killed or inflicted severe injury on a person;
2. Without provocation has killed or inflicted severe injury on another domestic animal;
3. Is determined by a police officer or an animal control officer to be a potentially dangerous animal;
4. Is to be treated in accordance with Section 4-36. Control of dangerous dogs.

(b) Any animal owned or harbored primarily or in part for the purpose of fighting or any animal trained for fighting.

Section 4-38 Violation of ordinances.

The violation of any portion of Section 4-32, 4-33 or 4-36 by any of those persons described in said Sections shall constitute a misdemeanor and the violator shall be punished accordingly.

Section 4-40 Effective date ordinance

This Ordinance shall become effective November 15 1982.

CHAPTER 5

BUILDINGS AND BUILDING REGULATIONS

Art. I. In General, §§5-1 ---5-17

Art. II. Building Code, §§5-18 ---5-28

Art. III. Plumbing Code, §§5-29

ARTICLE I. IN GENERAL

Section. 5-1. Building permit required.

It shall be unlawful for any person to erect, construct or build any building or structure of any kind or description within the corporate limits without first obtaining a building permit.

Section 5-2 Building permit fees.

The following fees shall be charged for all building permits: For the first two thousand dollars (\$2,000) estimated cost, twelve dollars (\$12.00) for each additional one thousand dollars (\$1,000) estimated cost, two dollars (\$2.00).

Section. 5-3. Roof coverings -Approved materials.

All buildings, except those specifically mentioned in Section 5-4 of this article, shall have roof coverings of standard quality, such as:

- (1) Brick or concrete surface;
- (2) Clay or Portland cement tile;
- (3) Tin or slate;
- (4) Asbestos shingles 1/8 inch thick or thicker;
- (5) Pitch or felt, built-up type, four or five plies, gravel or slag surface;
- (6) Asbestos-asphalt, built-up type, four or five plies, smooth or grit surface.

Section. 5-4. Same- Exceptions.

All of the following classes of buildings may be covered with coverings set forth in Section 5-3 or with standard Asphalt-Rag-Felt prepared roofing, or Asphalt-Rag-Felt shingles, or by other types of coverings having equivalent fire-resistive properties when approved and labeled by the Underwriters Laboratories, Inc., Chicago, Illinois:

- (1) Dwellings;
- (2) Frame buildings;
- (3) Buildings not exceeding two stories, or thirty (30) feet in height and two thousand five hundred (2,500) square feet in area, and not used for factories, warehouses or mercantile purposes.

Section. 5-5. Same - Dormer windows.

The top and sides of dormer windows shall be covered same as the roof or with other material having equivalent fire-resistive properties.

Section. 5-6. Same -Wood shingle roofs.

If a wood shingle roof is damaged by a fire more than twenty per cent (20%) the entire roof shall be replaced with material specified in Sections 5-3 and 5-4. If a wood shingle roof is to be repaired more than ten per cent (10%) in any one year, the same shall be entirely replaced with materials specified in said Sections

Section. 5-7. Same -Power of condemnation.

The building inspector shall have the power to condemn and have removed any wood shingle roof that in his opinion is in such a deteriorated condition as to be excessively inflammable.

Sections. 5-8 ---5-17. Reserved.

ARTICLE II.

BUILDING CODE

Section. 5-18. Adoption of state building code.

All rules and regulations adopted by the State of North Carolina for the proper construction and erection of all buildings, as provided in the North Carolina General Statutes , Sections 143-136, et seq. , are hereby adopted by reference, and shall control general construction the same as if set out at length herein, except as the same may be amended or modified in this chapter.

Sections. 5-19 ---5-28. Reserved..

ARTICLE III.

PLUMBING CODE II

Section. 5-29. Adoption of state regulations.

All rules and regulations adopted by the State of North Carolina pertaining to plumbing are hereby adopted and made apart of the building code of the town the same as if set out at length herein, except as may be modified or amended in this chapter.

CHAPTER 6

CIVIL EMERGENCIES

State Law References--Authority of town to enact ordinances dealing with states of emergency, G. S. §14-288.12; one political subdivision to assist officers of another, G. S. §160A-288; continuity of local government in emergency, G. S. §162B-1, et seq.

Section 6-1. State of emergency defined.

A state of emergency shall be deemed to exist whenever, during times of great public crisis, disaster, rioting, catastrophe, or similar public emergency, for any reason, municipal public safety authorities are unable to maintain public order or afford adequate protection for lives or property.

Section 6-2. Declaration of state of emergency.

In the event of an existing or threatened state of emergency endangering the lives, safety, health and welfare of the people within the town of Biltmore Forest, or threatening damage to or destruction of property, the mayor is hereby authorized and empowered to issue a public proclamation declaring to all persons the existence of such a state of emergency, and in order more effectively to protect the lives and property of people within the town, to place into effect any or all of the restrictions hereinafter authorized.

Section 6-3. Proclamation.

In accordance with section 6-2, the following proclamation shall be issued:

"PROCLAMATION"

"WHEREAS, the Governing Body of the Town of Biltmore Forest has duly adopted an ordinance providing that when there exists within the town a state of emergency extraordinary measures are authorized to cope with any widespread illegal activity endangering the lives, safety and property of persons within the town; and

WHEREAS, by ordinance duly adopted by the Governing Body of the Town of Biltmore Forest, the Mayor is authorized to proclaim the existence of such a state of emergency to all citizens and to impose certain restrictions for the protection of the lives and property;

NOW, THEREFORE, I, _____ Mayor of the Town of Biltmore Forest, do hereby proclaim that:

I.

A state of emergency exists within the Town of Biltmore Forest.

II.

Except as provided in Section IV below, and until the state of emergency as hereby proclaimed is ended, it shall be unlawful for any person

- (a) To possess off his own premises, or to buy, sell, give away or otherwise transfer or dispose of any explosives, firearms, ammunition or dangerous weapons of any kind;
- (b) to buy or sell beer, wine or intoxicating beverages of any kind;
- (c) to organize or participate in any demonstrations, parades, marches or vigils on any public ways or public property within the town of Biltmore Forest.

III.

Until the state of emergency as hereby proclaimed is ended, all persons shall remain in their homes, offices or places of business, between ____ o'clock p. m. on each day and ____ o'clock a. m. on the next day, and during such hours it shall be unlawful for any person to:

- a. be or travel upon any public street, alley or roadway or upon any public property, unless in search of medical assistance, food, or other commodity or service necessary to sustain the well being of himself or his family or some member thereof;
- b. participate in or carryon any business activity;
- c. keep open any place of business, place of entertainment, or any other place of public assembly.

IV.

(a) The following persons are exempt from the restrictions imposed by Section III.(a) above:

- (1) (List, such as law enforcement officers, etc.)
- (2) Etc.

(b) The following businesses are exempt from the restrictions imposed by Section III(c) above:

(1) (List, such as public utilities, news media, etc.)

(2) Etc.

V.

This proclamation shall become effective at ____ o'clock ____n this ____ day of _____, 2____, and shall remain in force until dissolved by the mayor or governing body of the town of Biltmore Forest.”

Section 6-4. Curfew authorized.

The mayor is hereby authorized and empowered to limit by the proclamation set out in section 6-3 the application of all or any part of such restrictions to any area specifically designated or described within the corporate limits and to specific hours of the day or night; and to exempt from all or any part of such restrictions law enforcement officers, firemen and other public employees, doctors, nurses, employees of hospitals and other medical facilities, on-duty military personnel, whether state or federal; on duty employees of public utilities, radio broadcasting and television broadcasting corporations operated for profit; and such other classes of persons as may be essential to the preservation of public order and immediately necessary to serve the safety, health and welfare needs of the people.

Section 6-5. Termination.

The mayor shall proclaim the end of such state of emergency or all or any part of the restrictions imposed as soon as circumstances warrant or when directed to do so by the governing body.

Section 6-6. Restrictions.

During the existence of a proclaimed state of emergency, the mayor may impose by proclamation any or all of the following restrictions:

- (1) Prohibit or regulate the possession of explosives, firearms, ammunition, or dangerous weapons of any kind, and prohibit the purchase, sale, transfer or other disposition thereof.
- (2) Prohibit or regulate the buying or selling of beer, wine or intoxicating beverages of any kind, and their possession or consumption off one's own premises.
- (3) Prohibit or regulate any demonstration, parade, march, vigil, or participation therein taking place on any of the public ways or upon any public property,

- (4) Prohibit or regulate the sale of gasoline, kerosene, naphtha, or any other explosive or inflammable fluids or substances.
- (5) Prohibit or regulate travel upon any public street, alley, or roadway, or upon any other public property, except by those in search of medical assistance, or other commodity or service necessary to sustain the well-being of themselves or their families.
- (6) Prohibit or regulate the participation in, or carrying on of any business activity, and prohibit or regulate the keeping open of places of business, places of entertainment, and any other places of public assembly.

Cross references--Alcoholic beverages, Ch. 3 Miscellaneous provisions and offenses, Ch. II.

Section 6-7. Extension, alteration or repeal.

Any proclamation may be extended, altered or repealed, in part or in whole, during the continued or threatened existence of a state of emergency by the issuance of a subsequent proclamation.

Section 6-8. Violation of restrictions.

- (a) During the existence of a proclaimed state of emergency, it shall be unlawful for any person to violate any provision of any restriction imposed by any proclamation authorized by this chapter.
- (b) The violation of any provision of this chapter, or any provision of any restriction imposed by any proclamation authorized by this chapter, shall constitute a misdemeanor, punishable as provided by section 1-7 of this Code.

CHAPTER 7

ELECTIONS

Section 7-1. Schedule for elections.

Municipal elections shall be held as provided by the General Statutes of North Carolina, specifically, Section 163-279.

Section 7-2. County board of elections.

The county board of elections of Buncombe County shall conduct the elections of the town of Biltmore' Forest pursuant to the authority of Section 163-285 of the General Statutes of North Carolina.

Section 7-3. Procedures.

All procedures for municipal elections in Biltmore Forest shall be as provided in Chapter 163, Article 23 of the General Statutes of North Carolina.

CHAPTER 8

FIRE PROTECTION AND PREVENTION

State Law Reference--Fire protection generally, G.S. §69-38

Art. I. In General,9~-1 ---8-13

Art. II. Fire Department,§§8-14 ---8-16

ARTICLE I. IN GENERAL

Section 8-1. Burning trash within the town prohibited.

It shall be unlawful for any person to burn or cause to be burned any trash, refuse, shavings, paper, leaves, litter or other material of any kind outside any house, or on any street, sidewalk, alley, lot or yard, within the corporate limits.

Section 8-2. Lots to be kept free from fire hazards.

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

Section 8-3. False fire alarms.

It shall be unlawful for any person to give any false alarm of fire, by means of the fire alarms system or otherwise.

State law reference-- Giving false fire alarms, G.S. 14-286.

Sections 8-4. through 8-13. Reserved

ARTICLE II. FIRE DEPARTMENT

State Law References -- Authority to appoint chief and employ firemen, G.S. §160A-291

Section 8-14. Designated

The fire department of Biltmore Forest shall consist of ten (10) members, who shall also serve as policemen, plus thirty (30) volunteer firemen.

Section 8-15. Training sessions

Each salaried member of the fire department shall attend a training school provided by the State once each year. All expenses incurred by each member of the fire department attendant to such school shall be reimbursed and each member shall receive regular salary while in attendance.

Section. 8-16. Uniforms and equipment.

All uniforms and equipment necessary to members of the fire department in the performance of their duties shall be furnished by the town.

CHAPTER 9

REGULATION OF SOLID WASTE

State Law Reference--Authority of town to regulate removal of garbage and trash. G. S. 160A-192.

Section 9-1 Definitions

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

- (1) **Building Material Scraps.** Scrap building material from, the construction, reconstruction, remodeling, or repair of a building, walkway, driveway, sign and or 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 containers or wrappings therefore.
- (2) **Bulky Waste.** Large items of Solid Waste such as furniture, White Goods, large auto parts, stumps, and other oversize wastes whose large size precludes or complicates its handling by normal solid waste collection, processing, or disposal methods.
- (3) **Collection.** The act of removing Solid Waste or Recyclable Material to a transfer station, processing facility, or disposal facility. For the purposes of this Chapter any collection receptacles or containers located on Town property are considered to be in the stream of collection.
- (4) **Garbage.** Animal and vegetable matter resulting from the handling, preparation, cooking, and consumption of food, in cans, glassware, or other containers, rags, waste paper, includes all Putrescible Wastes but excludes sewage and human waste.
- (5) **Hazardous Waste.** A Solid Waste or combination of Solid Wastes, including liquid or gaseous wastes, which, because of its quantity, concentration, or physical, chemical, or infectious characteristics may;
 - (a) Cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness; or
 - (b) Pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed.
- (6) **Medical Waste.** Any Solid Waste that is generated in the diagnosis, treatment, or immunization of human beings or animals, in research pertaining thereto, or the production of biologicals.
- (7) **Mixed Paper.** Envelopes, catalogs, bulk mail, magazines, computer paper, copy paper, file folders, phone books, gray cartons, adding machine tapes, letters, scratch

pads, soft-covered books and other material as defined by the Director of Public Works.

- (8) Pathological Waste. Human tissues, organs, and body parts, and the carcasses and body parts of any animals that were known-to have been exposed to pathogens that are potentially dangerous to humans during research, were used in the production of biologists or in vivo testing of pharmaceuticals, or that humans died with a known or suspected disease transmissible to humans.
- (9) Putrescible. Solid Waste capable of being decomposed by microorganisms with sufficient rapidity as to cause nuisances from odors and gases; such as kitchen wastes, offal, and animal carcasses.
- (10) Recycle, Recyclables or Recyclable Material. Those materials or that process by which Solid Waste, or materials which would otherwise become Solid Waste, are collected, separated or processed or returned to use in the form of raw materials or products.
- (11) Refuse. Solid Waste that is non-Putrescible Waste collected from residences.
- (12) Sharps. Needles, syringes, and scalpel blades
- (13) Solid Waste. Garbage Refuse including "Solid Waste" materials resulting from residential and business activities, but does not include solids or dissolved materials in domestic sewage or other significant pollutants in water resources, such as silt, dissolved materials in irrigation return flows or other common water pollutants.
- (14) White Goods. Inoperative and discarded refrigerators, ranges, water heaters, freezers and other similar domestic and commercial large appliances.
- (15) Yard Trash. Solid Waste consisting solely of vegetative matter resulting from landscaping maintenance. Includes grass clippings, leaves, sod, tree limbs and weeds.

Section 9-2 Littering.

The ordinance provides that it shall be unlawful for any person to throw or deposit upon any street or street right-of-way (except as set forth in Section 9-7), or upon any private property, any rocks, bricks, lumber, sawdust, bottles, jars, broken glass, or any plastic or paper bags, cups or paper of any kind, or any trash, leaves, dirt, rubbish or any thing that may be unsightly or offensive or that may, in any way, be dangerous to traffic.

Section. 9-3 Construction Debris.

All Refuse, lumber and debris remaining as a result of the repair of a building or the erection and completion of a new building shall be removed by the property owner within ten (10) days from the date of completion of said work.

Section. 9-4 Materials Resulting from Clearing Land.

No materials such as trees, shrubbery, or underbrush resulting from land being cleared shall be placed for collection by the Town, but such materials shall be disposed of by the contractor or builder. In the event the contractor or builder fails to remove such material, the removal thereof shall be the responsibility of the owner of the property.

Section. 9-5 Garbage Collection

- (1) Garbage shall be collected in the back yard of the resident. Collection of garbage shall be made by the Town on a regular basis. A schedule of such times and routes of collection shall be posted in the Town Hall and may be changed from time to time as may be necessary in the discretion of the Director of Public Works and Town Administrator.
- (2) It shall be unlawful for any person to place or deposit at any location within the corporate limits of the Town for collection by the Town any Solid Waste of any type that was generated outside the corporate limits of the Town.
- (3) It shall be unlawful for any owner or occupant of any residence, dwelling unit, business or commercial premise to allow any person to place or deposit for collection by the Town any Solid Waste of any type which was generated outside the corporate limits of the Town.

Section. 9-6 Garbage Receptacles

Garbage receptacles shall be cans made substantially of metal, plastic, or plastic bags. Cans shall have tight-fitting covers and strong handles and the covers shall be kept on at all times except when cans are being filled or emptied. Plastic bags shall be properly secured at the bag opening with a twist tie or other means to eliminate any spillage of contents. Containers shall not exceed thirty-two (32) gallons or exceed fifty pounds in weight. Each household may have up to five (5) garbage receptacles. Garbage can shall not be located behind closed fences, inside closed buildings, or in any other inaccessible place. Garbage from dumpsters shall not be collected by the Town.

9-7. Tree Limbs. Brush. Leaves. Etc.

- (1) All trees or portions thereof to be picked-up shall be cut up and reduced in lengths so that no portion shall be more than six feet in length. Limbs shall be no greater than six inches in diameter (distance through the limb). All limbs shall be cut from the main body of any limb or trunk. All such materials shall be neatly piled with the

length of such items substantially parallel to the street. One dump truck load of limbs and brush shall be allowed each resident per two months without additional charges. Should the volume exceed one dump truck load, a fee will be charged for each two (2) cubic yards or any portion thereof. A fee of \$50.00 per two (2) cubic yards will be charged when limbs and brush have exceeded one dump truck load in a two-month period.

- (2) Loose leaves shall be collected at roadside by Town forces from November 1 through January 15. Leaves shall be free of sticks, rocks, and other debris, and not placed in plastic bags.
- (3) Tree limbs and brush shall not be placed at roadside more than five days prior to the collection date.
- (4) Limbs and brush shall not be placed at roadside from November 1 through January 15.
- (5) Removal of limbs, brush, and debris of all types resulting from work of commercial tree services shall be the responsibility of the property owner, and not the Town.

9-8. Placement of Limbs. Brush. and Leaves. Etc.

Limbs, brush, and leaves shall be placed by occupant upon that portion of residents' property immediately adjacent to the street right-of-way normally used by vehicles but at least three feet off of the pavement.

Section 9-9. Grass Clippings.

The Town strongly discourages the deposit of grass clippings within the street rights of way adjacent to residences. However, should an occupant of a residence place grass clippings within the street rights of way, the Town may remove said grass clippings and, if so removed, shall bill the owner of said residence a flat fee of \$150.00.

Section. 9-10. Fee Schedule.

The following fees shall be charged and collected by the Town:

FEE SCHEDULE

1. Collection of limbs and brush in excess of one dump truck per two months, \$50.00 fee per two (2) cubic yards.
2. \$100.00 fee per dump truck load.
3. \$25.00 fee for limbs and brush placed at roadside seven days prior to scheduled pickup.

4. \$150.00 flat fee for disposal of grass clippings
5. \$25.00 fee for placement of limbs, brush, and leaves in a location other than the street right-of-way immediately adjacent to the front of the residents' property.
6. \$100.00 fee for collection of construction debris or other items not collected by the Town in addition to \$10.00 fee per each two (2) cubic yards or any portion thereof collected.

Solid Waste collection fees shall be billed on the same billing as water and sewer fees. Any payment made on said bill shall first be applied to the payment of solid waste collection fees, water service fees, sewer fees and finally to water fees.

Where such an accumulation exists for any reason, the Town may summarily remove, abate, or remedy such accumulation and the expense of the action shall be a lien upon the land or premises and shall be collected as unpaid taxes.

Section. 9-11 Refuse Not Collected by the Town

1. *Asbestos
2. Ashes
3. Batteries
4. Bedding
5. Building Materials
6. Flammable Materials
7. *Gas Tanks
8. *Hazardous Waste
9. *Liquids
10. Materials Resulting from Clearing Land
11. Medical Waste
12. Paint
13. Pathological Waste
14. Rocks
15. Sharps
16. Tires
17. White Goods

*Denotes refuse not accepted by the Buncombe County Landfill. Asbestos not accepted unless prior arrangement with Buncombe County Landfill personnel.

Section. 9-12. Accumulation of Garbage, Refuse, Rubbish and Waste Prohibited.

No property owner or tenant shall allow the accumulation of garbage, refuse, rubbish, or waste upon land or premise owned or occupied by them so that such accumulation is dangerous or prejudicial to the public health.

Where such an accumulation exists for any reason, the Town may summarily remove, abate, or remedy such accumulation and the expense of the action shall be a lien upon the land or premises and shall be collected as unpaid taxes.

Section 9-13. Recycle, Recyclables and Recyclable Material

- (1) Recycling Encouraged. Each person who owns, leases or manages a residence, residential unit or place of business, industry, commerce or other place providing goods or services, or institution, church, camp or school is strongly encouraged to remove Recyclable Materials from Solid Waste generated and make them available for recycling.
- (2) Recyclable Materials. Recyclable Material shall consist of the following items and shall be prepared for recycling, prior to deposit in the Town's recycling containers, as directed:
 - (A) Glass. [All brown, clear and green container (bottles and jars) glass.]
 - (B) Aluminum beverage and bimetal (tin or steel) food cans.
 - (C) Plastic containers No.1 PETE (soda containers) and No. 2 HDPE (milk and shampoo containers) and Nos. 3, 5 and 7 (mixed plastic).
 - (D) Corrugated containers and cardboard. Must be flattened.
 - (E) Newspapers. May be bundled with string or left loose. Inserts may remain.
 - (F) Mixed Paper. See definition.
- (3) It shall be unlawful for any person to place or deposit at the Towns recycling containers any recyclable material unless all such material can fit entirely within the appropriate container.
- (4) It shall be unlawful for any person to place or deposit in the Towns recycling containers any recyclable material of any type that was generated outside the corporate limits of the Town.
- (5) No person, other than persons authorized by the Town, may remove Recyclable Material from a recycling container.

Section 9-14. Notice of Non-Compliance.

The Town utilizes red tags to inform residents of receptacles that are not in compliance. A letter of warning shall be given on the first occasion of placement of tree limbs and brush more than five days prior to the date of collection.

9-15. Penalties

- a. Any willful and knowing refusal to pay fees assessed in this Chapter shall subject the offender to a civil penalty in the amount of fifty dollars (\$50.00) payable to the Town as law provided.
- b. Violation of this ordinance shall constitute a misdemeanor for each day such violation occurs and subject the violator of the ordinance to a fine of fifty dollars (\$50.00) or thirty (30) days imprisonment or both for each violation of the ordinance.

CHAPTER 10

HEALTH AND SANITATION

Section. 10-1. Abatement of nuisances.

- (a) Whenever a nuisance shall exist on any premises in the town, the chief of police or the county health officer shall give notice to the owner or occupant of the premises of the existence of the nuisance and shall direct that the nuisance be abated. It shall be unlawful for any person receiving a notice to abate a nuisance, given pursuant to this section, to fail to start abatement of the nuisance within twenty-four (24) hours after such notice.
- (b) In the event the owner or occupant of the premises shall fail to abate a nuisance on his premises after having been given notice pursuant to subsection (a), the town may abate the nuisance and the costs of abatement shall be certified to the tax collector and collected as taxes.

State law reference--Abatement of public health nuisances, G. S. §160A-193.

Section. 10-2. Stagnant water.

It shall be unlawful for any person to allow stagnant water to accumulate or stand in ponds, holes, ditches, vats or otherwise upon any lot or premises so as to be detrimental to health. Such stagnant water shall be subject to abatement as a nuisance as provided in section 10-1.

Section. 10-3. Obstruction of natural drainage.

No person shall erect any dam or obstruction of any kind which shall prevent the natural flow of water or which shall cause the same to be collected or dammed in a pool or pools upon any lot in the town, or upon any street, road or alley; nor shall they do or cause to be done any work, the effect of which will cause the formation of such pool or pools. Provided, however, that nothing in this section shall prevent the owner or owners of any lot or lots from filling up the same as may be found desirable if adequate drainage is provided through or across the same to care for the surface water that may be collected or diverted from its natural flow.

Section. 10-4. Cleanliness of premises

Owners or occupants of premises shall be required to keep such premises free from noxious weeds, trash or any other form of refuse which may be dangerous or detrimental to the public health or which may be unsightly. Proper maintenance requires that grass and weeds are to be cut neatly as reasonably required. Areas, such as decks, porches, yards and play areas, etc., that are in view of neighboring property or in view from the streets, shall be maintained and arranged in an orderly open, uncluttered manner, utilizing furniture and

appointments appropriate to the area. Failure to comply with this provision shall constitute a misdemeanor and shall also be subject to abatement as a nuisance as provided in section 10-1.

Section. 10-5. Removal of dead animals.

It shall be the duty of the owner to remove any dead animal from the town within eight (8), hours.

Cross reference--Animals and Fowl, Ch. 4.

