

CHAPTER 21: UTILITIES

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Notes

- ¹ Cross-reference:
Buildings and Building Regulations, Ch. 5; minimum standards for basic plumbing, heating, and electrical equipment and facilities, § 5-405; Fire Protection and Prevention, Ch. 10; Solid Waste, Ch. 11; Planning, Zoning, and Subdivision Control, Ch. 17; Streets, Sidewalks, and Other Public Places, Ch. 19.
- Statutory reference:
Public enterprise, G.S. §§ 160A-311 et seq.; authority to operate public enterprise, G.S. §§ 160A-312; utility franchises, G.S. § 160A-319.

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Water and sewer extension charges, Ch. 21, Art. VI.

Editor's note:

Ord. 13-2004, adopted June 7, 2004, amended the code by the addition of §§ 21-220 through 21-226; however, said provisions have been re-designated as §§ 21-280 through 21-287, at the discretion of the editor, for purposes of maintaining the code format.

DIVISION 1. GENERALLY

§ 21-201 OWNERSHIP AND OPERATION.

The water system of the town shall be owned, and operated, by the town, and responsibility for adopting policies, rules, and regulations for its operation is vested in the Town Council.

(Ord. 2-86, passed 2-17-1986)

§ 21-202 CONNECTIONS.

No water from the town water system shall be turned on for service to any premises by any person but the Director of Public Works, or some person authorized by him or her to perform this service.

(Ord. 2-86, passed 2-17-1986)

§ 21-203 APPLICATION.

(A) No person shall connect with the town water system until application for permission to do so has been made, in writing, to the Public Works Director, which application shall contain an agreement to