State law reference--Removal of dead animals and fowl, G. S. §106-403.

MOTOR VEHICLES

Cross Reference--Traffic, Ch. 17; Streets and Sidewalks, Ch. 15.

Section. 11-1. Leaving ignition keys in unattended vehicle.

No person driving or in charge of a motor vehicle shall permit it to stand unattended in any public place or parking lot without first stopping the engine, locking the ignition, removing the ignition key from the vehicle, effectively setting the brakes and, when standing on any grade, turning the front wheels to the curb or side of the highway.

Section. 11-2. Driving unsafe vehicles.

It shall be unlawful for any person to drive on the streets of the town any vehicle or combination of vehicles which is in such unsafe condition as to endanger any person or property.

Section. 11-3. Improperly equipped vehicles.

No automobile or motor vehicle shall be operated on the streets of Biltmore Forest unless the same shall be equipped with all necessary equipment to make the vehicle safe. This shall include an adequate muffler, properly installed to prevent unnecessary noise.

Section. 11-4. Weight limitation permit required.

No person shall operate a motor vehicle upon the streets of Biltmore Forest when the gross weight of such vehicle exceeds forty thousand (40,000) pounds, or which is of the tractor-trailer type, unless a permit is issued. If it is necessary for such a vehicle to enter Biltmore Forest for the purpose of loading or unloading, then the operator of such vehicle shall apply to the chief of police or other designated officer who, upon showing the necessity of such entry shall issue a permit therefore.

CHAPTER 12

OFFENSES AND MISCELLANEOUS PROVISIONS

Section. 12-1. Firearms and Other Weapons.

No person shall shoot, discharge, or release within the Corporate Limits any firearms, spring-propelled devices or guns, including a bow, which discharges sharp pointed arrows designed to penetrate. This Section shall not apply to any law enforcement officer or representative of any governmental unit charged with the duties of protecting life or property or enforcing laws and regulations, and while engaged in the performance of official duties. It is further provided that this section shall not apply in defense of life.

However, for promoting public health, safety and welfare of the Town, this section shall not preclude the discharge of weapons listed above for the purpose of taking wildlife by Town of Biltmore Forest law enforcement officers or persons designated by the Town for this purpose pursuant to any depredation permit issued by the North Carolina Wildlife Resources Commission.

Section 12-2. Sounds Impacting Residential Life.(amended November 12, 2006)

As a means of controlling and reducing noise levels in Biltmore Forest, all construction activities and property maintenance, including delivery of worker's material, machinery or equipment to or from a work site, must be conducted from 7:30 a.m. until 6 p.m. on Monday thru Saturday. Such activities are prohibited on Sundays, New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day. These restrictions apply on all properties within the Town except for clubs.

Should conditions on any property within the Town occur that have the potential of injury or damage to persons or property during prohibited hours, persons in charge, or involved in such matters, shall contact the Town's police officer in charge, present the problem, and seek permission to take appropriate action.

Any sound from radio, music or other noises are not permitted to the extent that they disrupt the quiet enjoyment of property.

Section. 12-3. Offenses Against the Public Peace.

It is intended by this Section to prohibit the Commission of and to provide punishment pursuant to Section 1- 7 of this Code for the following acts:

- 1) Disturbing the peace;
- 2) Resisting arrest, and resisting any officer of the Town in the lawful performance of his duties;
- 3) Impersonating any officer of the Town;
- 4) Assembling for the purposes of gambling;
- 5) Committing a breach of the peace;

- 6) Appearing in an intoxicated condition outside the offender's own home;
- 7) Making unusual or unnecessary noises calculated to disturb the peace and good order;
- 8) Violent or boisterous conduct calculated to disturb the peace and quiet of other persons;
- 9) Using profane or obscene language towards others in such manner as to be offensive;
- 10) Committing riotous acts;
- 11) Maliciously interfering with pedestrians or with traffic;
- 12) Indecent acts in the presence of others.

State Law References -Disorderly conduct in public places, G.S. 14-132; profanity, G.S. 14-195; authority to regulate loud noises, G.S. 160A-184.

Section. 12-4 Regulating Solicitors. Peddlers. Hawkers. Itinerant Merchants or Transient Vendors of Merchandise.

No un-invited door-to-door solicitations are allowed in the Town of Biltmore Forest

State Law Reference -Regulation of Solicitation, G.S. 160A-178.

Section. 12.5. No Human Burials Permitted.

There being no existing church cemeteries or duly licensed cemeteries by the State Cemetery Commission, no human body shall be buried inside the corporate limits of Biltmore Forest.

Section. 12-6. Removal of fallen Trees or Limbs.

In the event a tree or limb located on private property falls out onto Town property such as a road, road right-of-way, or public park, the Town shall remove the same, haul it away, and dispose of the same. The property owner shall pay the disposal fee incurred by the Town, but the Town shall bear the costs of clean up and hauling to the disposal site. The property owner shall be solely responsible for cleaning up and disposing of all portions of fallen tree or limb not located on Town property.

Section. 12-7. Permitting the Posting of Signs Prohibiting the Carrying of Concealed Weapons on Certain Municipal Property .

Sub-Section I. Posting of Signs Required.

The Board of Commissioners is hereby authorized and instructed to post conspicuous signage at appropriate locations on or within each park and each building or portion of a building owned, leased as lessee, operated, occupied, managed or controlled by the Town as well as the appurtenant premises to such the building, indicating that carrying a concealed handgun is prohibited therein.

Sub-Section 2. Location of Signs.

Signs on buildings shall be visibly posted on the exterior of each entrance by which the general public can access the building. The Board of Commissioners shall exercise discretion in determining the number and appropriate sign location of signs to be placed on or within appurtenant premises and parks.

Sub-Section 3. Effective Date.

This ordinance shall be effective on and after January 12, 1999.

State Law References -G.S. 14-415.23, G.S. 14-415.11(c), G.S. Chapter 14, Article 54B -Chapter 398 of the 1995 Session laws.

Section. 12-7 Severability; Conflict of Laws.

If this ordinance or application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the ordinance, which can be given separate effect, and to that end the provisions of this ordinance is declared to be severable. All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed.

Section. 12-8 Penalty.

Any person violating the provisions of Chapter 12 shall be guilty of misdemeanor subject to a fine not to exceed Fifty and no/100 Dollars (\$50.00) or imprisonment not to exceed (30) days as provided by G.S. 14-4.

CHAPTER 13

PARKS AND RECREATION

Section.13-1. Destruction. injury to park property.

It shall be unlawful for any person to cut, break, trample, injure, or take any plants, flowers, shrubbery, trees, or vegetation within any municipal park or playground area, or to deface, injure, or remove any benches, seats, playground equipment or any other appurtenances of such parks or playground areas.

Section. 13-2. Riding motorized vehicles in park areas.

It shall be unlawful for any person to ride any motorcycle, go cart or other type of motorized vehicle in any park or playground area except on trails or in areas specifically designated therefore.

Cross reference--Motor vehicles, Ch. 11.

CHAPTER 14

POLICE

State Law Reference--Law enforcement, G. S. §§160A-281 ---160A-289.

Section. 14-1. Police department.

The police department shall consist of a chief and as many policemen as the board of commissioners shall from time to time determine necessary.

State law reference--Authority to appoint and employ, G. S. §160A-281.

Section. 14-2. Character of policemen.

No person shall be appointed as a regular II policeman unless he be of good moral character and habits.

Section. 14-3. Special policemen.

The mayor shall have the power and authority from time to time to appoint such special policemen as he may think necessary for special purposes.

Section. 14-4. Unlawful police calls.

It shall be unlawful for any person to send in a call for a policeman without good reason.

Section. 14-5. Hampering an officer.

It shall be unlawful for any person to obstruct, oppose, menace or seek to intimidate any police officer engaged in the performance of his duty.

CHAPTER 15

STREETS AND SIDEWALKS

Cross References --Authority to regulate travel on public streets during civil emergencies, 6-6; littering, 9-1; motor vehicles, Ch. 11; Traffic, Ch. 17.

State Law Reference --General authority relative to establishment and control of streets and sidewalks, G.S. 160a-296.

Section 15-1. Protection of parkways.

It shall be unlawful for any person to willfully destroy, injure, mutilate, carry away, break, or in any manner deface any tree, shrub, plant, grass or other property of any kind within or upon any of the roads, streets, public grounds or parkways of Biltmore Forest, nor shall any person allow any animal or pet belonging to him or in his charge to injure any such property.

It shall further be unlawful for any person to allow any animal or to drive any vehicle upon any of the grass or grass-plots along the roadways and streets.

Section. 15-2. Signs and posters.

Except as set forth herein, no sign of any kind, including posters, advertisements, billboards, announcements, etc., shall be erected by any person in any, district zoned R-1, R-2, R-3, R-4, or R-5 unless prior approval of the sign and its intended location are first obtained from the Board of Commissioners. Any sign erected in violation of this Section shall be promptly removed by the police department. Also, any sign allowed to remain for an unreasonable length of time may be removed by the police department.

Section 15-2 Signs and Poster to read as follows:

Subsection 1.

No person, either as owner or real estate agent, shall post any sign on any residential lot to advertise the same for sale or rent or for any other purpose, except as follows:

- (a) One sign per lot, not to exceed six (6) square feet in size, not to contain any electrical component and not to be lighted in any way.
- (b) If the sign is posted by a real estate agency, the wording shall be limited appropriately to indicate that the property is for sale or rent and the name and telephone number of the agency, the listing firm website, the Multiple Listing Service number, texting code or individual website assigned to the home for sale.

- (c) If the sign is posted by an owner, the wording shall be limited to appropriately indicate that the property is for sale or rent, the name of seller, if so desired, and a telephone number, and individual website assigned to the home for sale.
- (d) Wording shall be the same on both sides of the sign if both sides are exposed to the roadway.
- (e) The only sign, per subsection 1(a) above, shall be set back at least thirty (30) feet from the nearest edge of the pavement of the public road on which the house fronts or faces and in no event shall the sign be located within any public road right of way.
- (f) No portion of the sign shall extend more than four (4) feet above the ground.
- (g) The sign shall be removed no later than three (3) days after a sales contract is signed on the property advertised for sale by such sign.
- (h) If a sign is for commercial use in the R-4 or R-5 Residential Zoning District and does not comply with the regulations above, application is to be made to the Board of Commissioners for approval.

Subsection 2.

On any residential lot on which construction has begun by a general contractor neither the general contractor nor the owner of the residential lot shall post nor permit to be posted more than one sign in addition to any sign required by law to be posted (i.e., building permits, etc.)

The general contractor may place one sign on the residential lot on which construction has begun which sign shall not exceed six (6) square feet in size and shall be limited in wording to the street number or address of the property and the name, address and telephone number of the general contractor. The general contractor's sign shall also be subject to the provisions of subparagraphs 9a), (d), (e) and (f) of Subsection 1 above. The general contractor's sign shall be removed from the property not later than three (3) days from the completion of construction by the general contractor or occupancy by the owner of the property being constructed, whichever first

Subsection 3.

Political signs are allowed on any residential lot prior to a primary election, general election or referendum provided the signs are erected as follows:

- a. Signs may be posted thirty (30) days prior to the day of an election, and removed within five (5) days after the day of the election.
- b. Four (4) signs are permitted per lot, with each sign representing one candidate, or one issue if a referendum.

- c. Each sign shall not exceed four (4) square feet in size, and not contain any electrical component or lighted in any way.
- d. Wording shall be the same on both sides of the sign if both sides are exposed to the roadway.
- e. The sign shall be set back at least twenty (20) feet from the nearest edge of the pavement of all public roads on which the house borders, and in no way shall signs be located within the public right-of-way.
- f. No portion of the sign is to extend more than four (4) feet above the ground.
- g. A sign located on private property requires the owner's approval.
- h. The property owner shall be fined if the signs are not removed within five (5) days of an election or referendum.

Subsection 4.

On any lot occupied by a business in the R-4 and R-5 Districts on-premise signs are allowed provided the following definitions and permit requirements are met.

Definitions

1. *Attached sign* -Any sign attached to, applied on, or supported by the front wall or wall facing street of a building.
2. *Clearance* -the vertical distance from the established finished grade to the lowest edge of the sign.
3. *Development Identification Sign* -A sign bearing only the name of the multiple tenant development.
4. *Erect* -To construct, build, raise, assemble, install, place, replace, locate, affix, attach, display, alter, use, create, paint, draw, illuminate, or in any other way bring into being or establish.
5. *Freestanding Pole Sign* A sign which is permanently affixed to the ground by a pole or other structure and which is not part of the building.
6. *Grade* -The lowest point at which a sign is attached to the ground.
7. *Ground Sign* A Freestanding sign flush to the ground and not elevated upon poles or stanchions and not attached to the building.

8. *Height* -The vertical distance between the highest part of the sign or its supporting structure, whichever is highest, and the base of the sign at grade.
9. *Internally Illuminated* Any sign designed to provide artificial light either through exposed lighting on the sign face or through transparent or translucent material, from a light source within the sign.
10. *Lot* -A parcel of land occupied or capable of being occupied by a building or group of buildings devoted to a common use.
11. *Multiple Tenant Development* A development in which there exists a number of individual or separate activities and in which there are appurtenant-shared facilities {such as parking areas).
12. *Nonconforming Sign* Any sign, which was allowed when, erected or displayed but which does not conform with the standards of this subsection and any sign, which was not allowed, but was nonetheless impermissibly created or displayed before the effective date of this subsection.
13. *On Premise Sign* Any sign used for the purpose of displaying advertising, identifying, or directing attention to a business, products, operations or services sold or offered on the lots where the sign is located.
14. *Setback* The horizontal distance between the leading face of the curb of a street and the closest point of a sign or sign structure on such lot. Where there is not a curb, the measurement shall be made from the edge of the pavement.
15. *Sign* Any words, lettering, numerals, parts of letters or numerals, figure, phrases, sentences, emblems, devices, designs, trade names or trade marks by which anything is known, made of any material, except live vegetation, including any surface, fabric, or other material background structure designed to carry such devices, as are used to designate or attract attention.
16. *Sign Structure* Any structure, which supports, has supported or is capable of supporting a sign.
17. *Single Tenant* A single business establishment, activity or use.
18. *Wall Sign* Any sign painted or attached flat against and parceled to the exterior wall or surface of a building or other structure and/or which projects from the wall or surface.
 - a) On-premise Single Tenant Signs -Allowed within the R-4 and R-5 zoning district may be either: Freestanding: Pole or Ground or Attached: Wall

Two (2) business identification signs are allowed per lot, only one (1) of which shall be a free standing Or ground sign. For freestanding or attached signs, the total allowable area per face of selected sign(s) shall not exceed forty (40) square feet per face, with two (2) faces per freestanding or ground sign allowed. In the event the free standing sign is less than the forty (40) square feet per face allowed, the size of the attached sign erected may be increased by that difference. Signs may be internally or externally illuminated.

Additionally, the following requirements must be met based on the type of sign selected:

If freestanding pole or ground: The sign shall be a maximum of eight (8) feet in height with a minimum setback of ten (10) feet.

If wall: Maximum projection from a wall shall be six (6) inches.

- b) On-Premise Multiple Tenant development signs allowed within the R-4 and R-5 zoning district may be either: Freestanding: Pole or Ground attached or Wall.

For a multiple tenant development, the development itself is allowed one (1) identification sign. For a freestanding sign, the total allowable area per face of selected sign shall not exceed sixty (60) square feet with two (2) faces per freestanding or ground sign allowed. If freestanding pole or ground: the sign shall be a maximum of twenty (20) feet in height and minimum setback of fifteen (15) feet. Individual tenants within the development shall be allowed one attached wall sign not to exceed ten (10) square feet, and at the due discretion of the Board of Commissioners, not more than two, not to exceed ten square feet. The maximum projection from a wall shall be six (6) inches.

Subsection 5.

The owner of a residential lot and the real estate agent placing a real estate sign on the residential lot shall each be responsible for any violation of subsection 1 of this ordinance and the owner of the residential lot and the general contractor shall be responsible for any violation of Subsection 2 of this ordinance. The owner of the business establishment erecting a sign shall be responsible for violation of Subsection 3 of this ordinance.

Subsection 6.

Violation of this ordinance shall constitute a misdemeanor for each day such violation occurs and subject to the violator of the ordinance to a fine of fifty dollars (\$50.00) or thirty (30) days imprisonment or both for each violation of the ordinance

Subsection &. Any sign removed by the police department for violation of this ordinance shall be disposed of by the police department within ten (10) days from the date the sign is removed from the residential lot unless the residential lot owner, real estate agent or general contractor, as the case may be, claims said sign within the ten (10) day period.

Subsection 7.

Any and all ordinances in conflict with this ordinance are hereby repealed.

Subsection 8.

This ordinance was duly adopted by the Board of Commissioners of the Town of Biltmore Forest on the 15th day of September 1987 and shall become effective on the 1st day of October 1987. This ordinance as amended on December 18, 1990, shall become effective on the 1st day of January 1991. This ordinance as amended on July 9, 2002, shall become effective on the 1st day of September 2002.

Section 15-3 Destruction of street signs.

It shall be unlawful for any person to remove or cause to be removed, or to mutilate, deface, destroy, or injure in any manner any road or street sign located in Biltmore Forest.

Section. 15-4. Construction of private drives; permit

No private drive or entrance way shall be constructed upon any public street or road shoulder in Biltmore Forest without adequate provision through or under said way to preserve the pre-existing flow and drainage of surface water along the margin of the street or road affected.

Before constructing or causing the construction of any drive or entrance way upon a public street or road shoulder, the owner of the lot or lots to be served thereby shall notify the Town Clerk in writing and the Clerk shall issue, to the owner a permit for such construction when the same complies with the requirements of this section.

Private driveways and entrance ways constructed within the Town Right-of-Way shall be constructed of stone base or asphalt, and any damages or disturbance of same resulting from maintenance or installation of underground facilities located in said Right-of-Way shall be repaired or replaced by the Town or other entity causing the damage. Such repair or replacement of existing drive ways or entrances or curbing or obstructions constructed of concrete, brick pavers, or similar materials shall be the sole responsibility of the property owner. The construction of curbing or obstructions across the Town Right-of-Way is prohibited.

- a) No person, firm, corporation, governmental body or agency shall construct or cause to be constructed any drive or entrance way upon or connecting to any public street or

road shoulder in the Town of Biltmore Forest which drive or entrance way shall serve or be designed to serve dwelling(s), residence(s), building(s), business (es) or separately platted lot(s), or any area, without first receiving written permission from the Biltmore Forest Board of Commissioners. This Ordinance shall not, however, apply to those applicants who receive driveway entrances by obtaining a Certificate of Zoning Compliance for a new residence. The Board may grant or deny permission or may grant permission upon such terms as it, in its discretion, deems reasonably necessary to protect the best interest of the Town.

- b) In determining whether or not to grant permission and if granted, under what conditions the Board may consider and employ the provisions of G.S. 160 A-11, 160A-174, 160A-296, 160A-367, 160A-300, 160A-307, and 160A-372 and all other applicable statutes now or hereafter enacted by the North Carolina General Assembly.
- c) Violation of this ordinance shall constitute a misdemeanor for each day such violation occurs and subject the violator of the ordinance to a fine of Fifty Dollars (\$50.00) or thirty (30) days imprisonment or both for each violation of the ordinance.

Section 15-5. Hauling building materials and construction debris

It shall be the responsibility of the owner of any lot or lots where construction is taking place to have all construction debris removed from the site and to insure that any building materials and construction debris which may be dropped on the streets or other public ways is cleaned up and taken away.

In the event it becomes necessary for the town to remove such building materials or debris, the costs incident to such removal shall be assessed against the owner of the property where such construction is taking place.

Section. 15-6. Permit Required for cutting, excavating under, or boring within roadway of Biltmore Forest.

No person, firm, corporation, governmental unit, water or sewer authority, or public or private utility shall cut or excavate under, bore under, or in any way damage, any roadway owned or maintained by the Town of Biltmore Forest without first obtaining the written permission from the Town Chief Administrative Officer. Any applicant for such permission shall file a written application, stating the reason for the cut or excavation, and the proposed location of same, the length of time required to complete the project, and shall restore the roadway to its original condition. Wherever boring under the roadway surface can be done without unreasonable expenses as determined by the Town's Chief Administrative Officer, such boring, rather than roadway cut, shall be used.

On receipt of an application the Town's Chief Administrative Officer shall consult with, and obtain the advice of The Director of Public Works before granting written permission, or imposition of any conditions or limitations on such permission. This Ordinance shall not

apply to any act or project under the direction of the Director of Public works of the Town of Biltmore Forest.

The violation of this Ordinance shall constitute a misdemeanor.

CHAPTER 16

TAXATION

State Law References--Authority to impose taxes, G. S. §160A-206; remedies for collecting taxes, G. S. §160A-270; special assessments, G. S. §160A-216 ---160A-236.

Section. 16-1. Tax rate.

The tax rate of the town shall be set from time to time by the board as provided by law and hall remain posted on the bulletin board of the town hall.

Section.16-2. Tax levy to conform to state law.

No property within the limits of the town shall be free from taxes except such property exempted by the state constitution. State law references--Machinery act, G. S. §105-271; property taxes, generally, G. S. §160A-209.

CHAPTER 17

TRAFFIC

Cross References--Police, Ch. 14; Streets and Sidewalks, Ch. 15.
State Law References--Operation of vehicles and rules of the road, G. S. Ch. 20; authority of cities relative to traffic, G. S. §§20-169, 160A-300.

Art. I. In General, §§17-1 ---17-29

Art.11. Operation of Vehicles, §§17-30 -- 17-46

Art.111. Stopping, Standing and Parking, §§17-47 ---17-61

Art. IV. Traffic Control Devices, §§17-62 ---17-67

ARTICLE I. IN GENERAL

Section. 17-1. Definitions.

The following words and phrases when used in this chapter shall have the meaning respectively ascribed to them, except in those instances where the context clearly indicates a different meaning.

Authorized emergency vehicle. Vehicles of the fire department, police vehicles, and such ambulances designated or authorized by the chief of police.

Motor vehicle. Every vehicle, which is self-propelled, and every vehicle, which is propelled by electric power obtained from overhead trolley wires, but not operated upon rails.

Vehicle. Every device in, upon or by which any person or property is or may be transported or drawn upon a highway, except devices moved by human power or used exclusively upon stationary rails or tracts; provided, that for the purpose of this chapter, a bicycle or a ridden animal shall be deemed a vehicle.

Traffic. Pedestrians, ridden or herded animals, vehicles, street cars and other conveyances either singly or together while using any street for the purpose of travel.

Right-of-way. The privilege of the immediate use of a roadway.

Stop when required. The complete cessation of movement.

Stop or stopping when prohibited. Any stopping of a vehicle except when necessary to avoid conflict with other traffic or in compliance with the direction of a police officer or traffic control sign or signal.

Standing. Any stopping of a vehicle, whether occupied or not.

Park. The standing of a vehicle, whether occupied or not, otherwise than temporarily for the purpose of and while actually engaged in loading, or unloading.

Official time standard. Whenever certain hours are named herein they shall mean standard time or daylight savings time as may be in current use.

Driver. Every person who drives or is in actual physical control of a vehicle.

Pedestrian. Any person afoot.

Street or highway. The entire width between property lines of every way or place of whatever nature when any part thereof is open to the use of the public, as a matter of right, for the purpose of vehicular traffic.

Private road or driveway. Every road or driveway not open to the use of the public for purposes of vehicular travel.

Roadway. That portion of a street improved, designed, or ordinarily used for vehicular travel.

Sidewalk. That portion of a street between the curb lines, or the lateral lines of a roadway, and the adjacent property lines intended for the use of pedestrians.

Intersection. The area embraced within the prolongation of the lateral curb lines or if none, then the lateral boundary lines of two or more highways which join one another at an angle whether or not one such highway crosses the other.

Block. A portion of any street located between two (2) intersections next adjacent to each other.

Crosswalk. (1) That portion of a roadway ordinarily included within the prolongation or connection of the lateral lines of sidewalks at, intersections. or (2) Any portion of a roadway distinctly indicated for pedestrian crossing by lines or other markings on the surface.

Safety zone. The area or space officially set apart within a roadway for the exclusive use of pedestrians and which is protected or is so marked or indicated by adequate signs as to be plainly visible at all times while set apart as a safety

Official traffic signals. Any device, whether manually, electrically or mechanically operated, by which traffic is alternately directed to stop and to proceed.

Residential district. Any area not comprising a business district and which is mainly occupied by dwellings or by dwellings and buildings in use for business.

Cross reference--General definitions and rules of construction, §1-2.

State law reference--Similar definitions, G. S. §20-38.

Section. 17-2. Required obedience to traffic regulations.

It is a misdemeanor for any person to do any act forbidden or to fail to perform any act required in this chapter.

Section. 17-3. Obedience to police

No person shall willfully fail or refuse to comply with any lawful order or direction of a police officer.

Cross reference--Police, Ch. 14.

Section. 17-4. Public employees to obey traffic regulations.

The provisions of this chapter shall apply to the driver of any vehicle owned by or used in the service of the United States government, this State, county or town, and it shall be unlawful for any said driver to violate any of the provisions of this chapter, except as otherwise permitted in this chapter or by State statute.

Section. 17-5. Authority of police in special cases.

In the event of a fire or other emergency or when necessary to expedite traffic or safeguard pedestrians, police officers may direct traffic as conditions may require, notwithstanding the provisions of this chapter.

Cross references--Civil Emergencies, Ch. 6; Fire Protection and Prevention, Ch. 8.

Section. 17-6. Exemptions to authorized emergency vehicles.

- a) The provisions of this chapter regulating the operation, parking and standing of vehicles shall apply to authorized emergency vehicles as defined in section 17-1, except as follows:

A driver when operating such vehicle in an emergency, except when otherwise directed by a police officer may:

1. Park or stand, notwithstanding the provisions of this chapter;
2. Proceed past a red or stop signal or stop sign, but only after slowing down as may be necessary for safe operation;
3. Exceed the prima facie speed limits so long as he does not endanger life or property;
4. Disregard regulations governing direction of movement or turning in specified directions so long as he does not endanger life or property.

- b) The foregoing exemptions shall not, however, protect the driver of any such vehicle from the consequences of his reckless disregard for the safety of others.

Section. 17-7. Zone of quiet.

Whenever authorized signs are placed, erected or installed indicating a zone of quiet, it shall be unlawful for any person operating a motor vehicle within any such zone to sound the horn or other warning device of said vehicle except in an emergency.

Section. 17-8. Play streets.

Whenever authorized signs are placed, erected or installed indicating any street or part thereof as a play street, it shall be unlawful to drive a vehicle upon any such street or portion thereof except drivers of vehicles having residences within such closed area, and then said drivers shall exercise the greatest care in driving upon any such street or portion thereof.

Section. 17-9. School zone.

Whenever authorized signs are placed, erected or installed indicating any street or parts thereof as school zones, all drivers of motor vehicles; and operators of other vehicles using said streets or parts thereof shall exercise the greatest care in driving upon said streets or parts thereof for the protection of children.

Section. 17-10. Push carts, bicycles or animals.

Every person propelling a push cart or riding a bicycle or any animal upon a roadway, and every person driving any animal-drawn vehicle, shall be subject to the provisions of this chapter applicable to the driver of any vehicle, except those provisions of this chapter which by their very nature can have no application.

State law reference--Application to persons propelling push carts, etc.
G. S. §20-171.

Section. 17-11. Riding on handle bars prohibited.

The operator of a motorcycle or bicycle when upon a street shall not carry any person upon the handle bar, frame or tank of any such vehicle, nor shall any person so ride upon any such vehicle.

Section. 17-12. Riding on sidewalks or without hands on handlebars prohibited.

It shall be unlawful to ride a bicycle or motorcycle on any street without having his hands upon the handlebars, or to ride a bicycle upon any sidewalk or walkway.

Section. 17-13. Clinging to moving vehicles.

No person riding upon any bicycle, coaster, sled, roller-skates, skateboards, go-carts, or any toy vehicle shall attach himself or his vehicle to any moving vehicle upon any roadway.

Section. 17-14. Unlawful riding.

It shall be unlawful for any person to ride on any public conveyance or vehicle or any portion thereof not designed or intended for the use of, passengers. This provision shall not apply to employees engaged in the necessary discharge of a duty or to persons riding within truck bodies in spaces intended for merchandise.

Section. 17-15. Boarding or alighting from vehicles in motion.

It shall be unlawful for any person to board or alight from any public conveyance or other vehicle while such conveyance or vehicle is in motion.

Section. 17-16. Persons riding must stay inside.

No person, when riding, shall allow any part of his body to protrude or extend beyond the limits of the vehicle in which he is riding, except to give such signals as by law are required, and it shall be unlawful for any person to hang onto any vehicle whatsoever.

Cross reference--Clinging to moving vehicles, §17-13.

Section. 17-17. Entering, jumping on, or riding vehicles without permission.

It shall be unlawful for any person to jump on or ride any automobile or other vehicle without the consent of the owner or driver.

Section. 17-18. Limitation of number in driver's seat.

It shall be unlawful for the driver or the person in charge of any motor vehicle to permit more than three (3) persons, including the driver, to ride in the front or driver's seat of a motor vehicle.

Section. 17-19. Moving of vehicles into restricted areas.

It shall be unlawful for any person to move a vehicle not owned by him into any prohibited area or away from a curb, such distance as is unlawful.

Section 17-20 Bicyclists to Ride in Single File

All persons operating a bicycle upon a road in Biltmore Forest shall ride in single file only, and as near to the cyclists right side of the road as is reasonably safe under the existing

conditions, and exercising due care when passing a standing vehicle, or being passed by a moving vehicle, or one proceeding in the same direction.

Every person operating a bicycle upon a highway or bikeway shall be subject to the provisions of Article 3, Motor Vehicle Act of 1937, as found in Chapter 20 of the North Carolina General Statutes, except those provisions of such sections of the General Statutes which by their nature can have no application.

All persons operating a bicycle upon a road in Biltmore Forest shall ride in single file only, and as near to the cyclists right side of the road as is reasonably safe under the existing conditions, and exercising due care when passing a standing vehicle, or being passed by a moving vehicle, or one proceeding in the same direction.

Sections 17-21 --- 17-29 Reserved.

TRAFFIC

ARTICLE II. OPERATION OF VEHICLES

Section. 17-30. Vehicles prohibited on sidewalks

It shall be unlawful for the driver of any vehicle to drive upon or within any sidewalk area except as a permanent or temporary driveway.

Section. 17-31 Emerging from private drives.

The driver of a vehicle emerging from a private driveway shall stop such vehicle immediately prior to driving onto a sidewalk or into the sidewalk areas extending across such drive, and upon entering the roadway shall yield the right-of-way to all vehicles approaching on said roadway.

Section 17-32. Limitations on turning around.

No driver shall turn any vehicle so as to proceed in the opposite direction in any street or street intersection, unless the same is clearly marked for such "U" turns.

State law reference -- Turning movements generally, G.S. 20-153.

Section 17-33. Driving through funeral processions.

No vehicle shall be driven through a funeral procession, except fire department vehicles, police patrols, and ambulances, when the same are responding to calls.

State law reference -- Authority to regulate processions, G.S. 20-169.

Section. 17-34. Limitations on backing.

The driver of a vehicle shall not back the same into any intersection or over a crosswalk and shall not in any event or at any place back a vehicle unless such movement can be made in safety, and he shall have given ample warning to those who may be behind him by hand and horn or other signal.

Section 17-35 Speed Regulations

No person shall drive a vehicle on a street or highway in the Town of Biltmore Forest at a speed greater than is reasonable and prudent under the conditions then existing.

Section. 17-35.1. Speed limits on specific street – 35 miles per hour.

No person shall operate a vehicle in excess of thirty-five (35) miles per hour on the following streets in the Town of Biltmore Forest:

Vanderbilt Road, North from the Biltmore Forest Town Hall to the Biltmore Forest Town limits with the City of Asheville.

Section. 17-35.2 Speed limits on specific streets – Twenty-five miles per hour.

No person shall operate a vehicle in excess of twenty-five (25) miles per hour on the following streets in the Town of Biltmore Forest:

Amherst Road, Arboretum Road, Brooklawn Chase, Brookside Road, Browntown Road, Buena Vista Road, Busbee Road, Cedar Chine Road, Cedarcliff Road, Cedar Hill Drive, Chauncey Circle, Deerfield Road, East Forest Road, Eastwood Road, Fairway Place, Fir Tree Lane, Forest Road, Frith Drive, Greenwood Place, Greenwood Road, Hemlock Road, Hilltop Road, Holly Hill Road, Lone Pine Road, Niagara Drive, Park Road, Parkway Road, Ridgefield Place, Southwood Road, Stuyvesant Crescent, Stuyvesant Road, Valley Springs Road, Vanderbilt Road South from Biltmore Forest Town Hall, Westwood Road, and White Oak Road.

State law references --Speed restrictions and authority of town relative thereto, G.S. 20-141; when speed limits not applicable G.S. 20-145.

Section. 17-36 Left Turns

In making left turns at street intersections, all traffic shall travel to the left of the center of said intersections as may be indicated by buttons, markers, or other directing signs.

Sections. 17-37 through 17-46 reserved.

TRAFFIC

ARTICLE III.

STOPPING, STANDING AND PARKING

State law references --Authority of town to designate stop intersections, G.S. 20-158; authority to regulate and limit vehicular parking, G.S. 160A-301.

Section. 17-47. Stopping, standing or parking prohibited in specified places.

It shall be unlawful for any person to stop, stand or park a vehicle except when necessary to avoid conflict with other traffic, or in compliance with the directions of a police officer or traffic control device in any of the following places:

1. On the sidewalk;
2. On a crosswalk;
3. Within an intersection;
4. Within thirty (30) feet of any flashing beacon, stop sign, or traffic control signal located at the side of a street or roadway
5. Underpass approaches. No vehicle shall park on either side of any street approaching a railroad underpass.
6. Grade crossing approaches. No vehicle shall park on either side of any street approaching a grade crossing within fifty (50) feet of the closest rail; provided, that where existing permanent structures are located along the street and closer than fifty (50) feet, parking may be permitted in front of such structures, unless otherwise prohibited, if the said parking does not interfere with the view in either direction of an approaching locomotive or train;
7. Along side or opposite any street excavation or obstruction when such stopping or standing or parking would obstruct traffic;
8. Upon any bridge or other elevated structure or within any underpass structure;
9. Within fifteen (15) feet in either direction of the entrance to a hotel, theater, hospital, sanitarium or any public building;
10. On the roadway side of any vehicle stopped, standing or parked at the edge or curb of a street.

Section 17-48. Vehicles not to obstruct passage.

It shall be unlawful for any vehicle to stand on any street so as to interrupt or interfere with the passage of public conveyances or other vehicles.

Section. 17-49. Stop when traffic obstructed.

No driver shall enter an intersection or a marked crosswalk unless there is a sufficient space on the other side of the intersection or crosswalk to accommodate the vehicle he is operating without obstructing the passage of other vehicles or pedestrians, notwithstanding any traffic control sign to proceed.

Section. 17-50. Vehicles not to stop in streets; exceptions.

It shall be unlawful for any person to stop, a vehicle in any street except for the purpose of parking as prescribed in this chapter in designated areas, unless such stop is made necessary by the approach of fire apparatus, by the approach of a funeral, or other procession which is given the right-of-way, by the giving of traffic signals, the passing of some other vehicle or a pedestrian, or by some emergency; and in any case covered by these exceptions, said vehicle shall not stop so as to obstruct any crossing or street intersection if the same can be avoided.

Cross reference--Driving through funeral processions, §17-33.

Section. 17-51. Parking near fire hydrants or emergency apparatus.

It shall be unlawful for any person to stand, stop or park a motor vehicle, vehicle, push cart or other means of conveyance in any area where such stopping, or parking is prohibited, or within fifteen (15) feet of any fire hydrant or other emergency apparatus, or in any manner wherein such ;(RI'~ parkIng would cause a hazard to persons property. It shall be the duty of every police officer to take immediate steps by whatever means necessary and most expedient to remove any obstruction that might cause a hazard to persons or property within the corporate limits.

Sections. 17-52 --17-61. Reserved.

TRAFFIC

ARTICLE IV.

TRAFFIC CONTROL DEVICES

State Law References--Authority to regulate by means of traffic control devices, G.S. §20-169.

Section. 17-62. Obedience to official traffic control devices.

The driver of every motor vehicle, and any other vehicle shall obey the instructions of any official traffic control device applicable thereto placed in accordance with the traffic regulations in this chapter, unless otherwise directed by a police officer, subject to the exceptions granted the driver of an authorized emergency vehicle in this chapter.

No provision of this chapter for which signs are required shall be enforced against an alleged violator if at the time and place of the alleged violation an official sign is not in proper position and sufficiently legible to be seen by an ordinarily observant person. Whenever a particular section does not state that signs are required, such section shall be effective without signs being placed to give notice thereof.

Section. 17-63. Obedience to no-turn signs and turning markers.

Whenever authorized signs are placed, erected, or installed indicating that no right or left or "u" turn is permitted, it shall be unlawful for the driver of a vehicle to disobey the directions of any such sign, and when authorized markers, buttons or other indications are placed within an intersection indicating the course to be traveled by vehicles traversing or turning thereat, it shall be unlawful for any driver of a vehicle to disobey the directions of such indications.

Section. 17-64. Obedience to no-parking zone and safety zone markers.

Whenever authorized signs or markings are placed, erected or installed indicating no parking zones or safety zones, it shall be unlawful for the driver of any vehicle to disobey the regulations in connection therewith.

Section. 17-65. Traffic control signal legend.,

Whenever traffic is controlled by traffic control signals exhibiting the words "Go" , "Caution" or "Stop" or exhibiting different colored lights successively one at a time, the following colors only shall be used, and said terms and lights shall indicate as follows:

- a) Green alone or "Go"

- i. Vehicular traffic facing the signal may proceed straight through or turn right or left unless a sign at such place prohibits either such turn. But vehicular traffic shall yield the right-of-way to other vehicles and to pedestrians lawfully within the intersection at the time such signal is exhibited.
 - ii. Pedestrians facing the signal may proceed across the roadway within any marked or unmarked crosswalk.
 - b. Yellow alone or "Caution" when shown following the green or "Go" signal.
 - i. Vehicular traffic facing the signal shall stop before entering the nearest crosswalk at the intersection, but if such stop cannot be made in safety, a vehicle may be driven cautiously through the intersection.
 - ii. Pedestrians facing such signal are thereby advised that there is insufficient time to cross a roadway and any pedestrian then starting to cross shall yield the right-of-way to all vehicles.
 - c) Red alone or "Stop"
 - i. Vehicular traffic facing the signal shall stop before entering the nearest crosswalk at an intersection or at such other point as may be indicated by a clearly visible line, and shall remain standing until green or "Go" is shown alone.
 - ii. No pedestrian facing such signal shall enter the roadway unless he can do so safely and without interfering with any vehicular traffic.
 - d) Red with green arrow.
 - i. Vehicular traffic facing such signal may cautiously enter the intersection only to make the movement indicated by such arrow, but shall not interfere with other traffic.
 - ii. No pedestrian facing such signal shall enter the roadway unless he can do so safely and without interfering with any vehicular traffic.

Section. 17-67. Flashing signals.

Whenever flashing red or yellow signals are used they shall require obedience by vehicular traffic as follows:

- i. Flashing red (stop signal). When a red lens is illuminated by rapid intermittent flashes, drivers of vehicles shall stop before entering the nearest "crosswalk" at an intersection or at a limit line when marked, and the right to proceed shall be subject to the rules applicable after making a stop at a stop sign.

- ii. Flashing yellow (caution signal). When a yellow lens is illuminated with rapid intermittent flashes, drivers of vehicles may proceed through the intersection or past such signal only with caution.

CHAPTER 18

UTILITIES

Cross Reference --Buildings and building regulations, Ch. 5.
State Law Reference --Water and sewer authority.
G.S. 162A-1 ---162A-58

Section. 18-1. Tampering with city property.

It shall be unlawful for any person not authorized by the town to tamper with alter or injure any valve on street mains or curb cocks, or any Cut Offs or fixtures or attachments used in connection with the waterworks system of the town. All cut-offs and cut-ons are to be performed by Town Employees.

Section 18-2. Contamination of water supply.

No person shall contaminate or pollute in any way the water supply of the town nor shall they throw any dirt or other foreign substance of any kind into any reservoir containing water for the supply of said town or in any other fountain or source of the town's water supply.

Section. 18-3 Water tap-on fees.

Each person hooking onto the town water supply shall pay an initial tap-on fee of at least \$1,770 for a 1" meter, and at least \$1,500 tap-on fees for 1 1/2" or 2" meters.

In addition to the initial tap on fee, each person shall pay a bi-monthly meter charge as follows:

Meter Size	Bi-Monthly Charge
3/4 inch	.10
1 inch	.18
1 1/2 inch	.50
2 inch	.65

This charge shall be included on the bi-monthly bill for water.

Section. 18-4. Water rates.

Water rates shall be set from time to time by the board of commissioners and such rates shall be posted in the office of the town clerk.

Section 18-41 Minimum Bi-Monthly Charge or Base Rate

The minimum bi-monthly charge, for water service is determined by the size of the meter and is outlined in the rate schedule. Customers shall be charged \$10 per month for each and every water meter on their property regardless of whether the service has been used.

Section 18-42 Seasonal Customers

Seasonal and irrigation meter customers can make arrangements to have the water meter disconnected, by completing a “Request to Disconnect Water Service”.

To reconnect the water meter, customers should complete a “Request to Reconnect Water Service”.

Section 18-50. Scope

The intent of this policy is to provide uniform procedures, rates and charges for providing water and sewer service to the Town's customers that will treat all citizens in a fair and indiscriminate manner

Section 18-51. Original Application

Any person requesting services shall be required to complete an application for services as approved at that time. The requestor will be required to supply social security number or driver's license number, and sign the application in the presence of a Town Finance Office employee or a notary public.

Applications must be received by 12:00 noon to be turned on the next business day. Only the primary tenant(s) or resident(s) can apply for membership with the Town. Other persons living in the household are not eligible. As previously stated, the utility requires proof that the applicant is the primary tenant. If service has been disconnected for non-payment or meter tampering, the Town may require the new applicant to sign an affidavit attesting to the fact that the previous primary tenant is no longer living in the residence.

Section 18-52. Returned Checks

When a customer's check is returned from the bank for any reason the customer is notified, by mail, that the check was not honored and that the service will be disconnected unless, arrangements are made with Town Hall to pay the bill within seventy-two (72) hour's from mailing of notification.

The Town reserves the right to require a customer to pay a utility bill in cash only when three or more bad checks have been received during a twelve (12) month period.

After the Town has received more than one bad check, the Town will charge \$25 for each bad check.

Section 18-53 Service Fees

Service fees shall be charges to customers for the purpose of recovering costs associated with supplying service. Service fees shall be charged as follows:

		Weekdays 9am-5pm
Cut on service(s) at a fixed time or date, read and set up account.		\$20
Transfer from tenant to owner, read meter (s) and leave service on.		\$20
Complete a Request for Utility Service		\$20
Transfer from a previous customer to a new customer and leave on.		\$20
Installation of a second, 1” irrigation meter.		\$1,770
Capital Improvement Charge (Monthly Charge)	3-inch Meter	\$440
	4-inch Meter	\$770
	6-inch Meter	\$990
Development Fee New Meter	3-inch Meter	\$9,000
	4-inch Meter	\$24,000
	6-inch Meter	\$60,000

Drop in meters – used when service lines, meter and box are already installed and not for newly requested services

	Labor & Materials	Service Charge	Development Fee
3-inch Meter	\$1,628	\$25	\$9,000
4-inch Meter	\$2,687	\$25	\$24,000
6-inch Meter	\$5,205	\$25	\$60,000

Restore service following involuntary termination of delinquent account after full payment received.

1st occasion \$100
2nd & all subsequent occasions \$200

*An additional \$75.00 on weekends, holidays, or nights in an emergency as determined by the Town Administrator

Meter Tampering Charge \$100 &/or legal action
Unauthorized Tap \$100 &/or legal action

Two Free meter re-reads are allowed per year, thereafter \$20 each reading
Letter to advise of disconnection for non-payment – 1st occasion \$20
Letter to advise of disconnection for non-payment – 2nd occasion \$30

Third and subsequent occasion of non-payment by due date will result in automatic disconnect.

Water Service fees shall be billed on the same billing as solid waste fees, and water and sewer fees. Any payment made on said bill shall first be applied to the payment of solid waste collection fees, water service fees, sewer fees and finally to water fees.

Section 18.54 Requested Discontinuance of Service

When a Customer desires to discontinue service, twenty-four (24) hours advance notice must be given to the Town. The Customer will be responsible for all service usage within the twenty-four (24) hours following the time of notice to the Town.

Section 18.55 Involuntary Discontinuance of Service.

The Town may discontinue service for one or more of the following reasons:

1. Failure of the customer to pay billings for utility services when due as required by the current cut off policy.
2. Upon evidence of meter tampering meter by pass or any attempt to defraud the Town of utility services.

Section 18.56 Restoration of Services

When it becomes necessary for the Town to discontinue services for any of the reasons listed in Section 18.55 service will be restored only after:

1. Payment of all billings owed to the Town including penalties and service fees.

2. Payment of any reconnection fees and any material and labor costs incurred by the Town.

Section. 18.57 Customer's Rights Prior to Discontinuance of Service.

It is the policy of the Town to discontinue water service to customers for reason of non-payment only after the customer has a reasonable opportunity to be heard when the accuracy of the bill is questioned. Reasonable opportunity is defined as thirty days from the issuance of the bill.

If a customer disputes the accuracy of his/her bill, they have the right to a hearing at which they may be represented in person, or by another person of their choosing and may present, orally or in writing their complaint and contentions. A hearing shall be required within thirty (30) days of the date the bill is issued and must be heard by the Finance Officer at the Town Hall, 355 Vanderbilt Road, Biltmore Forest, NC or telephone (828) 274-0824. A hearing may be scheduled between 9:00 a.m. and 5:00 p.m. Monday through Friday.

Section 18.58 Testing of Meters.

If the customer suspects a malfunction, he/she has the right to request the municipality to test his/her meter for accuracy. Such requests for accuracy tests may be made at intervals of no less than six (6) months at a fee not to exceed the Town's actual cost. The results of all such tests will be made available to the customer. Should the owner's meter prove to be faulty (registering at 4% above correct 100%) the above charge shall be refunded and adjustment made to the customer. The adjustment shall be determined by the previous six (6) months' use and not be adjusted for more than a total of six (6) months.

Section. 18.59 Meter Tampering and/or Unauthorized Taps.

Tampering with water meters is prohibited by North Carolina General Statutes 14-159.1 as follows:

(a) It shall be unlawful for any unauthorized person to alter, tamper with or bypass a meter which has been installed for the purpose of measuring water or knowingly to use water bypassing a meter provided by water supplier for the purpose of measuring and registering the quantity of water consumed.

(b) Any meter or service entrance facility found to have been altered, tampered with or bypassed in a manner that would cause such meter to inaccurately measure and register the water to be diverted from the recording apparatus of the meter shall be the prima facie evidence of intent to violate and of the violation to this Section by the person in whose name such meter is installed or the person or persons so using or receiving the benefits of such unmeasured, unregistered or diverted water and shall be assessed a meter tampering and/or unauthorized tap charge of \$50.00 and/or legal action.

(c) Any person violating any of the provisions of the Section shall be guilty of a misdemeanor and upon conviction thereof shall be fined not more than five hundred dollars (\$500.00) or imprisoned not longer than two (2) years or both fined and imprisoned in the discretion of the court.

(d) Whoever is found in a civil action to have violated any provision hereof shall be liable to the water supplier in the triple amount of losses and damages sustained or five hundred dollars (\$500) whichever is greater.

(e) Nothing in this act shall be construed to apply to licensed contractors while performing usual and ordinary services in accordance with recognized customs and standards.

(f) The person or persons making unauthorized taps or meter tampering or the person knowingly benefiting from such water or sewer service will be billed for unauthorized usage at current rates. The usage shall be estimated by the Town and the minimum charge shall be \$25.00.

(g) Connection fees and unauthorized tap charges must also be paid. Service to the house, building or other customer-owned facilities will not be restored until such payment has been received by the Town.

Section. 18.60 Service Interruptions.

The Town does not guarantee continuous and uninterrupted water service and shall not be liable for loss or damage caused by any failure to supply water or by any interruption unless due to the negligence of the Town.

The customer shall notify the Town promptly of any defect in service or of any trouble or irregularity in the water supply or quality. In no event shall the Town be responsible for any damage resulting during the customer's delay in notifying the Town of such trouble or irregularity.

Whenever service is interrupted for work on the water lines or on related equipment such work shall be done, as far as practicable, at a time that will cause the least inconvenience to the customer. The customer or customers to be effected by such interruptions shall, if practical, be notified in advance.

Section. 18.61 Office and Service Hours

The Town Hall office is open for business between the hours of 9:00 a.m. and 5:00 p.m. Monday through Friday. Routine and regular service work is performed during the hours of 8:00 a.m. and 4:30 p.m. except that no routine or regular service work shall be performed on Saturdays, Sundays, or holidays. Service personnel can be reached by calling the Town's regular number as listed in the local telephone directory during regular office hours and by calling the police department during non-office hours.

Section. 18.62 Title to Water Meters and Connections.

The title and ownership of the water meters and connections are retained by the Town.

Section. 18.63 Town reserves right to remove, test etc.. meters.

The Town reserves the right to remove, test, seal and interfere with any meter for causes deemed justifiable by the Director of Public Works.

Section. 18.64 Connections for sprinkler systems.

- (a) All irrigation systems shall have a separate tap from the water main and a separate meter. No irrigation system shall be connected in any manner to the house service. An RPZ device must be placed within fifteen (15) feet of the irrigation meter and before any branch lines. All RPZ devices shall be installed above ground with a minimum of twelve (12) inches of unimpeded clearance from the bottom of the discharge port. All connections shall be made in accordance with specifications furnished by the Public Works Director.
- (b) Any persons with irrigation connections who do not comply with the aforesaid requirements shall immediately bring the system into compliance.
- (c) No water passing through connections made for irrigation purpose shall be used for any purposes other than to operate sprinkler system.
- (d) In the event any person fails to comply with any of the provisions of this section the Town shall terminate water service to the irrigation connection until such time as the person is in compliance with this ordinance.
- (e) Any persons with an irrigation connection that does not comply with the aforesaid requirements in section 18.64, shall be given notice to conform thereto. A period of fourteen (14) days shall be allowed for the owner of the irrigation system to bring said system into compliance. After a period of thirty (30) days of non-compliance the water supply to the irrigation system shall be terminated until said system is brought into compliance.

Section. 18.65 Cross-connection, backflow, and back-siphonage control.

I.

INTENT PURPOSE AND CONTROL

- (a) It is the intent of this Section to recognize that there are varying degrees of hazard to potable water within the water main and water supply systems. It is also the intent to apply the principle that the degree of protection should be Commensurate with the degree of hazard.

- (b) The purpose of this Section is:
1. To protect public potable water supply of the Town of Biltmore Forest against actual or potential cross-connections, backflow and back-siphonage by isolating with the premise or private property contamination or pollution that has occurred or may occur because of some undiscovered or unauthorized cross-connection on the premise or private property.
 2. To eliminate cross-connections, backflow and back-siphonage or any other source of water or process water used for any purpose whatsoever this may jeopardize the safety of the public potable water supply of the Town of Biltmore Forest.
 3. To establish a cross-connection, back-flow and back-siphonage control program.
 - a. Cross-connection, back-flow and back-siphonage control require cooperation between the Town of Biltmore Forest and the consumer. The responsibilities and duties of each shall be as set forth in the Section and other applicable regulations.

II. RESPONSIBILITIES

- (a) The Town of Biltmore Forest is primarily responsible for the prevention of contamination and pollution of the public water system. Such responsibility begins at the point of origin of the public water supply and includes all of the public water distribution system, and ends at the service connection to the consumer's water system. In addition, the Town shall exercise reasonable vigilance to insure that the consumer has taken the proper steps to protect the public potable water system. When it is determined that a back-flow prevention device is required for the protection of the public system of the Town of Biltmore Forest, the Town shall require the consumer, at the consumer's expense, to install an approved back-flow prevention device at each service connection.
- (b) The consumer has the prime responsibility of preventing contaminants and pollutants from entering his potable water system or the public water system at his service connection. The consumer, at his own expense, shall install, operate and maintain an approved back-flow prevention device and the service connection as directed by the Town of Biltmore Forest. Any testing, maintenance and repairs of backflow prevention devices shall be made by a licensed plumber at the consumer's expense. Installations are to be made by a licensed plumber.
- (c) Enforcement of this Section shall be administered by the Director of Public Works in cooperation with the Buncombe County Health Department - Environmental Health Division.

III. DEFINITIONS

Air Gap Separation. The unobstructed vertical distance through the free atmosphere between the lowest opening from any pipe or faucet supplying water to a tank, plumbing fixture or other device and the flow leveling of the receptacle. An approved air gap separation shall be at least double the diameter of the supply pipe measured vertically above the top rim of the vessel.

Approved. The term approved as herein used in reference to a water supply system or backflow prevention device (or method) shall mean one that has been approved by the Public Works Director.

Back-Pressure backflow. Backflow caused by a pump elevated tank boiler or other means that could create pressure within the system greater than the supply pressure.

Back-Siphonage Backflow. A reversal of the normal direction of flow in the pipeline due to a negative pressure (vacuum) being created in the supply line with the backflow source subject to atmospheric pressure.

Backflow prevention device-Type -A. Backflow prevention device shall mean any effective device, method or construction used to prevent backflow into a potable water system. The type of device used shall be based on the degree of hazard either existing or potential.

Check valve-approved. The term approved check valve shall mean a check valve that is drip tight in the normal direction of flow when the inlet pressure is one P.S.I. and the outlet pressure is zero. The check valve shall permit no leakage in a direction reverse to the normal flow. The closure element (e.g. clapper) shall be internally weighted or otherwise internally loaded to promote rapid and positive closure.

Consumer. Shall mean any person, firm or corporation using, or receiving water from the Town of Biltmore Forest water system.

Contamination. Contamination shall mean an impairment of the quality of the water by sewage or industrial fluids or waste to a degree, which creates an actual hazard to the public health through poisoning or through the spread of disease.

Cross-connection. A cross-connection shall mean any actual or potential connection of structural arrangement between a public or a consumer's potable water system and any other source or system through which it is possible to introduce into any part of the potable system any used water, industrial fluid, gas or substance other than the intended potable water with which the system is supplied. By-pass arrangements jumper connections, removable sections, swivel or change-over devices and other temporary/permanent devices through which or because of which backflow can or may occur are considered to be cross-connections.

Double check assembly. The term double check valve assembly shall mean an assembly composed of two single independently acting approved check valves including tightly closing shut-off valves located at each end of the assembly and suitable connections for testing the water-tightness of each check valve.

Hazard - Degree of. The term plumbing hazard shall mean a plumbing type cross-connection in a consumer's potable water system that has not been properly protected by a vacuum breaker, air-gap separation or other device. Unprotected, plumbing type cross-connections are considered to be a health hazard. They include, but are not limited to, cross-connections to toilets, sinks, lavatories, wash trays, domestic washing machines and lawn sprinkling systems. Plumbing type cross-connections can be located in many type of structures including homes, apartment houses, hotels and commercial and industrial establishment.

Hazard pollution. The term "pollutional hazard" shall mean an actual or potential threat to the physical properties of the water system or the potability of the public or the consumer's potable water system but which would not constitute a health or system hazard as defined. The maximum degree of intensity of pollution to which the potable water system could be degraded under this definition would cause a nuisance or be aesthetically objectionable or could cause minor damage to the system or its appurtenances.

Hazard-system. The term system hazard shall mean an actual or potential threat of severe danger to the physical properties of the public or the consumer's potable water system or of a pollution or contamination, which would have a protracted effect on the quality of the potable water in the system.

Service connection. The term service connection shall mean the terminal end of a service connection from the public potable water system i.e. where the Town loses jurisdiction and sanitary control over the water at its point of delivery to the consumer's water. If a meter is installed at the end of the service connection, then the service connection shall mean the downstream end of the meter. There should be no unprotected takeoffs from the service line ahead of any meter or backflow prevention device located at the point of delivery to the consumer's water system.

Water-Potable. The term potable water shall mean water from any source which has been investigated by the health agency having jurisdiction and which has been approved for human consumption.

Water supply-Auxiliary. The term auxiliary water supply shall mean any water supply on or available to the premises other than the Town of Biltmore Forest's approved public potable water supply. These auxiliary waters may include water from another purveyor's public potable water supply or any natural source such as a well, spring, river, stream, etc., or used water, or industrial fluids. They may be polluted or contaminated or they may be objectionable and constitute an unacceptable water source over which the Town does not have sanitary control.

Water system — Consumer's. The term consumer's water system shall include any water system located on the consumer's premises whether supplied by a public potable water system or an

auxiliary water supply. The system or systems may be either a potable water system or an industrial piping system.

Water system — Consumer's potable. The term consumer's potable water system shall mean that portion of the privately owned potable water system tying between the service connection and the point of use. This system will include all pipes, conduits, tanks, receptacles, fixtures, equipment and appurtenances used to produce, convey, store or use potable water.

Water system — Public potable. The term —"Public potable water system"- shall mean any publicly or privately owned water system operated as a public utility under a valid health permit to supply water for domestic purposes. This system will include all sources, facilities and appurtenances.

Industrial Fluids. The term "industrial fluids", shall mean any fluid or solution which may be chemically, biologically or otherwise contaminated or' polluted in a form or concentration such as would constitute a health system, pollutional or plumbing hazard if introduced into an approved water supply. This may include, but not be limited to: polluted or contaminated used water; all types of process water and "used waters" originating from the public potable water system which may deteriorate in sanitary quality; chemicals in fluid form; planting acids and alkalis; circulated cooling waters collected to an open cooling tower and/or cooling waters that are chemically or biologically treated or stabilized with toxic substances; contaminated natural water such as from wells, springs, streams, rivers, irrigation canals or systems, etc. ; oils, gases, glycerin, paraffines, caustic and acid solutions and other liquid and gaseous .fluids used in industrial or other processes or for firefighting purposes.

Industrial piping system — Consumer's. The term "consumer's industrial piping system" shall mean any system used by the consumer for transmission of or to confine or store any fluid, solid or gaseous substance other than an approved water supply. Such a system would include all pipes, conduits, tanks, receptacles, fixtures, equipment and apparatus used to produce, convey or store substances which are or may be polluted or contaminated.

Pollution. Pollution means an impairment of the quality of the water to a degree which does not create an actual hazard to the public health but which does adversely and unreasonably affect such waters for domestic use.

Reduced pressure principle backflow prevention device. The term "Reduced pressure principle backflow device" shall mean a device containing within its structure a minimum of two independently acting, approved check valves, together with an automatically operating pressure differential relief valve located between the two check valves. The first check valve reduces the supply pressure at predetermined amount so that during normal flow and at cessation of normal flow the pressure between the checks. It shall be less than the supply pressure. In case of leakage of either check valve, the differential relief valve, by its discharging to atmosphere, shall operate to maintain the pressure between the checks less than the supply pressure. The unit shall include tightly closing shut-off valves located at each end of the de\ ice and each device shall be fitted with properly located test cocks between the source and the service connection such as valves, pumps,

pipes, conduits, tanks, receptacles, fixtures, equipment and appurtenances used to, produce, convey, treat or store a potable water for public consumption or use.

Water Used. The term used water" shall mean any water supplied by a water purveyor from a public potable water system to a consumer's water system after it has passed through the service connection and is no longer under the control of the water purveyor.

IV. REGULATIONS

- a) No water service connections to any premises shall be installed or maintained unless the potable water and water supply are protected against actual or potential contamination or pollution in the manner required.
- b) In the event of contamination or pollution of a potable water system, the consumer shall notify immediately the Town, in order that appropriate measures may be taken to overcome the contamination or pollution.
- c) The director or his authorized representative shall have the right to enter any building, structure or premises to perform any duty imposed upon by this Section where cross-connection, backflow and back-siphonage is deemed possible.
- d) Nothing herein shall relieve the consumer of the responsibility for conducting or causing to be conducted, periodic surveys of water use practices on his premises to determine whether there are actual or potential cross-connection in the consumer's water system through which contaminants or pollutants could flow back into the public water system.
- e) On request, the consumer shall furnish to the Director any pertinent information regarding the water supply system on such property where cross-connection, backflow and back-siphonage is deemed possible.
- f) Water service may be discontinued after reasonable notice to the consumer if a violation of this Section exists on the premises. Such other precautionary measures may be taken as are deemed necessary to eliminate any danger to the potable water system. Water service shall not be restored until the danger has been eliminated in compliance with the provisions of this Section. Installation of all cross connections, backflow and back siphonage control devices will be made by a licensed plumber approved by the Director of Public Works. All installations shall be made under the supervision of the Town's cross connection control inspector.
- g) Installations of all reduced pressure principle backflow prevention devices on existing or proposed water meters shall be installed adjacent to the property line or within fifteen (15) feet of the meter.
- h) All cross-connections, backflow and back-siphonage all control equipment shall meet the testing requirements of the Foundation for Cross-Connection Control and

Hydraulic Research, the American Water Works Association and the North Carolina State Building Code, Volume II Plumbing, and the EPA.

- i) All cross-connections backflow and back-siphonage control devices, both existing and new, and all parts thereof, shall be maintained in a safe condition and in good working order. The consumer shall be responsible for the maintenance of all backflow prevention devices downstream from the service connection on the private water system. All backflow prevention devices located at the service connections shall be tested at least once a year, or more often in those instances where inspections indicate a need by the Department of Public Works. Test results shall be made available to the consumer. The consumer shall be {"notified by the Public Works Department prior to the requirement that all rubber goods shall be replaced every five (5) years or more often if needed. Removal, rebuilding, and installation shall be made by a licensed plumber approved by the Director of Public Works. All maintenance and repairs of the backflow device shall be made at the expense of the consumer.
- j) Any RPZ devices that have been installed inside a building shall be required to be inspected at least annually by an independent inspector certified by the State of North Carolina to conduct such inspections. The test results shall be mailed to the Public Works Director within fourteen (14) days of inspection.
- k) All RPZ devices must remain free of obstructions (i.e. brush, shrubbery, fences, etc.) for testing or inspection purposes.
- l) The Town of Biltmore Forest assumes no responsibility for the RPZ device during an annual inspection.
- m) All fire protection water lines must have an RPZ device.
- n) All commercial buildings that use a boiler system must have an RPZ device and that device must be inspected annually by an independent inspector certified by the State of North Carolina to conduct such inspections. The test results shall be mailed to the Public Works Director within fourteen (14) days of inspection.
- o) All permanent installations designed to introduce water into a swimming pool from a potable water supply shall be done only through an air gap of at least two (2) times the diameter of the introducing pipe. In those instances where a permanent water introduction system is not installed and water from a potable water supply is introduced into a swimming pool by means of a hose, the hose bib to which the hose is connected shall be equipped with an RPZ backflow preventer.
- p) No irrigation lines shall be placed within the Town of Biltmore Forest Right of Way.

Section 18.66 Metering For Sprinkler System

The metering for an irrigation system shall be installed and maintained by the Town. The meter for an irrigation system shall be adjacent to the present meter for the customer or adjacent to the Town right-of-way. The cost of the tap for the meter shall be \$1,770.00. Larger taps can be achieved but at a significantly higher cost.

Section 18-67 Identity Theft Prevention Program

Purpose: The creation and implementation of an Identity Theft Prevention Program at the Town of Biltmore Forest that will identify, detect, mitigate, and update Red Flags that signal the possibility of identity theft in connection with the opening of a covered utility account or any existing covered utility account.

Section 18-67.1 Definition

1. **"Covered Account"** means an account that the Town of Biltmore Forest offers or maintains, primarily for personal, family or household purposes, that involves or is designed to permit multiple payments or transactions **and** any other account that the Town of Biltmore Forest offers or maintains for which there is a reasonably foreseeable risk to customers or the safety and soundness of the Town of Biltmore Forest from identity theft, including financial, operational, compliance, reputation, or litigation risks.
2. **"Identity Theft"** means a fraud committed or attempted using the identifying information of another person without authority.
3. **"Red Flag"** means a pattern, practice, or specific activity that indicates the possible existence of identity theft. Part 2 provides a specific description of which Red Flags are applicable to this policy.

Section 18-67.2 Identification of Relevant Red Flags

- A. After careful examination of our accounts, including the methods by which we open access and past experience with identity theft, the following events/occurrences reasonably indicate the potential for identity theft and should be considered "Red Flags" for purposes of this policy:
- B. Alerts, notifications, or other warnings received from consumer reporting agencies or service providers, such as fraud detections services.
- C. The presentation of suspicious documents, such as:
 1. Document provided for identification that appears to have been altered or forged.
 2. The photograph or physical description on the identification is not consistent with the appearance of the applicant or customer presenting the identification.

3. Other information on the identification is not consistent with information provided by the person opening a new covered account or customer presenting the identification.
 4. Other information on the identification is not consistent with readily accessible information that is on file with the financial institution or creditor, such as a signature card or a recent check.
 5. An application appears to have been altered or forged, or gives the appearance of having been destroyed and reassembled.
- D. The presentation of suspicious personal identifying information, such as a suspicious address changes:
1. Personal identifying information provided is inconsistent when compared against external information sources used by the Town of Biltmore Forest.
 2. Personal identifying information provided by the customer is not consistent with other personal identifying information provided by the customer. For example, there is a lack of correlation between the SSN range and date of birth.
 3. Personal identifying information provided is associated with known fraudulent activity as indicated by internal or third-party sources used by the Town of Biltmore Forest. For example:
 4. The address on an application is the same as the address provided on a fraudulent application; or
- E. The phone number on an application is the same as the number provided on a fraudulent application:
1. Personal identifying information provided is of a type commonly associated with fraudulent activity as indicated by internal or third-party sources used by the financial institution or creditor. For example:
 2. The address on an application is fictitious, a mail drop, or a prison; or the phone number is invalid, or is associated with a pager or answering service.
 3. The SSN provided is the same as that submitted by other persons opening an account or other customers.
 4. The address or telephone number provided is the same as or similar to the account number or telephone number submitted by an unusually large number of other persons opening accounts or other customers.
 5. The person opening the covered account or the customer fails to provide all required personal identifying information on an application or in response to notification that the application is incomplete.
 6. Personal identifying information provided is not consistent with personal identifying information that is on file with the Town of Biltmore Forest.

If the Town of Biltmore Forest uses challenge questions, the person opening the covered account or the customer cannot provide authenticating information beyond that which generally would be available from a wallet or consumer report.

- A. The unusual use of, or other suspicious activity related to, a covered account:

B. Notice from customers, victims of identity theft, law enforcement authorities, or other persons regarding possible identity theft in connection with covered accounts held by the Town of Biltmore Forest:

1. The Town of Biltmore Forest is notified by a customer, a victim of identity theft, a law enforcement authority, or any other person that it has opened a fraudulent account for a person engaged in identity theft.

Section 18-67.3 Detection, Prevention and Mitigation

A. Detection

In an effort to ensure proper detection of any Red Flags, all customers (consumers) must provide at least the following information/documentation before any new covered account will be opened:

1. Full Name;
2. Date of birth (individual);
3. Address, (a residential or business street address for an individual; for an individual who does not have a residential or business street address, an Army Post Office (APO) or Fleet Post Office (FPO) box number, or the residential or business street address of next of kin or of another contact individual; or for a person other than an individual (such as a corporation, partnership, or trust), a principal place of business, local office, or other physical location; and;
4. Identification number, which shall be: (i) For a U.S. person, a taxpayer identification number; or (ii) For a non-U.S. person, one or more of the following: a taxpayer identification number; passport number and country of issuance; alien identification card number; or number and country of issuance of any other government-issued document evidencing nationality or residence and bearing a photograph or similar safeguard.

For any account holder of a covered account for which the above information is not already on file at the Town of Biltmore Forest, the customer will be contacted within a reasonable period of time after discovering the missing information to obtain the necessary information.

To assist with detection of Red Flags, the Town of Biltmore Forest will implement the appropriate computer programs tailored to the Town of Biltmore Forest business needs to help authenticate customers, monitor transactions, and change of address requests. The following programs are being used and the Town of Biltmore Forest continued use thereof is incorporated and made part of this policy:

- i. CSI Technology Outfitters
900 East Main Street , Suite T
Easley, South Carolina 29640

B. Preventing and Mitigating Identity Theft

In the event a Red Flag is detected, the Town of Biltmore Forests committed to preventing the occurrence of identity theft and taking the appropriate steps to mitigate any harm caused thereby. In order to respond appropriately to the detection of a Red Flag, the Town of Biltmore Forest shall consider any aggravating circumstance(s) that may heighten the risk of identity theft. After assessing the degree of risk posed, the Town of Biltmore Forest will respond to the Red Flag in an appropriate manner, which may include:

1. Monitoring a covered account for evidence of identity theft;
2. Contacting the customer;
3. Changing any passwords, security codes, or other security devices that permit access to a covered account;
4. Reopening a covered account with a new account number;
5. Not opening a new covered account;
6. Closing an existing covered account;
7. Notifying law enforcement; or
8. Determining that no response is warranted under the particular circumstances.

In an effort to mitigate the damage caused by identity theft, the following programs/software are being used, and the Town of Biltmore Forest's continued use thereof is incorporated and made part of this policy: *CSI Technology Outfitters*

For the protection of our customers, all service providers hired by the Town of Biltmore Forest to perform any activity in connection with any covered account must also take appropriate steps to prevent identity theft. To this end, the Town of Biltmore Forest will only contract with service providers that have implemented and follow a similar identity theft prevention policy.

Section 18-67.4 Identity Theft Prevention

The Town of Biltmore Forests committed to maintaining an Identity Theft Prevention Policy that is current with the ever-changing crime of identity theft. To that end, the Town of Biltmore Forest will reassess this policy on a periodic (annual) basis to reflect changes in risks to customers or to the safety and soundness of the Town of Biltmore Forest from identity theft. The determination to make changes to this policy will be within the discretion of the responsible parties, identified in Part 6 of this policy, but after careful consideration of the following:

1. The Town of Biltmore Forest's past experience(s) with identity theft;
2. Changes in methods of identity theft;
3. Changes in methods to detect, prevent, and mitigate identity theft;
4. Changes in the types of accounts that the Town of Biltmore Forest offers or maintains; and

5. Changes in the business arrangements of the Town of Biltmore Forest, including service provider arrangements.

Section 18-67.5 Additional Legal Requirements

A. Consumer Addresses

Address Confirmation

The Town of Biltmore Forest shall develop policies and procedures designed to enable the organization to form a reasonable belief that a credit report relates to the consumer for whom it was requested. In an effort to ensure that the Town of Biltmore Forest maintains accurate address information for its consumers and to ensure the Town of Biltmore Forest provides accurate address information of our consumers to reporting agencies if requested, at least one of the following steps must be taken prior to providing the consumer's address to the consumer reporting agency:

1. Verify the address on file with the consumer;
2. Confirm the address being sent to the consumer reporting agency matches the address the Town of Biltmore Forest has on file for that particular consumer;
3. Compare the address with information received from any third-party source; or
4. Verify by other means that are reasonably available at the time.

If an accurate address is confirmed, the Town shall furnish the consumer's address to the nationwide consumer reporting agency from which it received the notice of address discrepancy if:

- a) The Town establishes a continuing relationship with the customer; and
- b) The Town regularly and in the ordinary course of business, furnishes information to the consumer reporting agency.

Section 18-67.6 Administration

The Town Administrator of the Town of Biltmore Forest will be responsible for overseeing the implementation, management, and updating of this new policy and shall have the following responsibilities:

1. Assign specific responsibility for the Program's implementation, including appropriate training for staff;
2. At least annually, the assigned person/staff must report to the Board of Commissioners and provide an update on the policy's effectiveness, any service provider arrangements, and significant incidents involving identity theft and the Town of Biltmore Forest's response, and recommendations for ways to improve the program.

3. Review reports prepared by staff to ensure that the Town of Biltmore Forest remains compliant with its legal responsibility to maintain an Identity Theft Prevention Program; and
4. Approve material changes to this program as necessary to address changing identity theft risks.

CHAPTER 19

TREE PROTECTION

Section.19-1. Purpose

In order to maintain the unique characteristics of the Town of Biltmore Forest as a residential neighborhood with a 75-year history beginning as part of the Vanderbilt Estate, it is necessary to preserve the quality and flavor that form so much of the traditional appearance of Biltmore Forest as a true forest. This is particularly true of trees along the roads and around the perimeter of lots. Reference is hereby made to Section 1109 of Zoning Ordinance relating to removal of natural vegetation, which section is routinely involved when residences or other structures are placed on a lot. The importance of trees is recognized for their shade, cooling, noise and wind reduction, soil erosion prevention, oxygen production, dust filtration, carbon dioxide absorption, wildlife habitat, aesthetic enhancement of all real property and their contribution to the well-being of the citizens of the Town. Trees provide a buffer, a natural canopy, and are a hallmark of the Town requiring protection, and damage to or removal of protected trees requires regulation and control.

Section.19-2. Identification

For purposes of this Ordinance, a protected tree is any tree six inches or more in diameter at height of 4 ½ feet from the ground (DBH-Diameter at Breast Height), that is in sound, healthy condition. Preservation of protected trees is the intent of this Ordinance.

Section.19-3. Permits

No person shall remove or in any way damage any protected tree without first filing an application for said removal, and receiving a permit from the Town Administrator. For further purposes of this Ordinance, residential lots shall be separated into two sections: first, that section of the lot around the perimeter within the front, side, or rear yard setback lines, as the same are variously defined and referred to in the Town's Zoning Ordinance, Section 401, and Article VII, "Dimensional Requirements." The Town Administrator in his own discretion can allow the removal of up to three protected trees within these portions of the lot. Secondly, within the area remaining in the central portion of the lot or site, and on which structures or improvements may be located, the Town Administrator, in his own discretion, can allow up to ten protected trees be removed.

However, if the Town Administrator concludes that the removal of the number of trees requested would be undesirable, and not within the letter or intent of this Ordinance, he may refuse to issue such a permit, or permit a lesser number. Further, in his discretion, the Town Administrator can request a survey to show the location, size and type of protected trees on site, including common scientific names. Applicant has the right to appeal any action taken by the Town Administrator to the Board of Adjustment. The survey shall clearly indicate which protected trees are indicated for removal and which will be left undisturbed. In the case of new construction, the site plan must show location of the buildings, driveways,

terraces, etc. All protected trees on the site shall be clearly tagged as to the retention or removal, thus preventing removal or damage to trees intended to remain once land disturbance or construction begins. An application for a permit in excess of the number permitted within the discretion of the Town Administrator will be presented directly to the Board of Adjustment.

A tree that is dead, produces no foliage during normal growing season, or a tree that is diseased or storm damaged to the extent that it is structurally compromised and, thus, poses a safety hazard, or a tree that, for any other reason, poses a safety hazard can only be removed by the property owner after notifying the Town Administrator, of the plans to remove said tree(s) and being given approval to remove said tree(s). If deemed appropriate, the Town Administrator or the Board of Adjustment can require the property owner to retain a certified arborist to render an opinion as to the health and structural integrity of the tree(s) in question and report said findings, in writing, to the Town before final approval is given. The Town reserves the right to consult with its tree specialist to confirm the health and condition of any tree(s) prior to removal.

Section.19-4. Pre-Construction conference & Supervision

Prior to the commencement of any pre-construction land-clearing or soil disturbance, a pre-construction conference will take place between the responsible representative of the Town and the applicant to review procedures for protection and management of all protected trees and other landscape elements identified in the approved landscape plan. The applicant will designate one or more persons to be , responsible for ensuring the protection of new or existing landscaping elements to be preserved. The responsible person shall be present on site whenever activity is taking place that could damage or disturb such landscape elements, and will notify the town Administrator that related activity is taking place.

The Town Administrator shall have developed sites inspected frequency to insure that the work is conforming to the approved landscape plan and the applicable sections of this ordinance.

Prior to the commencement of any pre-construction land-clearing or soil disturbance, the developer / contractor shall be required to sign a document agreeing to abide by the conditions stipulated in this ordinance. At the option of the town, a compliance bond may be required, see Section.-12.

Section.19-5. Enforcement

If any unauthorized removal, cutting or damage to trees takes place, the Town Administrator shall issue a Stop-Work Order which shall remain in effect until all corrections are made that are necessary to confirm this Chapter.

Section.19-6. Dip Line Protection

The health of protected trees requires the prevention of soil disturbance within the drip line of the trees. Covering this area with pavement or other materials, including excess soil, can affect the health of the tree. Landscape plans, to the extent feasible, shall protect this area around the tree.

Section.19-7. Replacement of Trees

Any protected trees that are removed must be replaced in that particular area of the property at a replacement ratio of 2 to 1 (inches in diameter); that is, the diameters of the young trees (measured one foot from the ground level) used in replacement of each removed tree must total at least one half the Diameter at Breast Height of the removed tree. Any replacement tree must be in the ground within 18 months of removal of original trees. Depending on extenuating circumstances related to proximity of other trees and/or structures, lesser quantities of replacement trees can be authorized by the Town Administrator or by the Board of Adjustment in the case of an appeal for the Town Administrator.

Section.19-8. Inspections

All protected trees designated to remain, pursuant to a tree survey, plus any replacement trees shall be inspected by the Town Administrator or designated person one year following any construction and/or replacement trees, to ensure that they are surviving in a healthy condition. Any repair or further replacement of the new plantings that did not survive will be determined by the Town Administrator.

Section.19-9. Appeals

Any person who feels aggrieved under strict enforcement of this ordinance by any administrative official may file, within five days after such aggrievement, a petition to have such cases reviewed and acted upon, in regular session, by the Board of Adjustment, the decision of which on all matters shall be final. Subject only to a Petition for a Writ of Certiorari to the Superior Court.

Section.19-10. Penalties

The penalty for violating this ordinance is set out in North Carolina General Statute Section 14-4. Each day of continued violation shall be a separate offense. Upon determining that a variance has occurred, the Town Administrator shall record the nature of the violation, and forward a copy of this record to the violator by certified mail. The violator shall have 30 days to accomplish compliance with the provisions of the ordinance. Upon failure to do so, the Town Administrator shall proceed to charge the Violator under the provisions of N.C.G.S. 14-4.

Section.19-11. Bond

At the option of the Town, a bond or other type of guarantee can be required of the property owner when initiating new construction, to ensure that all permits and agreements are met, to the satisfaction of the Town.

Section.19-12. Revision Provision

For the first five years after its passage, this Chapter shall be reviewed annually by the Town Administrator with the advice of the Board of Adjustment or designee appointed by the Town Board of Commissioners. The review will be presented to the Town Board, and shall assess the effectiveness of the ordinance, and recommend any necessary revisions or additions.

Chapter 20

Stormwater Management

Section 20-1. Purpose.

The Stormwater management regulations of this article shall protect, maintain and enhance the public health, safety, environment and general welfare by establishing minimum requirements and procedures to control the adverse effects of Stormwater runoff associated with new development. Proper management of Stormwater runoff will protect property, control stream channel erosion, prevent increased flooding associated with new development, protect floodplains, wetlands, water resources, riparian and aquatic ecosystems, and otherwise provide for environmentally sound use of the county's natural resources.

Section 20-2. Scope.

Except as otherwise expressly stated, the Stormwater management regulations of this article apply to all development within the incorporated area of Biltmore Forest...

Section 20-3. Applicability and Exemptions.

The Stormwater management regulations of this article do not apply to any of the following development activities.

- a) Activities including the breeding and grazing of livestock, undertaken on agricultural land for the production of plants and animals useful to man, including but not limited to.
 1. Forages and sod crops, grains and feed crops, tobacco, cotton and peanuts.
 2. Dairy animals and apiary products.
 3. Poultry and poultry products.
 4. Livestock, including beef cattle, sheep, swine, horses, ponies, mules and goats.
 5. Bees and dairy products.
 6. Fur producing animals.
- b) Activities undertaken on forestland for the production or harvesting of timber and timber products and conducted in accordance with best management practices as set out in Forest Practice Guidelines Related to Water Quality.
- c) Activities for which a permit is required under the mining act, G.S. 74-46 et seq.
- d) Commercial development on lots less than one half acre.
- e) Residential development that disturbs less than one acre, including total build out of the site, if it is not part of a larger plan of development that is greater than 1 acre.
- f) Any development in which the owner has accrued a vested right. A vested right is recognized if either a preliminary plan has been approved by the Buncombe County Planning Board that meets the required specifications and standards of Buncombe County ordinances, or a Land Disturbing Permit has been issued pursuant to Buncombe County Soil Erosion and Sedimentation Control ordinance in effect on or before the effective date of this ordinance, and that such plan or permit remains unexpired.

A party in interest to a particular plan found to have no vested right to construct or develop on or before the effective date of this ordinance may appeal to the Buncombe County Board of

Adjustment for a hearing de novo. Such hearing shall be expedited and shall be limited to the issue of whether the landowner has a vested right to construct or develop his site under plans submitted prior to the effective date of this ordinance.

Redevelopment or expansions to uses included in the above categories are not subject to the stormwater requirements unless it would result in an expansion of impervious surface on commercial lots in size equal to or greater than one-half acre, would result in commercial redevelopment where more than 50% of the square footage of a structure is replaced on a lot in size equal to or greater than one-half acre, or would result in a total developed acreage of one acre for residential development.

Section 20-4. Definitions.

- a. *Applicant.* An owner or developer of a site who executes the Stormwater Permit Application pursuant to Buncombe County's Stormwater Ordinance.
- b. *Connection.* Any ditch, pipe, or other device for the diversion or transmission of storm drainage, which will in any way affect the operation or maintenance of the drainage ways.
- c. *Conveyance.* Any feature of the landscape or earth, manmade or natural that carries water in a concentrated flow.
- d. *Detain.* To store and slowly release stormwater runoff following precipitation by means of a surface depression or tank and an outlet structure.
- e. *Development.* Any land disturbing activity which adds to or changes the amount of impervious or partially pervious cover on a land area or which otherwise decreases the infiltration of precipitation into the soil, other than a rebuilding activity that does not qualify as redevelopment.
- f. *Drainage structures.* Shall include swales, channels, and storm sewers, curb inlets, yard inlets, culverts, and other structures designed or used to convey stormwater.
- g. *Impervious surface.* Any surface that, in whole or in part, restricts or prevents the natural absorption of water into the ground. Such surfaces may include, but are not limited to, gravel, concrete, asphalt or other paving material, and all areas covered by the footprint of buildings or structures.
- h. *Land disturbing activity.* Any use of, or operations on, the land by any person in residential, industrial, educational, institutional, or commercial development, including road construction and maintenance, that results in a change in the natural cover or topography.
- i. *One-year, 24-hour storm.* The surface runoff resulting from a 24-hour rainfall of intensity expected to be equaled or exceeded, on average, once in 12 months and with duration of 24-hours.
- j. *Retain.* To capture and hold stormwater runoff following precipitation by means of surface depression allowing the water to infiltrate into the soil, thus reducing the hydrologic and pollution impacts downstream.
- k. *Stormwater.* Any surface flow, runoff, and drainage consisting entirely of water from rainfall events.
- l. *Stream.* A watercourse that collects surface runoff.
- m. *Velocity.* The average velocity of flow through the cross Section 20- of the main channel at the

peak flow of the storm of interest.

Section 20-5. Review and Decision-Making Entities.

Buncombe County Planning and Development will administer this ordinance. The Director of Planning and Development will designate a Stormwater Administrator. In addition to the powers and duties that may be conferred, the Stormwater Administrator shall have the following powers and duties under this ordinance;

- a) To review and approve or disapprove applications for approval of plans pursuant to this ordinance.
- b) To make determinations and render interpretations of this ordinance.
- c) To establish application requirements and schedules for submittal and review of applications and appeals, to review and approve applications.
- d) To enforce the provisions of this ordinance in accordance with its enforcement provisions.
- e) To make records, maps, and official materials as relate to the adoption, amendment, enforcement, or administration of this ordinance.
- f) To provide expertise and technical assistance to Buncombe County.
- g) To designate appropriate other person(s) who shall carry out the powers and duties of the Stormwater Administrator.

- h) To take any action necessary to administer the provisions of this ordinance. Section 20-

Section 20-6. Review and Appeals Procedures.

- a) A stormwater permit is required for all development and redevelopment which equals or exceeds one acre of residential development, or on commercial lots that are one-half acre in size or more, unless exempt pursuant to this ordinance.
- b) The Buncombe County Board of Commissioners shall establish permit review fees as well as policies, and may amend and update the fees and policies when needed.
- c) For all activities which are subject to this ordinance, no person shall initiate, proceed, or undertake any land disturbing or development activity for which a permit is required without first being issued a written stormwater control permit. All other required applications must be received and permits must be obtained prior to the start of the work. These may include but are not limited to Soil Erosion and Sedimentation Control, Flood Damage Prevention, Subdivision, Building Permits and Inspections, NC Department of Transportation, NC Division of Water Quality, US Army Corps of Engineers, and NC DENR-Dam Safety.
- d) Plan review fees shall be double the amount when land disturbing activity begins before a stormwater permit is obtained from the county. Prior to presenting a Stormwater plan to the Buncombe County Planning and Development, a consultation meeting with the Stormwater Administrator or his designee is required to assess necessary stormwater management measures, constraints, opportunities and potential approach.
- e) Two (2) copies of the stormwater plan submittal shall be submitted to Planning and Development for review.
- f) The Department shall review the plan for completeness and for compliance with the requirements of this ordinance. An incomplete or nonconforming stormwater plan will be returned to the applicant prior to review with an explanation of issues requiring resolution before plan review can be initiated.

- g) Within thirty (30) days of receipt of application for stormwater plan approval, Planning and Development shall take action on the plan.
 - 1. Planning and Development shall forward a copy of the plan to the Buncombe County Soil and Water Conservation District who, within twenty (20) days of receipt of the plan, will review the plan and submit its comments and recommendations to the Stormwater Administrator at the Buncombe County Planning and Development Department. Failure of the Soil and Water Conservation District to submit its comments and recommendations within twenty (20) days shall not delay final action on the plan. Planning and Development is solely responsible for plan(s) review and will incorporate review comments and recommendations from the Soil and Water Conservation District into its examination of the plan application.
- h) Approval, approval with modifications, or denial of the proposed stormwater plan shall be in writing. In the case of denial, the reasons for denial shall be clearly stated. The applicant may appeal the decision of the Stormwater Administrator at the Buncombe County Planning and Development Department to a plan review committee within 15 days after receipt of written notice of disapproval or approval with modifications. Only the applicant can appeal the decision of the Stormwater Administrator.
 - 1. A condition of plan approval will be the right to physical inspection of the drainage structures and stormwater management measures during and after construction.
- i) Hearings held pursuant to this section shall be conducted by a plan review committee consisting of the director of Planning and Development, the director of the Soil and Water Conservation District, and the director of General Services within 30 days after the date of the appeal or request for hearing,
- j) The plan review committee shall decide appeals within 15 days after the date of the hearing on any stormwater plan. If the review committee upholds the disapproval or modification of a proposed plan following the hearing, the person submitting the plan shall then be entitled to appeal the local plan review committee's decision to the Board of Adjustment within 15 days.
- k) The Board of Adjustment will conduct a hearing in the nature of a quasi-judicial proceeding with all findings of fact supported by material evidence.
- l) Decisions appealing the final decision by the Board of Adjustment may be filed in Buncombe County Superior Court, to be reviewed by proceedings in the nature of certiorari, within thirty (30) days of the final decision of the Board of Adjustment.
- m) The Stormwater Administrator shall take action on revisions to a stormwater plan which has been previously denied, within fifteen (15) days of receipt of the revised plan application for approval.
- n) If a revised application is not re-submitted within sixty (60) calendar days from the date the applicant was notified, the application shall be considered withdrawn, and a new submittal for the same or substantially the same project shall be required along with the appropriate fee and pursuant to the current standards.
- o) Application for an amendment to a stormwater plan in written and graphic form may be made at any time. Until such time that any amendment is approved by the Stormwater Administrator, it shall be unlawful to deviate from the approved plan.

- p) An approved plan shall become null and void if the applicant has failed to make progress on the site within six months after the date of approval. The Stormwater Administrator may grant a single, six-month extension of this time limit, for good cause shown, upon receiving a written request from the applicant before the expiration of the approved plan.

Section 20-7. Penalties for Violation.

Civil penalties may be imposed as follows.

- a) Any person who violates any of the provisions of this article, or rules or orders adopted or issued pursuant to this article, or who initiates or continues a development for which a stormwater plan is required, except in accordance with the terms, conditions and provisions of an approved plan, is subject to a civil penalty. The maximum civil penalty for a violation of this article is \$27,500 per day. Each day of a continuing violation shall constitute a separate violation. Additional fees may be charged for remedies and enforcement of this ordinance.
- b) No penalty shall be assessed until the applicant has been notified of the violation by registered or certified mail, return receipt requested, or other means reasonably calculated to give actual notice. The notice shall describe the violation with reasonable particularity, specify a reasonable time period within which the violation can be corrected, and warn that failure to correct the violation within the time period will result in the assessment of a civil penalty or other enforcement action.
- c) If the violation has not been corrected within the designated time period, a civil penalty may be assessed from the date the violation is detected.
- d) Refusal to accept the notice or failure to notify the Stormwater Administrator of a change of address shall not relieve the violator's obligation to pay such a penalty.
- e.) The Stormwater Administrator or other authorized agent may refuse to issue a certificate of occupancy for any building or other improvements constructed or being constructed on the site and served by the stormwater practices in question until the applicant has taken the remedial measures set forth in the notice of violation and cured the violations described therein.

Section 20-8. Permit Application and Plans.

- a) The stormwater permit application and plan shall refer to the drawings and technical documentation for planned site improvements necessary to fulfill the drainage and stormwater management requirements of this article. This shall include but not be limited to.
 1. Location and topographic maps with the total drainage area delineated including both on site and off site areas and sufficient information to define all ridges, existing streams, location of the 100-year floodplain and floodway, drainage ways, wetland areas, existing springs, and elevation of any proposed discharge point, and any additional information required to evaluate the existing and proposed drainage system, which may include a soil analysis.
 2. Architectural and engineering drawings showing plan, profile and details of piping, drainage structures, swales, and channels tying into a network of pre-existing manmade or natural channels.
 3. Written project specifications governing work performance and materials.

4. Computations and assumptions sufficient to support the design of piping, drainage structures, retention/detention ponds, and permanent erosion control measures.
 5. Whatever other narrative statements necessary to adequately describe the proposed site improvements and the measures planned to comply with the requirements of this article.
- b) The stormwater permit application and plan shall be prepared by and shall bear the seal and signature of a professional engineer or landscape architect licensed in the state of North Carolina, competent to perform all aspects of design.
 - c) The stormwater permit application and plan shall be prepared to meet the basic objectives and design standards for drainage and stormwater management as described in this ordinance.
 - d) The stormwater permit application and plan shall show the existing site topography and proposed site drainage improvements in sufficient detail to facilitate plan review and construction. The plan drawings shall be presented at a scale no smaller than 1 inch = 50 feet.

Section 20-9. Maintenance Manual.

- a) The stormwater permit application and plan shall be accompanied by an operations and maintenance manual. The manual shall contain a narrative describing each installed measure and device and its design specifications. The manual shall indicate for each installed measure and device what operation and maintenance actions are needed and what specific quantitative criteria will be used to determine when these actions will be taken. The manual must indicate the steps that will be taken to restore a measure or device to the design specifications if a failure occurs.
- b) After the permit and plan is approved and installation is complete, if changes have been made to any installed measure or device, the manual shall be revised to reflect these changes, and such changes shall be subject to the review and approval of the Stormwater Administrator.

Section 20-10. As-Built Plans and Specifications.

- a) The designer of the stormwater control plans shall provide as-built plans of all stormwater control and management plans showing the field location, size, depth, and planted vegetation of all measures and devices as installed. If the previously submitted plans remain unchanged, an as-built certification to the existing plans will be required. No certificate of compliance or occupancy shall be issued without said as-built plans.
- b) The designer shall certify, under seal, that the as-built stormwater measures and devices and their installation are in compliance with the County's stormwater ordinance.
- c) The designer shall submit a final electronic file of the stormwater plan that is readable by GIS systems.

Section 20-11. Stormwater Management Objectives.

- a) In order to reduce drainage related damage and hazards, adequate natural drainage systems or stormwater management installations are required to collect and transmit stormwater flows into either existing drainage facilities or a natural drainage system.
- b) All storm drainage facilities shall be designed, constructed and maintained so that adjacent properties are not unreasonably burdened with surface waters as a result of such improvements. Specifically.

1. Offsite areas which drain to or across a site proposed for development must be accommodated in the stormwater plans for the development. The stormwater management system must be capable of conveying the existing offsite flows through or around the development such that the volume and rate of flow from the adjacent property is not altered. If offsite flows are carried in the site system any detention system shall be sized to accommodate this flow. The flow must be released to the original drainage area.
 2. Storm drainage facilities shall be designed to limit the discharge from the site to the rate that existed prior to development of the site. For projects that are redeveloping a developed site, the discharge will be limited to that which occurs before any new development. The type and location of the discharge will be as occurred before the current development unless the discharge is to a manmade conveyance system.
- c) All site improvements shall be provided with a drainage system that is adequate to prevent the undue retention of surface water on the development site.
 - d) These goals for discharge can be accomplished by designing, constructing and maintaining all stormwater management installations to the extent practicable.
 1. Avoid increases in surface runoff volume and velocity by including measures which promote the infiltration of stormwater,
 2. Maximize the time of concentration of stormwater runoff, and
 3. Promote the filtration and precipitation of pollutants from stormwater runoff in order to protect the water quality of the receiving watercourse.
 - e) Whenever practicable, the drainage system of a development site shall coordinate with and connect to the drainage systems or drainage ways on surrounding properties or streets. Permission must be received from other applicable entities for connection.
 - f) To the extent practicable, all site improvements shall conform to the natural contours of the land, and without disturbance, utilize the preexisting natural and preexisting manmade drainage ways.
 - g) To the extent practicable, lot boundaries within subdivisions shall be made to coincide with natural and preexisting man made drainage ways to avoid creation of lots that can only be built upon by altering such drainage ways.
 - h) Stormwater shall not be diverted from one natural drainage basin into another,
 - i) Stormwater shall not be channeled or directed into sanitary sewers.
 - j) Stormwater controls shall not be located within the designated floodway.
 - k) No built upon area shall be located within 30 feet landward from any perennial and intermittent surface waters. A surface water shall be deemed present if the feature is approximately shown on either the most recent version of the soil survey map prepared by the Natural Resources

Conservation Service of the US Department of Agriculture or the most recent version of the quadrangle topographic maps prepared by the USGS.

- I) Streams shall not be relocated unless it is demonstrated that the relocation of the stream will have a positive impact on water quality while reducing velocity. All other applicable permits must be received.

Section 20-12. Stormwater Management Design Standards.

- a) Design standards are established for the purpose of promoting sound development practices which respect, preserve and enhance the County's watercourses and are not intended to prohibit the use of innovative and alternative techniques which can be demonstrated to have the potential for successfully achieving the objectives stated in Section 20-1.
- b) Design Storm.
1. The measures shall control and treat the difference in stormwater runoff volume leaving the project site between the pre- and post-development conditions for, at a minimum, the 1-year, 24-hour storm. Runoff volume drawdown time shall be a minimum of 48 hours, but not more than 120 hours.
 2. All structural Stormwater treatment systems used to meet the requirements of this ordinance shall be designed to have a minimum of 85% average annual removal for Total Suspended Solids (TSS).
 3. The hillside development standards of Chapter 70 of Buncombe County's Code of Ordinances (Section 20- 70-68) apply. This Section 20- limits the density of disturbed area and impervious surfaces on steep slopes.
 4. The design of drainage facilities in flood hazard areas shall be consistent with the requirements of Buncombe County's Flood Damage Prevention Ordinance. No stormwater controls shall be allowed within the floodway. No built upon area shall be within 30 feet landward of any perennial and intermittent surface water.
 5. The computation of stormwater runoff shall follow established engineering practice. Acceptable methods of computation include the Rational Method, the Peak Discharge Method as described in USDA Technical Release Number 55 {TR-55), and USCS Regression Equations, where applicable. If an alternate method is proposed, the method should be described and justification for using this method should be provided. The same method must be used for both the pre- and post-development conditions.
 6. Runoff coefficients shall be based on full development of the project and of the watershed to the extent of the current zoning or land use patterns, and shall include the complete development of the site through build-out, including roof tops and other impervious areas that may be proposed.
 7. Stormwater detention shall be provided to insure that the rate of discharge does not exceed the pre-development rate of discharge. In order to demonstrate this, pre and post development hydrographs will be submitted that demonstrate no increase in flow leaving the site during the one-year 24 hour storm. Inflow-outflow calculations shall also be submitted for any stormwater detention ponds.
 8. Stormwater controls that drain in whole or part to designated trout waters shall be designed

and shall implement the best stormwater practices that do not result in a sustained increase in the receiving water temperature, while still meeting the other requirements of this ordinance.

Section 20-13. Stormwater Design Manual.

The Buncombe County Planning and Development Department may furnish additional guidance and standards for the proper implementation of the regulations of this article and may provide such information in the form of a Stormwater Design Manual. Stormwater management practices that are designed, constructed, or maintained in accord with the Stormwater Design Manual must be presumed to comply with these regulations. However, the Stormwater Administrator shall have the right to consult other engineers and duly qualified professionals, and to impose any conditions or require any modifications deemed necessary to meet the purpose, intent and requirements of this ordinance.

Section 20-14. Construction and Maintenance.

- a) Stormwater management facilities shall be constructed in accordance with approved plans and maintained in proper working condition. The applicant/property owner is responsible for ensuring that the construction of drainage structures and Stormwater management measures are completed in accordance with the approved plan and specifications. Inspections which may be performed by Buncombe County during construction will not relieve the developer of the responsibility to install Stormwater management and drainage facilities in accordance with the approved plan.
- b) In response to a complaint, or as a compliance check with the requirements of the ordinance, the Stormwater Administrator or the designee shall perform a physical inspection of the construction of drainage structures and Stormwater management measures, or monitor long term maintenance procedures.
- c) The property owner will be notified in writing of any substandard and/or non-conforming work identified by the Stormwater Administrator. The notification shall state the specific work that is out of compliance, the specific reasons for noncompliance, and the corrective measures necessary to bring the work into compliance.
- d) Failure of the property owner or developer to correct substandard and/or non-conforming work identified by the Stormwater Administrator shall be sufficient reason to refuse or revoke building permits, and/or deny occupancy permits for buildings serviced by said work. Appeals on determination of nonconforming or substandard work and/or the adequacy of the corrective measures executed shall be made in accordance with Section 20-6 of this ordinance. Pending the ruling on the appeal, the determination of the Stormwater Administrator remains in effect.
- e) Revisions which affect the intent of the design or the capacity of the system shall require prior written approval by the Stormwater Administrator.

Section 20-15. Performance Security for Installation and Maintenance.

- a) Buncombe County will require the submittal of a surety performance bond made by a surety bonding company licensed and authorized to do business in North Carolina, a bond of the owner/developer with an assignment to the county of a certificate of deposit as security for the bond, a bond of the owner/developer by an official bank check drawn in favor of the county and deposited with the county, or cash or an irrevocable letter of credit deposited with the county

prior to issue of a permit in order to ensure that the Stormwater system is installed by the developer and functions as required by the approved Stormwater plan.

- b) The amount of an installation performance security shall be the total estimated construction cost of the system and devices approved under the permit, plus 25%.
- c) The performance security shall contain forfeiture provisions for failure, after proper notice, to complete work within the time specified, or to initiate or maintain any actions which may be required of the applicant in accordance with this ordinance.
- d) Upon default of the applicant to construct, maintain, repair, and if necessary reconstruct any stormwater device in accordance with the applicable permit, the Stormwater Administrator shall obtain and use all or any portion of the security to make necessary improvements based on an engineering estimate. Such expenditure of funds shall only be made after requesting the applicant to comply with the permit. In the event of a default triggering the use of installation of performance security, Buncombe County shall not return any of the unused deposited cash funds or other security, which shall be retained for maintenance.
- e) If Buncombe County takes action upon such failure by the applicant, Buncombe County may collect the difference should the amount of the reasonable cost of such action exceed the amount of the security held. This difference will be collected from the applicant.
- f) Within sixty (60) days of the final approval, the installation performance security shall be refunded to the applicant or terminated.

Section 20-16. Completion.

The developer is responsible for completing all stormwater improvements in accordance with the requirements of this article and other applicable ordinance and laws.

Section 20-17. Assurance that Improvements will be Maintained.

- a) The County may not approve a record plat, or in the case of single-lot development not requiring a record plat may not issue a building permit, until those stormwater improvements required of the developer have been completed or a performance guarantee has been provided.
- b) Upon completion of required improvements, the design professional must submit as-built plans, or certify the existing plans as as-built if no changes have occurred, of the installed stormwater improvements to the Stormwater Administrator. These plans must indicate that stormwater improvements were constructed in accordance with the County ordinance and approvals.

Section 20-18. Maintenance.

All stormwater improvements must be maintained so they will continue to serve their intended functions.

- a) The developer must maintain stormwater improvements until accepted by a property owners association or lot owner. The developer must disclose which party will be responsible for continued maintenance on the record plat and on the stormwater management plan. The developer will be responsible for the installation, operations, and maintenance of the stormwater controls until ownership is conveyed. The responsibility and agreement for operations and maintenance for the stormwater system is transferred with title, as each property is conveyed.

- b) Before improvements are accepted for maintenance by the property owners association or lot owner, the developer or the developer's engineer or landscape architect, must certify to the property owners association or lot owner and to the County that improvements are complete and functioning as designed.
- c) The developer must record, and reference on the record plat, an operations and maintenance plan that instructs the property owners association or lot owner about the annual operations and maintenance tasks for at least a 20-year period.
- d) The person responsible for maintenance of any stormwater structure or feature installed pursuant to this ordinance shall submit to the Stormwater Administrator an inspection report annually from a qualified registered North Carolina professional engineer, surveyor, or landscape architect performing services only in their area of competence. The report shall contain the following;
 - 1. The name and address of the land owner.
 - 2. The recorded book and page number of the lot of each stormwater control.
 - 3. A statement that an inspection was made of all stormwater controls and features.
 - 4. The date the inspection was made.
 - 5. A statement that all inspected controls and features are performing properly and are in compliance with the terms and conditions of the approved maintenance agreement required by this ordinance.
 - 6. The signature and seal of the engineer, surveyor, or landscape architect.

All inspection reports shall be on forms supplied by the Stormwater Administrator. An original inspection report shall be provided to the Stormwater Administrator beginning one year from the date of as-built certification and each year thereafter on or before the date of the as-built certification.

It will be the responsibility of the property owners association or lot owner to update the plan annually.

- e) The developer must record, and reference on the record plat, a maintenance agreement, or restrictive covenant that sets forth the property owners association's or lot owner's continuing responsibilities for maintenance, including specifying how cost will be apportioned among lot owners served.
- f) The maintenance agreement must provide that the association and its individual members are jointly and severably liable for maintenance.
- g) The developer must record easements for access, maintenance and inspections by any property owners association and by Buncombe County Government.
- h) All maintenance documents required by this article must be submitted to the Stormwater Administrator before record plat approval, and such documents must be referenced on the record plat, or, in the case of single-lot developments not requiring record plats, documentation must be submitted to the Stormwater Administrator before building permit issuance.

Sections 20-19 to Section 20-19 Reserved

CHAPTER 21

FLOOD DAMAGE PREVENTION ORDINANCE

ARTICLE 1. STATUTORY AUTHORIZATION, FINDINGS OF FACT, PURPOSE AND OBJECTIVES.

SECTION A. STATUTORY AUTHORIZATION.

That pursuant to authority granted by the Legislature of the State of North Carolina as contained in Part 6, Article 21 of Chapter 143; Parts 3, 5 and 8 of Article 19 of Chapter 160A; and Article 8 of Chapter 160A of the North Carolina General Statutes, delegated local governmental units have the authority and responsibility to adopt regulations designed to promote the public health, safety, and general welfare.

Therefore, the Board of Commissioners of Biltmore Forest, North Carolina, does ordain as follows:

SECTION B. FINDINGS OF FACT.

- (1) The flood prone areas within the jurisdiction of Biltmore Forest are subject to periodic inundation which results in loss of life, property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures of flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety, and general welfare.
- (2) These flood losses are caused by the cumulative effect of obstructions in floodplains causing increases in flood heights and velocities and by the occupancy in flood prone areas of uses vulnerable to floods or other hazards.

SECTION C. STATEMENT OF PURPOSE.

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

- (1) Restrict or prohibit uses that are dangerous to health, safety, and property due to water or erosion hazards or that result in damaging increases in erosion, flood heights or velocities;
- (2) Require that uses vulnerable to floods, including facilities that serve such uses, be protected against flood damage at the time of initial construction;
- (3) Control the alteration of natural floodplains, stream channels, and natural protective barriers, which are involved in the accommodation of floodwaters;
- (4) Control filling, grading, dredging, and all other development that may increase erosion or flood damage; and

- (5) Prevent or regulate the conduction of flood barriers that will unnaturally divert flood waters or which may increase flood hazards to other lands.

SECTION D. OBJECTIVES.

The objectives of this ordinance are to:

- (1) Protect human life, safety and health;
- (2) Minimize expenditure of public money for costly flood control projects;
- (3) Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
- (4) Minimize prolonged business losses and interruptions;
- (5) Minimize damage to public facilities and utilities (i.e. water and gas mains, electric, telephone, cable and sewer lines, streets, and bridges) that are located in flood prone areas;
- (6) Help maintain a stable tax base by providing for the sound use and development of flood prone areas; and
- (7) Ensure that potential buyers are aware that property is in a Special Flood Hazard Area.

ARTICLE 2. DEFINITIONS.

Unless specifically defined below, words or phrases used in this ordinance shall be interpreted so as to give them the meaning they have in common usage and to give this ordinance its most reasonable application.

“Accessory Structure (Appurtenant Structure)” means a structure located on the same parcel of property as the principal structure and the use of which is incidental to the use of the principal structure. Garages, carports and storage sheds are common urban accessory structures. Pole barns, hay shed and the like qualify as accessory structures on farms, and may or may not be located on the same parcel as the farm dwelling or shop building.

“Addition (to an existing building)” means an extension or increase in the floor area or height of a building or structure.

“Appeal” means a request for a review of the Floodplain Administrator’s interpretation of any provision of this ordinance.

“Area of Shallow Flooding” means a designated Zone AO on a community’s Flood Insurance Rate Map (FIRM) with base flood depths determined to be from one (1) to three(3) feet. These areas are located where a clearly defined channel does not exist, where the path of flooding is unpredictable and indeterminate, and where velocity flow may be evident.

“Area of Special Flood Hazard” see “Special Flood Hazard Area (SFHA)”.

“Basement” means any area of the building having its floor subgrade (below ground level) on all sides.

“Base Flood” means the flood having a one (1) percent chance of being equaled or exceeded in any given year.

“Base Flood Elevation (BFE)” means a determination of the water surface elevations of the base flood as published in the Flood Insurance Study. When the BFE has not been provided in a “Special Flood Hazard Area”, it may be obtained from engineering studies available from a Federal, State, or other source using FEMA approved engineering methodologies. This elevation, when combined with the “Freeboard”, establishes the “Regulatory Flood Protection Elevation”.

“Building” see “Structure”.

“Chemical Storage Facility” means a building, portion of a building, or exterior area adjacent to a building used for the storage of any chemical or chemically reactive products.

“Development” means any man-made change to improved or unimproved real estate, including, but not limited to, buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations, or storage of equipment or materials.

“Disposal” means, as defined in NCGS 130A-290(a)(6), the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste into or on any land or water so that the solid waste or any constituent part of the solid waste may enter the environment or be emitted into the air or discharged into any waters, including groundwaters.

“Elevated Building” means a non-basement building which has its lowest elevated floor raised above ground level by foundation walls, shear walls, post, piers, pilings, or columns.

“Encroachment” means the advance or infringement of uses, fill, excavation, buildings, structures or development into a floodplain, which may impede or alter the flow capacity of a floodplain.

“Existing Manufacture Home Park or Manufactured Home Subdivision” means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) was completed before the initial effective date of the floodplain management regulations adopted by the community.

“Flood” or “Flooding” means a general and temporary condition of partial or complete inundation of normally dry land areas from:

- (1) The overflow of inland or tidal waters; and/or
- (2) The unusual and rapid accumulation of runoff of surface waters from any source.

“Flood Insurance” means the insurance coverage provided under the National Flood Insurance Program.

“Flood Insurance Rate Map (FIRM)” means an official map of a community, issued by the Federal Emergency Management Agency, on which both the Special Flood Hazards Areas and the risk premium zones applicable to the community are delineated.

“Flood Insurance Study (FIS)” means an examination, evaluation, and determination of flood hazards, corresponding water surface elevations (if appropriate), flood hazard risk zones, and other flood data in a community issued by the Federal Emergency Management Agency. The Flood Insurance Study report includes Flood Insurance Rate Maps (FIRMs) and Flood Boundary and Floodway Maps (FBFMs), if published.

“Flood Prone Area” see “Floodplain”

“Floodplain” means any land area susceptible to being inundated by water from any source.

“Floodplain Administrator” is the individual appointed to administer and enforce the floodplain management regulations.

“Floodplain Development Permit” means any type of permit that is required in conformance with the provisions of this ordinance, prior to the commencement of any development activity.

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

“Floodplain Management Regulations” means this ordinance and other zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances, and other applications of police power. This term describes Federal, State or local regulations, in any combination thereof, which provide standards for preventing and reducing flood loss and damage

“Floodproofing” means any combination of structural and nonstructural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitation facilities, structures, and their contents.

“Floodway” means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one (1) foot.

“Flood Zone” means a geographical area shown on a Flood Hazard Boundary Map or Flood Insurance Rate Map that reflects the severity or type of flooding in the area.

“Freeboard” means the height added to the Base Flood Elevation (BFE) to account for the many unknown factors that could contribute to flood heights greater than the height calculated for a selected size flood and floodway conditions, such as wave action, blockage of bridge openings, and the hydrological effect of urbanization of the watershed. The Base Flood Elevation (BFE) plus the freeboard establishes the “Regulatory Flood Protection Elevation”.

“Functionally Dependent Facility” means a facility which cannot be used for its intended purpose unless it is located in close proximity to water, limited to a docking or port facility necessary for the loading and unloading of cargo or passengers, shipbuilding, or ship repair. The term does not include long-term storage, manufacture, sales, or service facilities.

“Hazardous Waste Management Facility” means, as defined in NCGS 130A, Article 9, a facility for the collection, storage, processing, treatment, recycling, recovery, or disposal of hazardous waste.

“Highest Adjacent Grade (HAG)” means the highest natural elevation of the ground surface, prior to construction, immediately next to the proposed walls of the structure.

“Historic Structure” means any structure that is:

- (a) Listed individually in the National Register of Historic Places (a listing maintained by the US Department of Interior) or preliminarily determined by the Secretary of Interior as meeting the requirements for individual listing on the National Register;
- (b) Certified or preliminarily determined by the Secretary of Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
- (c) Individually listed on a local inventory of historic landmarks in communities with a “Certified Local Government (CLG) Program”; or
- (d) Certified as contributing to the historical significance of a historic district designated by a community with a “Certified Local Government (CLG) Program”.

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

“Lowest Adjacent Grade (LAG)” means the elevation of the ground, sidewalk or patio slab immediately next to the building, or deck support, after completion of the building.

“Lowest Floor” means lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access, or limited storage in an area other than a basement area is not considered a building’s lowest floor, provided that such an enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of this ordinance.

“Manufactured Home” means a structure, transportable in one or more sections, which is built on a permanent chassis and designed to be used with or without a permanent foundation when connected to the required utilities. The term “manufactured home” does not include a “recreational vehicle”.

“Manufactured Home Park or Subdivision” means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

“Market Value” means the building value, not including the land value and that of any accessory structures or other improvements on the lot. Market value may be established by independent certified appraisal; replacement cost depreciated for age of building and quality of construction (Actual Cash Value); or adjusted tax assessed values.

“Mean Sea Level” means, for purposes of this ordinance, the National Geodetic Vertical Datum (NGDV) as corrected in 1929, the North American Vertical Datum (NAVD) as corrected in 1988, or other vertical control datum used as a reference for establishing varying elevations within the floodplain, to which Base Flood Elevations (BFEs) shown on a FIRM are referenced. Refer to each FIRM panel to determine datum used.

“New Construction” means structures for which the “start of construction” commenced on or after the effective date of the initial floodplain management regulations and includes any subsequent improvements to such structures.

“Non-Encroachment Area” means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one (1) foot as designated in the Flood Insurance Study report.

“Person” means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency or instrumentality, public corporation or any other legal or commercial entity.

“Post-FIRM” means construction or other development for which the “start of construction” occurred on or after the effective date of the initial Flood Insurance Rate Map.

“Pre-FIRM” means construction or other development for which the “start of construction” occurred before the effective date of the initial Flood Insurance Rate Map.

“Principally Above Ground” means that at least 51% of the actual cash value of the structure is above ground.

“Public Safety” and/or “Nuisance” means anything which is injurious to the safety or health of an entire community or neighborhood, or any considerable number of persons, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, or river, bay, stream, canal or basin.

“Recreational Vehicle (RV)” means a vehicle, which is:

- (a) Built on a single chassis;
- (b) 400 square feet or less when measured at the largest horizontal projection;
- (c) Designed to be self-propelled or permanently towable by a light duty truck; and
- (d) Designed primarily not for use as a permanent dwelling, but as temporary living quarters for recreational, camping, travel or seasonal use.

“Reference Level” is the top of the lowest floor for structures within Special Flood Hazard Areas designated as Zone A1-A30, AE, A, A99 or AO.

Regulatory Flood Protection Elevation” means the “Base Flood Elevation” plus the “Freeboard”. In “Special Flood Hazard Areas” where Base Flood Elevations (BFEs) have been determined, this elevation shall be the BFE plus two (2) feet of freeboard. In “Special Flood Hazard Areas” where no BFE has been established, this elevation shall be at least two (2) feet above the highest adjacent grade.

“Remedy a Violation” means to bring the structure or other development into compliance with State and community floodplain management regulations, or, if this is not possible, to reduce the impacts of its noncompliance. Ways that impacts may be reduced include protecting the structure or other affected development from flood damages, implementing the enforcement provisions of the ordinance or otherwise deterring future similar violations, or reducing Federal financial exposure with regard to the structure or other development.

“Riverine” means relating to, formed by, or resembling a river (including tributaries), stream, brook, etc.

“Salvage Yard” means any non-residential property used for the storage, collection, and/or recycling of any type of equipment, and including but not limited to vehicles, appliances and related machinery.

“Solid Waste Disposal Facility” means any facility involved in the disposal of solid waste, as defined in NCGS 130A-290(a)(35).

“Solid Waste Disposal Site” means, as defined in NCGS 130A-290(a)(36), any place at which solid wastes are disposed of by incineration, sanitary landfill, or any other method.

“Special Flood Hazard Area (SFHA)” means the land in the floodplain subject to a one percent (1%) or greater chance of being flooded in any given year, as determined in Article 3, Section B of this ordinance.

“Start of Construction” includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition placement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufacture home on a foundation. Permanent construction does not include land preparation, such as clearing, grading, and filling; nor does it include the installation of streets and/or walkways; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of the building, whether or not that alteration affects the external dimensions of the building.

“Structure” means a walled and roofed building, a manufactured home, or a gas, liquid, or liquefied gas storage tank that is principally above ground.

“Substantial Damage” means damage of any origin sustained by a structure during any one-year period whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred. See definition of “substantial improvement”. Substantial damage also means flood-related damage sustained by a structure on two separate occasions during a 10-year period for which the cost of repairs at the time of each such flood event, on the average, equals or exceeds 25 percent of the market value of the structure before the damage occurred.

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

- (a) Any correction of existing violations of State or community health, sanitary, or safety code specifications which have been identified by the community code enforcement official and which are the minimum necessary to assure safe living conditions; or
- (b) Any alteration of a historic structure, provided that the alteration will not preclude the structure’s continued designation as a historic structure.

“Variance” is a grant of relief from the requirements of this ordinance.

“Violation” means the failure of a structure or other development to be fully compliant with the community’s floodplain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in Articles 4 and 5 is presumed to be in violation until such time as that documentation is provided.

“Water Surface Elevation (WSE)” means the height, in relation to mean sea level, of floods of various magnitudes and frequencies in the floodplains of coastal or riverine areas.

“Watercourse” means a lake, river, creek, stream, wash, channel or other topographic feature on or over which waters flow at least periodically. Watercourse includes specifically designated areas in which substantial flood damage may occur.

“Zone A” designates the flood hazard area without base flood elevations established.

“Zone AE” is the 1% annual chance (100-year) floodplain with base flood elevations established.

“Zone X-Shaded” is the 0.2% annual chance (500-year) floodplain.

“Zone X-Unshaded” designates areas outside the 500-year floodplain.

ARTICLE 3. GENERAL PROVISIONS.

SECTION A. LANDS TO WHICH THIS ORDINANCE APPLIES.

This ordinance shall apply to all Special Flood Hazard Areas within the jurisdiction of the Town of Biltmore Forest.

SECTION B. BASIS FOR ESTABLISHING THE SPECIAL FLOOD HAZARD AREAS.

The Special Flood Hazard Areas are those identified under the Cooperating Technical State (CTS) agreement between the State of North Carolina and FEMA in its Flood Insurance Study (FIS) and its accompanying Flood Insurance Rate Maps (FIRM), for Buncombe County dated January 6, 2010, which are adopted by reference and declared to be a part of this ordinance.

The initial Flood Insurance Rate Maps are as follows for the jurisdictional areas at the initial date:

Buncombe County Unincorporated Area, dated 8/1/1980
Town of Biltmore Forest 5/6/1996

SECTION C. ESTABLISHMENT OF FLOODPLAIN DEVELOPMENT PERMIT.

A Floodplain Development Permit shall be required in conformance with the provisions of this ordinance prior to the commencement of any development activities within Special Flood Hazard Areas determined in accordance with the provisions of Article 3, Section B of this ordinance.

SECTION D. COMPLIANCE

No structure or land shall hereafter be located, extended, converted, altered or developed in any way without full compliance with the terms of this ordinance and other applicable regulations.

SECTION E. ABROGATION AND GREATER RESTRICTIONS.

This ordinance is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this ordinance and another conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

SECTION F. INTERPRETATION.

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

- (a) Considered as minimum requirements;
- (b) Liberally construed in favor of the governing body; and
- (c) Deemed neither to limit nor repeal any other powers granted under State statutes.

SECTION G. WARNING AND DISCLAIMER OF LIABILITY.

The degree of flood protection required by this ordinance is considered reasonable for regulatory purposes and is based on scientific and engineering consideration. Larger floods can and will occur. Actual flood heights may be increased by man-made or natural causes. This ordinance does not imply that land outside the Special Flood Hazard Areas or uses permitted within such areas will be free from flooding or flood damages. This ordinance shall not create liability on the part of Biltmore Forest or by any officer or employee thereof for any flood damages that result from reliance on this ordinance or any administrative decision lawfully made hereunder.

SECTION H. PENALTIES FOR VIOLATION.

- (1) Violation of the provisions of this ordinance or failure to comply with any of its requirements, including violation of conditions and safeguards established in connection with grants of variance or special exceptions, shall constitute a Class 1 misdemeanor. Any person who violates this ordinance or fails to comply with any of its requirements shall, upon conviction thereof, be fined not more than \$25,000.00 or imprisoned for not more than one hundred twenty (120) days, or both. Each day such violation continues shall be considered a separate offense. Nothing herein contained shall prevent Biltmore Forest from taking such other lawful action as is necessary to prevent or remedy any violation.
- (2) In addition to revoking or refusing to issue a Floodplain Development Permit, the Floodplain Administrator or other authorized agent may refuse or cause to be refused a certificate of occupancy for any building or other improvements constructed or being constructed on the site in question, or cause the Town permitting office to refuse to issue any permit that has been applied for, or cause the Town permitting office to freeze (or suspend) active permits and inspections until the applicant has taken the corrective procedures set forth in the notice and cured the violations described therein.
- (3) Failure to remove any artificial obstruction or enlargement or replacement thereof, that violates this Ordinance or the provision of any permit issued under the authority of this Ordinance may subject the person in violation of this Ordinance to a fine of not more than \$5,000 per day, and such fine shall constitute a separate violation of this Ordinance for each day that the failure

continues after written notice from the Town Board of Commissioners. Any fine imposed hereunder shall be a civil penalty which may be recovered by the Town in a civil action in the nature of a debt.

- (4) In addition to or in lieu of other remedies, the Town Board of Commissioners may, by and through its Floodplain Administrator or other authorized agent, institute any appropriate action or proceeding to restrain or prevent any violation of this Ordinance or of the provisions of any permit issued under the authority of this Ordinance, or to require any person, firm or corporation that has committed a violation to remove a violating obstruction or restore the conditions existing before the placement of the obstruction by any manner or means at law or in equity.

ARTICLE 4. ADMINISTRATION.

SECTION A. DESIGNATION OF FLOODPLAIN ADMINISTRATOR.

The Town Administrator or his designee, hereinafter referred to as the “Floodplain Administrator”, is hereby appointed to administer and implement the provisions of this ordinance.

SECTION B. FLOODPLAIN DEVELOPMENT APPLICATION, PERMIT AND CERTIFICATION REQUIREMENTS.

- (1) **Application Requirements.** Application for a Floodplain Development Permit shall be made to the Floodplain Administrator prior to any development activities located within Special Flood Hazard Areas. The following items shall be presented to the Floodplain Administrator to apply for a floodplain development permit:
- (a) A plot plan drawn to scale which shall include, but shall not be limited to, the following specific details of the proposed floodplain development:
 - (i) The nature, location, dimensions, and elevations of the area of development/disturbance; existing and proposed structures, utility systems, grading/pavement areas, fill materials, storage areas, drainage facilities, and other development;
 - (ii) The boundary of the Special Flood Hazard Area as delineated on the FIRM or other flood map as determined in Article 3, Section B, or a statement that the entire lot is within the Special Flood Hazard Area;
 - (iii) Flood zone(s) designation of the proposed development area as determined on the FIRM or other flood map as determined in Article 3, Section B;
 - (iv) The boundary of the floodway(s) or non-encroachment area(s) as determined in Article 3, Section B;

- (v) The Base Flood Elevation (BFE) where provided as set forth in Article 3, Section B; Article 4, Section C; or Article 5, Section D;
 - (vi) The old and new location of any watercourse that will be altered or relocated as a result of proposed development;
- (b) Proposed elevation, and method thereof, of all development within a Special Flood Hazard Area including but not limited to:
- (i) Elevation in relation to mean sea level of the proposed reference level (including basement) of all structures;
 - (ii) Elevation in relation to mean sea level to which any non-residential structure in Zone AE, A or AO will be floodproofed; and
 - (iii) Elevation in relation to mean sea level to which any proposed utility systems will be elevated or floodproofed;
- (c) If floodproofing, a Floodproofing Certificate (FEMA Form 81-65) with supporting data, an operational plan, and an inspection and maintenance plan that includes, but is not limited to, installation, exercise, and maintenance of floodproofing measures.
- (d) A Foundation Plan, drawn to scale, which shall include details of the proposed foundation system to ensure all provisions of this ordinance are met. These details include but are not limited to:
- (i) The proposed method of elevation, if applicable (i.e., fill, solid foundation perimeter wall, solid backfilled foundation, open foundation on columns/posts/piers/piles/shear walls);
 - (ii) Openings to facilitate automatic equalization of hydrostatic flood forces on walls in accordance with Article 5, Section B(4)(c) when solid foundation perimeter walls are used in Zones A, AO, AE, and A1-30;
- (e) Usage details of any enclosed areas below the lowest floor.
- (f) Plans and/or details for the protection of public utilities and facilities such as sewer, gas, electrical, and water systems to be located and constructed to minimize flood damage;
- (g) Certification that all other Local, State and Federal permits required prior to floodplain development permit issuance have been received.
- (h) Documentation for placement of Recreational Vehicles and/or Temporary Structures, when applicable, to ensure that the provisions of Article 5, Section B, subsections (6) and (7) of this ordinance are met.

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

(2) **Permit Requirements.** The Floodplain Development Permit shall include, but not be limited to:

- (a) A description of the development to be permitted under the floodplain development permit.
- (b) The Special Flood Hazard Area determination for the proposed development in accordance with available data specified in Article 3, Section B.
- (c) The regulatory flood protection elevation required for the reference level and all attendant utilities.
- (d) The regulatory flood protection elevation required for the protection of all public utilities.
- (e) All certification submittal requirements with timelines.
- (f) A statement that no fill material or other development shall encroach into the floodway or non-encroachment area of any watercourse, as applicable.
- (g) The flood openings requirements, if in Zones A, AO, AE or A1-30.
- (h) Limitations of below BFE enclosure uses, if applicable (i.e., parking, building access and limited storage only).

(3) **Certification Requirements.**

- (a) Elevation Certificates
 - (i) An Elevation Certificate (FEMA Form 81-31) is recommended prior to the actual start of any new construction. It shall be the duty of the permit holder to have established an elevation reference level, prior to construction. The Floodplain Administrator can review the certificate data submitted. Deficiencies detected by such review shall be corrected by the permit holder prior to the beginning of construction. Failure to submit the certification or failure to make required corrections shall be cause to deny a floodplain development permit.
 - (ii) A final as-built Elevation Certificate (FEMA Form 81-31) is required after construction is completed and prior to Certificate of Compliance/Occupancy issuance. It shall be the duty of the permit holder to submit to the Floodplain

Administrator a certification of final as-built construction of the elevation of the reference level and all attendant utilities. The Floodplain Administrator shall review the certificate data submitted. Deficiencies detected by such review shall be corrected by the permit holder immediately and prior to Certificate of Compliance/Occupancy issuance. In some instances, another certification may be required to certify corrected as-built construction. Failure to submit the certification or failure to make required corrections shall be cause to withhold the issuance of a Certificate of Compliance/Occupancy.

(b) Floodproofing Certificate

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

(c) If a manufactured home is placed within Zone A, AO, AE, or A1-30 and the elevation of the chassis is more than 36 inches in height above grade, an engineered foundation certification is required in accordance with the provisions of Article 5, Section B(3)(b).

(d) If a watercourse is to be altered or relocated, a description of the extent of watercourse alteration or relocation; a professional engineer's certified report on the effects of the proposed project on the flood-carrying capacity of the watercourse and the effects to properties located both upstream and downstream; and a map showing the location of the proposed watercourse alteration or relocation shall all be submitted by the permit applicant prior to issuance of a floodplain development permit.

(e) Certification Exemptions. The following structures, if located within Zone A, AO, AE or A1-30 are exempt from the elevation/floodproofing certification requirement specified in items (a) and (b) of this subsection:

- (i) Recreational Vehicles meeting requirements of Article 5, Section B(6)(a);
- (ii) Temporary Structures meeting requirements of Article 5, Section B(7); and
- (iii) Accessory Structures less than 150 square feet meeting requirements of Article 5, Section B(8).

SECTION C. DUTIES AND RESPONSIBILITIES OF THE FLOODPLAIN ADMINISTRATOR.

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

- (1) Review all floodplain development applications and issue permits for all proposed development within Special Flood Hazard Areas to assure that the requirements of this ordinance have been satisfied.
- (2) Review all proposed development within Special Flood Hazard Areas to assure that all necessary Local, State and Federal permits have been received.
- (3) Notify adjacent communities and the North Carolina Department of Crime Control and Public Safety, Division of Emergency Management, State Coordinator for the National Flood Insurance Program prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Emergency Management Agency (FEMA).
- (4) Assure that maintenance is provided within the altered or relocated portion of said watercourse so that the flood-carrying capacity is maintained.
- (5) Prevent encroachments into floodways and non-encroachment areas unless the certification and flood hazard reduction provisions of Article 5, Section F are met.
- (6) Obtain actual elevation (in relation to mean sea level) of the reference level (including basement) and all attendant utilities of all new and substantially improved structures, in accordance with Article 4, Section B(3).
- (7) Obtain actual elevation (in relation to mean sea level) to which all new and substantially improved structures and utilities have been floodproofed, in accordance with the provisions of Article 4, Section B(3).
- (8) Obtain actual elevation (in relation to mean sea level) of all public utilities in accordance with the provisions of Article 4, Section B(3).
- (9) When floodproofing is utilized for a particular structure, obtain certifications from a registered professional engineer or architect in accordance with the provisions of Article 4, Section B(3) and Article 5, Section B(2).
- (10) Where interpretation is needed as to the exact location of boundaries of the Special Flood Hazard Areas, floodways, or non-encroachment areas (for example, where there appears to be a conflict between a mapped boundary and actual field conditions), make the necessary interpretation. The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in this article.

- (11) When Base Flood Elevation (BFE) data has not been provided in accordance with the provisions of Article 3, Section B, obtain, review, and reasonably utilize any Base Flood Elevation (BFE) data, along with floodway data or non-encroachment area data available from a Federal, State, or other source, including data developed pursuant to Article 5, Section D(2)(b), in order to administer the provisions of this ordinance.
- (12) When Base Flood Elevation (BFE) data is provided but no floodway or non-encroachment area data has been provided in accordance with Article 3, Section B, obtain, review, and reasonably utilize any floodway data or non-encroachment area data available from a Federal, State, or other source in order to administer the provisions of this ordinance.
- (13) Permanently maintain all records that pertain to the administration of this ordinance and make these records available for public inspection, recognizing that such information may be subject to the Privacy Act of 1974, as amended.
- (14) Make on-site inspections of work in progress. As the work pursuant to a floodplain development permit progresses, the Floodplain Administrator shall make as many inspections of the work as may be necessary to ensure that the work is being done according to the provisions of the local ordinance and the terms of the permit. In exercising this power, the Floodplain Administrator has a right, upon presentation of proper credentials, to enter on any premises within the jurisdiction of the community at any reasonable hour for the purposes of inspection or other enforcement action.
- (15) Issue stop-work orders as required. Whenever a building or part thereof is being constructed, reconstructed, altered, or repaired in violation of this ordinance, the Floodplain Administrator may order the work to be immediately stopped. The stop-work order shall be in writing and directed to the person doing or in charge of the work. The stop-work order shall state the specific work to be stopped, the specific reason(s) for the stoppage, and the condition(s) under which the work may be resumed. Violation of a stop-work order constitutes a misdemeanor.
- (16) Revoke floodplain development permits as required. The Floodplain Administrator may revoke and require the return of the floodplain development permit by notifying the permit holder in writing stating the reason(s) for the revocation. Permits shall be revoked for any substantial departure from the approved application, plans, and specifications; for refusal or failure to comply with the requirements of State or local laws; or for false statements or misrepresentations made in securing the permit. Any floodplain development permit mistakenly issued in violation of an applicable State or local law may also be revoked.
- (17) May refuse or cause to be refused a certificate of occupancy for any building or other improvements constructed or being constructed on the site in question, or cause the Town permitting office to refuse to issue any permit that has been applied for, or cause the Town permitting office to freeze (or suspend) active permits and inspections.
- (18) Make periodic inspections throughout the Special Flood Hazard Areas within the jurisdiction of the community. The Floodplain Administrator and each member of his or her

inspections department shall have a right, upon presentation of proper credentials, to enter on any premises within the territorial jurisdiction of the department at any reasonable hour for the purposes of inspection or other enforcement action.

- (19) Follow through with corrective procedures of Article 4, Section D.
- (20) Review, provide input, and make recommendations for variance requests.
- (21) Maintain a current map repository to include, but not limited to, the FIS Report, FIRM and other official flood maps and studies adopted in accordance with Article 3, Section B of this ordinance, including any revisions thereto including Letters of Map Change, issued by FEMA. Notify State and FEMA of mapping needs.
- (22) Coordinate revisions to FIS reports and FIRMs, including Letters of Map Revision Based on Fill (LOMR-F) and Letters of Map Revision (LOMR).
- (23) Apply and enforce any and all provisions of this Ordinance. In determining the amount of any penalty ordered under authority of this Ordinance and the Floodplain Administrator shall give due consideration to the appropriateness of the penalty with respect to the size of the business of the person being charged, the gravity of the violation, the good faith of the person, the record of previous violations, and, in general, the facts and circumstances surrounding the violation.

SECTION D. CORRECTIVE PROCEDURES.

- (1) Violations to be Corrected: When the Floodplain Administrator finds violations of applicable State and local laws, it shall be his or her duty to notify the owner or occupant of the building of the violation. The owner or occupant shall immediately remedy each of the violations of law cited in such notification.
- (2) Actions in Event of Failure to Take Corrective Action: If the owner of a building or property shall fail to take prompt corrective action, the Floodplain Administrator shall give the owner written notice, by certified or registered mail to the owner's last known address or by personal service, stating:
 - (a) That the building or property is in violation of the floodplain management regulations;
 - (b) That a hearing will be held before the Floodplain Administrator at a designated place and time, not later than ten (10) days after the date of the notice, at which time the owner shall be entitled to be heard in person or by counsel and to present arguments and evidence pertaining to the matter; and
 - (c) That following the hearing, the Floodplain Administrator may issue an order affirming modifying or rescinding the original finding or may enter such other finding or order as the Floodplain Administrator may deem just and proper consistent with the provisions

of this Ordinance including, but not limited to order to alter, vacate, or demolish the building; or to remove fill as applicable.

- (3) Order to Take Corrective Action: If, upon a hearing held pursuant to the notice prescribed above, the Floodplain Administrator shall find that the building or development is in violation of the Flood Damage Prevention Ordinance, they shall issue an order in writing to the owner, requiring the owner to remedy the violation within a specified time period, not less than sixty (60) calendar days, nor more than one-hundred eighty (180) calendar days. Where the Floodplain Administrator finds that there is imminent danger to life or other property, they may order that corrective action be taken in such lesser period as may be feasible.
- (4) Appeal: Any owner who has received an order to take corrective action may appeal the order to the Board of Adjustment by giving notice of appeal in writing to the Floodplain Administrator and Clerk within ten (10) days following issuance of the final order. In the absence of an appeal, the order of the Floodplain Administrator shall be final. The Board of Adjustment shall hear an appeal within a reasonable time and may affirm, modify and affirm, or revoke the order.

Any order, requirement, decision, or determination made by the Floodplain Administrator may be appealed to the Board of Adjustment pursuant to the procedure found in Section F. Appeals below.

- (5) Failure to Comply with Order: If the owner of a building or property fails to comply with an order to take corrective action for which no appeal has been made or fails to comply with an order of the governing body following an appeal, the owner shall be guilty of a misdemeanor and shall be punished at the discretion of the court.

SECTION E. VARIANCE PROCEDURES.

- (1) The Board of Adjustment as established by Biltmore Forest, hereinafter referred to as the “appeal board”, shall hear and decide requests for variances from the requirements of this ordinance.
- (2) Any person aggrieved by the decision of the appeal board may appeal such decision to the Court as provided in Chapter 7A of the North Carolina General Statutes.
- (3) Variances may be issued for:
 - (a) The repair or rehabilitation of historic structures upon the determination that the proposed repair or rehabilitation will not preclude the structure’s continued designation as a historic structure and that the variance is the minimum necessary to preserve the historic character and design of the structure.
 - (b) Functionally dependent facilities if determined to meet the definition as stated in Article 2 of this ordinance, provided provisions of Article 4, Section E(9)(b), (c), and (e) have been satisfied, and such facilities are protected by methods that minimize flood damages during the base flood and create no additional threats to public safety.

- (c) Any other type of development provided it meets the requirements of this Section.
- (4) In passing upon variances, the appeal board shall consider all technical evaluations, all relevant factors, all standards specified in other sections of this ordinance, and:
- (a) The danger that materials may be swept onto other lands to the injury of others;
 - (b) The danger of life and property due to flooding or erosion damage;
 - (c) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
 - (d) The importance of the services provided by the proposed facility to the community;
 - (e) The necessity to the facility of a waterfront location as defined under Article 2 of this ordinance as a functionally dependent facility, where applicable;
 - (f) The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use;
 - (g) The compatibility of the proposed use with existing and anticipated development;
 - (h) The relationship of the proposed use to the comprehensive plan and floodplain management program for that area;
 - (i) The safety of access to the property in times of flood for ordinary and emergency vehicles;
 - (j) The expected heights, velocity, duration, rate of rise, and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site; and
 - (k) The costs of providing governmental services during and after flood conditions including maintenance and repair of public utilities and facilities such as sewer, gas, electrical and water systems, and streets and bridges.
- (5) A written report addressing each of the above factors shall be submitted with the application for a variance.
- (6) Upon consideration of the factors listed above and the purposes of this ordinance, the appeal board may attach such conditions to the granting of variances as it deems necessary to further the purposes and objectives of this ordinance.
- (7) Any applicant to whom a variance is granted shall be given written notice specifying the difference between the Base Flood Elevation (BFE) and the elevation to which the structure is to be built and that such construction below the Base Flood Elevation (BFE) increases risks to

life and property, and that the issuance of a variance to construct a structure below the Base Flood Elevation (BFE) will result in increased premium rates for flood insurance up to \$25 per \$100 of insurance coverage. Such notification shall be maintained with a record of all variance actions, including justification for their issuance.

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

(9) Conditions for Variances:

(a) Variances shall not be issued when the variance will make the structure in violation of other Federal, State, or local laws, regulations, or ordinances.

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

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

(d) Variances shall only be issued prior to development permit approval.

(e) Variances shall only be issued upon:

(i) A showing of good and sufficient cause;

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

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

(10) A variance may be issued for solid waste disposal facilities or sites, hazardous waste management facilities, salvage yards, and chemical storage facilities that are located in Special Flood Hazard Areas provided that all of the following conditions are met:

(a) The use serves a critical need in the community.

(b) No feasible location exists for the use outside the Special Flood Hazard Area..

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

- (d) The use complies with all other applicable Federal, State and local laws.
- (e) Biltmore Forest has notified the Secretary of the North Carolina Department of Crime Control and Public Safety of its intention to grant a variance at least thirty (30) calendar days prior to granting the variance.

SECTION F. APPEALS

- (1) *Types of appeals.* The Town Board of Adjustment shall hear and decide all appeals from any order, requirement, decision, or determination made by the Floodplain Administrator. In deciding appeals, it may hear both those based upon an allegedly improper or erroneous interpretation of this Ordinance and those based upon alleged hardship resulting from strict interpretation of this Ordinance.
- (2) *Procedure for filing appeals.* No appeal shall be heard by the Board of Adjustment unless notice thereof is filed within 30 days after the interested party receives notice of the order, requirement, decision or determination by the Floodplain Administrator. The applicant must file his application for a hearing with the Floodplain Administrator, who shall act as clerk for the Board of Adjustment in received this notice. All applications shall be made upon the form specified for that purpose, and all information required thereon shall be complete before an appeal shall be considered as having been filed.
- (3) *Hearings.* Hearings shall be conducted as follows:
 - (a) *Time.* After receipts of notice of appeal, the board chairperson shall schedule the time for a hearing, which shall be at a regular or special meeting within 31 days from the filing of such notice of appeal.
 - (b) *Notice of Hearing.* The Board of Adjustment shall mail notices of the hearing to the affected parties to the action appealed from, and to such other persons as the Floodplain Administrator shall direct, at least five days prior to the hearing. Such notice shall state the location of the building or lot, the general nature of the question involved in the appeal, and the time and place of the hearing.
 - (c) *Conduct of hearing.* Any party may appear in person or by agent or by attorney at the hearing. The order of business for the hearing shall be as follows:
 - (1) The chairperson, or such person as he shall direct, shall give a preliminary statement of the case.
 - (2) The applicant shall present the argument in support of his application.
 - (3) Persons opposed to granting the application shall present the argument against the application.
 - (4) Both sides will be permitted to present rebuttals to opposing testimony.

- (5) The chairperson shall summarize the evidence, which has been presented, giving the parties opportunity to make objections or corrections.

Witnesses may be called and factual evidence may be submitted, but the Board of Adjustment shall not be limited to consideration of only such evidence as would be admissible in a court of law. The Board of Adjustment may view the premises before arriving at a decision. All witnesses before the Board of Adjustment shall be placed under oath and the opposing party may cross examine them.

- (4) *Rehearings.* An application for a rehearing may be made in the same manner as provided for an original hearing. Evidence in support of the application shall initially be limited to that which is necessary to enable the Board of Adjustment to determine whether there has been a substantial change in the facts, evidence, or conditions in the case. The application for rehearing shall be denied by the Board of Adjustment if, from the record, it finds that there has been no substantial change in facts, evidence or conditions. If the Board of Adjustment finds that there has been a change, it shall thereupon treat the request in the same manner as any other application.

- (5) *Decisions.* Decisions shall be made in the following manner:

- (a) *Time.* A decision by the Board of Adjustment shall be made within 30 days from the time of hearing.
- (b) *Form.* Written notice by certified or registered mail of the decision in a case shall be given to the applicant by the Floodplain Administrator as soon as practical after the case is decided. Also, written notice shall be given to owners of the subject property, if not the applicant, and to other persons who have made written request for such notice. The final decision of the Board of Adjustment shall be shown in the record of the case as entered in the minutes of the Board of Adjustment and signed by the Floodplain Administrator and the chairperson upon approval of the minutes of the Board of Adjustment. Such record shall show the reasons for the determination, with summary of the evidence introduced and the findings of fact made by the Board of Adjustment. Where a variance is granted, the record shall state in detail any exceptional difficulty or unnecessary hardship upon which the appeal was based and which the Board of Adjustment finds to exist. The decision may reverse or affirm, wholly or partly, or modify the order, requirement, decision or determination appeal from. The record shall state in detail what, if any, conditions and safeguards are imposed by the Board of Adjustment in connection with the granting of a variance.
- (c) *Expiration of permits.* Unless otherwise specified, any order or decision of the Board of Adjustment granting a variance shall expire if a Floodplain Development Permit, building permit or certificate of occupancy for such use is not obtained by the applicant within one year from the date of the decision.
- (d) *Voting.* The concurring vote of four-fifths of the members of the Board of Adjustment shall be necessary to reverse any order, requirement, decision or determination of the

Floodplain Administrator; to decide in favor of the applicant any matter upon which the Board of Adjustment is required by this article to pass; or to grant a variance from the provisions of this article.

- (e) *Public record of decisions.* The decisions of the Board of Adjustment, as filed in its minutes, shall be a public record, available for inspection at all reasonable times.

(6) *Appeals from decision of Board of Adjustment.*

- (a) Appeals from the Board of Adjustment may be taken to the courts pursuant to G.S. 160A-388 as same is effective on and after January 1, 2010 in accordance Session Law 2009-421.
- (b) Every final decision granting or denying a permit under this Part shall be subject to review by the superior court of the county, with the right of jury trial at the election of the party seeking review. The time and manner of election of a jury trial shall be governed by G.S.1A-1, Rule 38(b) of the Rules of Civil Procedure. Pending the final disposition of an appeal, no action shall be taken that would be unlawful in the absence of a permit issued under this Part.

ARTICLE 5. PROVISIONS FOR FLOOD HAZARD REDUCTION.

SECTION A. GENERAL STANDARDS.

In all Special Flood Hazard Areas the following provisions are required:

- (1) All new construction and substantial improvements shall be designed (or modified) and adequately anchored to prevent flotation, collapse, and lateral movement of the structure.
- (2) All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.
- (3) All new construction and substantial improvements shall be constructed by methods and practices that minimize flood damages.
- (4) Electrical, heating, ventilation, plumbing, air conditioning equipment, and other service facilities shall be designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding to the Regulatory Flood Protection Elevation. These include, but are not limited to, HVAC equipment, water softener units, bath/kitchen fixtures, ductwork, electric/gas meter panels/boxes, utility/cable boxes, hot water heaters, and electric outlets/switches.
- (5) All new and replacement water supply systems shall be designated to minimize or eliminate infiltration of floodwaters into the system.

- (6) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of floodwaters into the systems and discharges from the systems into flood waters.
- (7) On-site waste disposal systems shall be located and constructed to avoid impairment to them or contamination from them during flooding.
- (8) Any alteration, repair, reconstruction, or improvements to a structure, which is in compliance with the provisions of this ordinance, shall meet the requirements of “new construction” as contained in this ordinance.
- (9) Nothing in this ordinance shall prevent the repair, reconstruction, or replacement of a building or structure existing on the effective date of this ordinance and located totally or partial within the floodway, non-encroachment area, or stream setback, provided there is no additional encroachment below the Regulatory Flood Protection Elevation in the floodway, non-encroachment area, or stream setback, and provided that such repair, reconstruction, or replacement meets all of the other requirements of this ordinance.
- (10) New solid waste disposal facilities and sites, hazardous waste management facilities, salvage yards, and chemical storage facilities shall not be permitted, except by variance as specified in Article 4, Section E (10). A structure or tank for chemical or fuel storage incidental to an allowed use or to the operation of a water treatment plant or wastewater treatment facility may be located in a Special Flood Hazard Area only if the structure or tank is either elevated or floodproofed to at least the Regulatory Flood Protection Elevation and certified in accordance with the provisions of Article 4, Section B(3).
- (11) All subdivision proposals and other development proposals shall be consistent with the need to minimize flood damage.
- (12) All subdivision proposals and other development proposals shall have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize flood damage.
- (13) All subdivision proposals and other development proposals shall have adequate drainage provided to reduce exposure to flood hazards.
- (14) All subdivision proposals and other development proposals shall have received all necessary permits from those governmental agencies for which approval is required by Federal or State laws including Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334.
- (15) When a structure is partially located in a Special Flood Hazard Area, the entire structure shall meet the requirements for new construction and substantial improvements.

- (16) When a structure is located in multiple flood hazard zones or in a flood hazard risk zone with multiple base flood elevations, the provisions for the more restrictive flood hazard risk zone and the highest Base Flood Elevation (BFE) shall apply.

SECTION B. SPECIFIC STANDARDS.

In all Special Flood Hazard areas where the Base Flood Elevation (BFE) data has been provided, as set forth in Article 3, Section B, or Article 5, Section D, the following provisions, in addition to the provisions of Article 5, Section A, are required:

- (1) Residential Construction. New construction and substantial improvement of any residential structure (including manufactured homes) shall have the reference level, including basement, elevated no lower than the Regulatory Flood Protection Elevation, as defined in Article 2 of this ordinance.
- (2) Non-Residential Construction. New construction and substantial improvement of any commercial, industrial, or other non-residential structure shall have the reference level, including basement, elevated no lower than the Regulatory Flood Protection Elevation, as defined in Article 2 of this ordinance. Structures located in A, AE, AO, and A1-30 Zones may be floodproofed to the Regulatory Flood Protection Elevation in lieu of elevation provided that all areas of the structure, together with attendant utility and sanitary facilities, below the Regulatory Flood Protection Elevation are watertight with walls substantially impermeable to the passage of water, using structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effect of buoyancy. A registered professional engineer or architect shall certify that the standards of this subsection are satisfied. Such certification shall be provided to the Floodplain Administrator as set forth in Article 4, Section B(3), along with the operational maintenance plans.
- (3) Manufactured Homes.
 - (a) New and replacement manufactured homes shall be elevated so that the reference level of the manufactured home is no lower than the regulatory flood protection elevation, as defined in Article 2 of this ordinance.
 - (b) Manufactured homes shall be securely anchored to an adequately anchored foundation to resist flotation, collapse, and lateral movement, either by certified engineered foundation system, or in accordance with the most current edition of the State of North Carolina Regulations for Manufactured Homes adopted by the Commissioner of Insurance pursuant to NCGS 143-143.15. Additionally, when the elevation would be met by an elevation of the chassis thirty-six (36) inches or less above the grade at the site, the chassis shall be supported by reinforced piers or engineered foundation. When the elevation of the chassis is above thirty-six (36) inches in height, and engineering certification is required.
 - (c) All enclosures or skirting below the lowest floor shall meet the requirements of Article 5, Section B(4).

- (d) An evacuation plan must be developed for evacuation of all residents of all new, substantially improved or substantially damaged manufactured home parks or subdivisions located within flood prone areas. This plan shall be filed with an approved by the Floodplain Administrator and the local Emergency Management coordinator.
- (4) Elevated Buildings. Fully enclosed area, of new construction and substantially improved structures, which is below the lowest floor
- (a) Shall not be designed or used for human habitation, but shall only be used for parking of vehicles, building access, or limited storage of maintenance equipment used in connection with the premises. Access to the enclosed area shall be the minimum necessary to allow for parking of vehicles (garage door) or limited storage of maintenance equipment (standard exterior door), or entry to the living area (stairway or elevator). The interior portion of such enclosed area shall not be finished or partitioned into separate rooms, except to enclose storage areas;
 - (b) Shall be constructed entirely of flood resistant materials at least to the regulatory flood protection elevation;
 - (c) Shall include, in Zones A, AO, AE, and A1-30, flood openings to automatically equalize hydrostatic flood forces on walls by allowing for the entry and exit of floodwaters. To meet this requirement, the openings must either be certified by a professional engineer or architect or meet or exceed the following minimum design criteria:
 - (i) A minimum of two flood openings on different sides of each enclosed area subject to flooding;
 - (ii) The total net area of all flood openings must be at least one (1) square inch for each square foot of enclosed area subject to flooding;
 - (iii) If a building has more than one enclosed area, each enclosed area must have flood openings to allow floodwaters to automatically enter and exit;
 - (iv) The bottom of all required flood openings shall be no higher than one (1) foot above the adjacent grade;
 - (v) Flood openings may be equipped with screens, louvers, or other coverings or devices provided they permit the automatic flow of floodwaters in both directions; and
 - (vi) Enclosures made of flexible skirting are not considered enclosures for regulatory purposes, and, therefore, do not require flood openings. Masonry

or wood underpinning, regardless of structural status, is considered an enclosure and requires flood openings as outlined above.

(5) Additions/Improvements.

- (a) Additions and/or improvements to pre-FIRM structures when the addition and/or improvements in combination with any interior modifications to the existing structure are:
 - (i) Not a substantial improvement, the addition and/or improvements must be designed to minimize flood damages and must not be any more non-conforming than the existing structure.
 - (ii) A substantial improvement, both the existing structure and the addition and/or improvements must comply with the standards for new construction.
- (b) Additions to post-FIRM structures with no modifications to the existing structure other than a standard door in the common wall shall require only the addition to comply with the standards for new construction.
- (c) Additions and/or improvements to post-FIRM structures when the addition and/or improvements in combination with any interior modifications to the existing structure are:
 - (i) Not a substantial improvement, the addition and/or improvements only must comply with the standards for new construction.
 - (ii) A substantial improvement, both the existing structure and the addition and/or improvements must comply with the standards for new construction.

(6) Recreational Vehicles. Recreational vehicles shall either:

- (a) Be on site for fewer than 180 consecutive days and be fully licensed and ready for highway use (a recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities, and has not permanently attached additions); or
- (b) Meet all the requirements for new construction.

(7) Temporary Non-Residential Structures. Prior to the issuance of a floodplain development permit for a temporary structure, the applicant must submit to the Floodplain Administrator a plan for the removal of such structure(s) in the event of a hurricane, flash flood or other type of flood warning notification. The following information shall be submitted in writing to the Floodplain Administrator for review and written approval:

- (a) A specified time period for which the temporary use will be permitted. Time specified may not exceed three (3) months, renewable up to one (1) year.
 - (b) The name, address, and phone number of the individual responsible for the removal of the temporary structure;
 - (c) The time frame prior to the event at which a structure will be removed (i.e., minimum of 72 hours before landfall of a hurricane or immediately upon flood warning notification);
 - (d) A copy of the contract or other suitable instrument with the entity responsible for physical removal of the structure; and
 - (e) Designation, accompanied by documentation, of a location outside the Special Flood Hazard Area, to which the temporary structure will be moved.
- (8) Accessory Structures. When accessory structures (sheds, detached garages, etc.) are to be placed within a Special Flood Hazard Area, the following criteria shall be met:
- (a) Accessory structures shall not be used for human habitation (including working, sleeping, living, cooking or restroom areas);
 - (b) Accessory structures shall not be temperature-controlled;
 - (c) Accessory structures shall be designed to have low flood damage potential;
 - (d) Accessory structures shall be constructed and placed on the building site so as to offer the minimum resistance to the flow of floodwaters;
 - (e) Accessory structures shall be firmly anchored in accordance with the provisions of Article 5, Section A(1);
 - (f) All service facilities such as electrical shall be installed in accordance with the provisions of Article 5, Section A(4); and
 - (g) Flood openings to facilitate automatic equalization of hydrostatic flood forces shall be provided below regulatory flood protection elevation in conformance with the provisions of Article 5, Section B(4)(c).

An accessory structure with a footprint less than 150 square feet that satisfies the criteria outlined above does not require an elevation or floodproofing certificate. Elevation or floodproofing certifications are required for all other accessory structures in accordance with Article 4, Section B(3).

SECTION C. RESERVED.

SECTION D. STANDARDS FOR FLOODPLAINS WITHOUT ESTABLISHED BASE FLOOD ELEVATIONS.

Within the Special Flood Hazard Areas designated as Approximate Zone A and established in Article 3, Section B, where no Base Flood Elevation (BFE) data has been provided by FEMA, the following provisions, in addition to the provision of Article 5, Section A, shall apply:

- (1) No encroachments, including fill, new construction, substantial improvements or new development shall be permitted within a distance of twenty (20) feet each side from top bank or five times the width of the stream, whichever is greater, unless certification with supporting technical data by a registered professional engineer is provided demonstrating that such encroachments shall not result in any increase in flood levels during the occurrence of the base flood discharge.
- (2) The BFE used in determining the Regulatory Flood Protection Elevation shall be determined based on the following criteria:
 - (a) When the Base Flood Elevation (BFE) data is available from other sources, all new construction and substantial improvements within such areas shall also comply with all applicable provisions of this ordinance and shall be elevated or floodproofed in accordance with standards in Article 5, Sections A and B.
 - (b) When floodway or non-encroachment data is available from a Federal, State, or other source, all new construction and substantial improvements within floodway and non-encroachment areas shall also comply with the requirements of Article 5, Section B and F.
 - (c) All subdivision, manufactured home park and other development proposals shall provide Base Flood Elevation (BFE) data if development is greater than five (5) acres or has more than fifty (50) lots/manufactured home sites. Such Base Flood Elevation (BFE) data shall be adopted by reference in accordance with Article 3, Section B and utilized in implementing this ordinance.
 - (d) When Base Flood Elevation (BFE) data is not available from a Federal, State, or other source as outlined above, the reference level shall be elevated or floodproofed (nonresidential) to or above the Regulatory Flood Protection Elevation, as defined in Article 2. All other applicable provisions of Article 5, Section B shall also apply.

SECTION E. STANDARDS FOR RIVERINE FLOODPLAINS WITH BFE, BUT WITHOUT ESTABLISHED FLOODWAYS OR NON-ENCROACHMENT AREAS.

Along rivers and streams where Base Flood Elevation (BFE) data is provided by FEMA or is available from another source but neither floodway nor non-encroachment areas are identified for a Special Flood Hazard Area on the FIRM or in the FIS report, the following requirements shall apply to all development within such areas:

- (1) Standards of Article 5, Sections A and B; and
- (2) Until a regulatory floodway or non-encroachment area is designated, no encroachments, including fill, new construction, substantial improvements, or other development, shall be permitted unless certification with supporting technical data by a registered professional engineer is provided demonstrating that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one (1) foot at any point within the community.

SECTION F. FLOODWAYS AND NON-ENCROACHMENT AREAS.

Areas designated as floodways or non-encroachment areas are located within the Special Flood Hazard Areas established in Article 3, Section B. The floodways and non-encroachment areas are extremely hazardous areas due to the velocity of floodwaters that have erosion potential and carry debris and potential projectiles. The following provisions, in addition to standards outlined in Article 5, Sections A and B, shall apply to all development within such areas:

- (1) No encroachments, including fill, new construction, substantial improvements and other developments shall be permitted unless:
 - (a) It is demonstrated that the proposed encroachment would not result in any increase in the flood levels during the occurrence of the base flood, based on hydrologic and hydraulic analyses performed in accordance with standard engineering practice and presented to the Floodplain Administrator prior to issuance of floodplain development permit, or
 - (b) A Conditional Letter of Map Revision (CLOMR) has been approved by FEMA. A Letter of Map Revision (LOMR) must also be obtained upon completion of the proposed encroachment.
- (2) If Article 5, Section F(1) is satisfied, all development shall comply with all applicable flood hazard reduction provisions of this ordinance.
- (3) No new manufactured homes shall be permitted. Replacement manufactured homes in an existing manufactured home park or subdivision may be permitted, provided the following provisions are met:
 - (a) The anchoring and the elevation standards of Article 5, Section B(3); and
 - (b) The no encroachment standards of Article 5, Section F(1).
- (4) No new habitable structures, included structures used for working, sleeping, living, cooking, or restroom facilities, shall be permitted in floodways and non-encroachment areas.

ARTICLE 6. LEGAL STATUS PROVISIONS.

SECTION A. EFFECT ON RIGHTS AND LIABILITIES UNDER THE EXISTING FLOOD DAMAGE PREVENTION ORDINANCE.

This ordinance in part comes forward by re-enactment of some of the provisions of the flood damage prevention ordinance enacted January 6, 2010, and it is not the intention to repeal but rather to re-enact and continue to enforce without interruption of such existing provisions, so that all rights and liabilities that have accrued thereunder are reserved and may be enforced. The enactment of this ordinance shall not affect any action, suit or proceeding instituted or pending. All provisions of the flood damage prevention ordinance of Buncombe County enacted on August 1, 1980, as amended, which are not reenacted herein are repealed.

The date of the initial flood damage prevention ordinance for each municipal jurisdiction within Buncombe County as follows:

City of Asheville: 7/16/1980

Town of Black Mountain: 4/15/1980

Town of Biltmore Forest: None

Town of Montreat: 2/10/2005

Town of Weaverville: 5/6/1996

Town of Woodfin: 2/1/1980

SECTION B. EFFECT UPON OUTSTANDING FLOODPLAIN DEVELOPMENT PERMITS.

Nothing herein contained shall require any change in the plans, construction, size, or designated use of any development or any part thereof for which a floodplain development permit has been granted by the Floodplain Administrator or his or her authorized agents before the time of passage of this ordinance; provided, however, that when construction is not begun under such outstanding permit within a period of six (6) months subsequent to the date of issuance of the outstanding permit, construction or use shall be in conformity with the provisions of this ordinance.

SECTION C. SEVERABILITY.

If any section, clause, sentence, or phrase of the Ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way effect the validity of the remaining portions of this Ordinance.

SECTION D. EFFECTIVE DATE.

This ordinance shall become effective on January 6, 2010.

CODE INDEX

A

ADMINISTRATION

- Board of Commissioners. See Mayor and Board of Commissioners.
- Mayor and Board of Commissioners. See that title.
- Personnel Rules and Regulations. See that title.
- Town Clerk. See that title.
- Vice Mayor. See Mayor and Board of Commissioners.

ALCOHOLIC BEVERAGES

- Adoption of state laws 3-1

ANIMALS AND FOWL

- Animals at large 4-2
- Bird Sanctuary. See that title
- Cruelty to animals 4-1
- Dangerous animals 4-8
- Dogs. See that title.
- Hogs and pigs 4-6
- Housing 4-4
- Impoundment 4-3
- Limitation on number of pets 4-5
- Pens 4-7
- Removal of dead animals. See Health and Sanitation.

AUTOMOBILES

- See Motor Vehicles.

B

BIRD SANCTUARY

- Designated 4-19
- Signs 4-21
- Trapping, hunting or shooting 4-20

BUILDING CODE

- Adopted. See Buildings and Building Regulations.

BUILDINGS AND BUILDING REGULATIONS

- Building Code, adopted 5-18
- Permits
 - Fees 5-2
 - Required 5-1

CODE INDEX Cont'd

BUILDINGS AND BUILDING REGULATIONS Contd.

Plumbing code, adopted	5-29
Roof coverings	
Approved materials	5-3
Condemnation	5-7
Dormer windows	5-5
Exception to materials	5-4
Wood shingle roofs	5-6

C

CIVIL EMERGENCIES

Curfew authorized	6-4
Declaration	6-2
Emergency defined	6-1
Proclamation declaring	
Existence	6-3
End of emergency	6-5
Extension, alteration of repeal	6-7
Restrictions	6-6
Termination of emergency	6-5
Violation of restrictions	6-8

CODE OF ETHICS

vii

CODE OF ORDINANCES

Altering or tampering with	1-5
Amendments ,	
Generally	1-4
Catch lines of sections	
Effect	1-3
Numbering system explained. See preface to this code.	
Corporate officers, agents and employees	
Liability for code violations	1-6
Definitions and rules of construction ,	
General code definitions	1-2
Specific definitions and terms in various contexts, See specific subjects as indexed.	
Designated and cited, how	1-1
General penalties. See within this title: Violations.	
Ordinances saved from repeal, etc. See adopting ordinance.	

CODE INDEX Contd.

Penalties. See within this title: Violations.
Severability of parts of code 1-8
Violations

CODE OF ORDINANCES

Violations Contd.
Continuing violations 1-7
Corporate officers, agents and employees,
liability for code violations 1-6

CODE INDEX Contd.

CODE OF ORDINANCES

Violations Contd.
General penalty 1-7

CURFEW

Civil Emergencies. See that title.

D

DOGS

Impoundment 4-33
Procedures 4-33
Reclaiming impounded dogs 4-34
Running at large 4-32
Unclaimed dogs 4-35
Vicious dogs 4-36

E

ELECTIONS

Board of Elections 7-2
Procedures 7-3
Schedule 7-1

EMERGENCIES

Civil Emergencies. See that title.

EMPLOYEES

See Personnel Policy Manual

EXPLOSIVES

Firearms. See Offenses.

CODE INDEX Contd.

F

FIREARMS

Discharge of See Offenses.

FIRE EQUIPMENT

See Fire Protection and Prevention

FIRE DEPARTMENT

Fire Protection and Prevention. See that title.

FIRE PROTECTION AND PREVENTION

Burning within town prohibited	8-1
False fire alarms	8-3
Fire Department	
Established	8-14
Equipment	8-16
Training sessions	8-15
Uniforms	8-16
Lots to be kept free of fire hazards	8-2

FLOOD PROTECTION ORDINANCE 21-0

Statutory authorization, findings of fact, purpose & objectives.	21-1
Definitions	21-2
General Provisions	21-3.
Administration	21-4
Provisions for flood damage reduction	21-5
Legal status provisions	21-6

G

GARBAGE AND TRASH

Collection	9-3
Construction debris	9-2
Littering	9-1

H

HEALTH AND SANITATION

Abatement of nuisances	10-1
Animals - removal of dead	10-5
Cleanliness of premises	10-4
Drainage obstructions	10-3

CODE INDEX Cont'd

Stagnant water 10-2

HOLIDAYS

See Personnel Policy Manual

IMPOUNDMENT

See Animals and Fowl.

J

JUNK

Rubbish. See Garbage and Trash.

K

KEYS

Ignition keys. See Motor Vehicles.

L

LIQUOR

Alcoholic Beverage Control. See Alcoholic Beverages.

LITTERING

Garbage and Trash. See that title.

M

MAYOR AND BOARD OF COMMISSIONERS

Committees	2-1
Compensation	2-10
Elections by board	2-9
Meetings	
Limitation on discussion	2-8
Order of business	2-5
Procedures	
Quorum	2-6
Vice Mayor	2-2
Vote	2-17

CODE INDEX Cont'd

MOTOR VEHICLES

Driving unsafe vehicles	11-2
Go-carts. See Parks and Recreation.	
Improperly equipped vehicles	11-3
Keys, leaving in ignition	11-1
Motorcycles. See Parks and Recreation.	
Weight limitation, permit	11-4

N

NOISES

Offenses. See that title	12-2
--------------------------	------

NUISANCES.

Abatement. See Health and Sanitation	
--------------------------------------	--

O

OBSTRUCTIONS

Drainage. See Health and Sanitation.	
Streets and Sidewalks. See that title.	

OFFENSES

Boisterous conduct	12-2(8)
Breach of peace	12-2(5)
Disturbing the peace	12-2(1)
Firearms and other weapons	12-1
Gambling	12-2(4)
Impersonating officers	12-2(3)
Indecent acts	12-2(12)
Interfering with traffic	12-2(11)

OFFENSES -Cont'd

Intoxication	12-2(6)
Obscene language	12-2(9)
Obscene language	12-2(9)
Offenses against public peace	12-2
Profane language	12-2(9)
Resisting arrest	12-2(2)
Riotous acts	12-2(10)

CODE INDEX Cont'd

P

PARKS AND RECREATION

Park property	
Destruction of	13-1
Riding motorized vehicles	13-2

PERSONNEL RULES AND REGULATIONS

See Personnel Policy Manual

PLUMBING CODE

Adopted. See Buildings and Building Regulations.

POLICE

Character of policemen	14-2
Hampering an officer	14-5
Police Department	
Chief of police	14-1
Composition	14-1
Special policemen	14-3
Unlawful police calls	14-4

POLICE DEPARTMENT

Police. See that title.

Q

QUORUM

Mayor and Board of Commissioners. See Meetings within that title.

R

RECREATION

See Parks and Recreation

ROOF COVERINGS

See Buildings and Building Regulations.

RULES OF CONSTRUCTION FOR CODE

See Code of Ordinances.

CODE INDEX Cont'd

S

SEWER

Charges. See Utilities.

SICK LEAVE

See Personnel Policy Manual

STATE OF EMERGENCY, CURFEW

Civil Emergencies. See that title.

STORMWATER MANAGEMENT

Applicability & Exemptions	20-3
As-Built Plans & Specifications	20-10
Assurance that Improvements will be Maintained	20-17
Construction & Maintenance	20-14
Definitions	20-4
Design Standards	20-12
Maintenance	20-18
Maintenance Manual	20-9
Penalties for Violation	20-7
Permit Application & Plans	20-8
Performance Security for Installation & Maintenance	20-15
Review & Appeals	20-6
Review & Decision-Making Entities	20-5
Stormwater Management Objectives	20-11

STREETS AND SIDEWALKS

Construction of private drives	15-4
Destruction of street signs	15-3
Drives, construction	15-4
Hauling building materials	15-5
Parkways, protection	15-1
Signs and posters	15-2

T

TAXATION

Levy to conform to state law	16-2
Rate	16-1

CODE INDEX Cont'd

TOWN CLERK	
Compensation	2-4
Duties	2-4
Elected	2-3
TRAFFIC	
Alleys, emerging from	17-31
Animals on roadways	17-10
Authorized emergency vehicles	
Defined	17-1
Exemption from traffic regulations	17-6
Backing, limitations on	17-34
Bicycles	
TRAFFIC	
Clinging to moving vehicles	17-13
On roadways	17-10
Riding on handle bars	17-11
Riding on sidewalks	17-12
Riding without hands on handle bars	17-12
Block defined	17-1
Boarding vehicles in motion	17-15
Clinging to vehicles	17-13
Curbs	
Stopping, Standing and Parking. See within this title that subject.	
Definitions	17-1
Driver's seat	
Limitation of passengers	17-18
Driveways	
Emerging from	17-31
Emergency vehicles. See Vehicles, this title.	
Fire hydrants, parking near	17-51
Flashing signals. See Traffic Control Devices, this title.	
Funeral processions	
Driving through	17-33
Left turns	17-36
Lights. See Traffic Control Devices this title.	
Obedience to police	17-3
Obedience to traffic regulations	17-2
Obstructing traffic	
Entering intersection so as to obstruct	17-49
Vehicle standing so as to obstruct	17-48
Parking. See within this title: Stopping, Standing and Parking.	
Passengers	17-16

Play streets	17-8
CODE INDEX Cont'd	
Police	
Authority in special cases	17-5
Obedience to lawful orders	17-3
Public employees	
Obedience to traffic regulations	17-4
Push carts	17-10
School zones. See within this title: Zones	
Sidewalks	17-12
Speed limits	17-35
Stopping, Standing and Parking Prohibited in certain places	
Bridges	17-47(8)
Crosswalks	17-47(2)
Fire hydrants	17-51
TRAFFIC	
Grade crossing approaches	17-47(6)
Intersections	17-47(3)
Public buildings	17-47(9)
Roadway side of stopped vehicle	17-47(10)
Sidewalks	17-47(1)
Street excavations	17-47(7)
Traffic signals	17-47(4)
Underpass approaches	17-47(5)
Stopping vehicles in unlawful places	17-47
Traffic Control Devices	
Flashing signals	17-67
No parking and safety zone markers	17-64
No turn signs and turning markers	17-63
Obedience to	17-62
Signal legend; color signals	17-65
Turning around	17-32
Unlawful riding	17-14
Vehicles	
Emergency vehicles	
Authorized emergency vehicles	17-1
Exemption to traffic regulations	17-6
Emerging from alley or private drive	17-31
Entering, jumping on or riding without permission	17-17
Moving into restricted areas	17-19
Obstructing passage	17-48
Parking. See Stopping, Standing and Parking, within this title.	
Prohibited on sidewalks	17-30
Stopping in streets	17-50

CODE INDEX Cont'd

Zones	
Quiet zones	17-7
School zones	17-9

TRASH

Garbage and Trash. See that title.

TREE PROTECTION

Identifying protected tree	19-2
Replacement trees	19-7

U

UTILITIES

Contamination of water supply	18-2
Sewer charges	18-5
Tampering with city property	18-1
Water tap-on fee	18-3

UTILITIES

Water rates	18-4
-------------	------

V

VACATION LEAVE

See Personnel Policy Manual

VEHICLES.

See Motor Vehicles.

W

WATER AND WATER RATES

See Utilities

WEEDS

See Health and Sanitation.

WEIGHT OF VEHICLES

See Motor Vehicles.

CODE INDEX Cont'd

Z

ZONING

Administration	Art. VII
Definitions	Art. II, Secs. 1-11
Districts	Art. III, Sec. 1
Interpretation and effective date	Art. VII, Secs 1, 2
Title	Art. I
Uses	
Business District	Art. V, Secs. 1- 7
Industrial District	Art. V-A
Non-Conforming	Art. VI
Residence	Art. IV, Secs. 1- 9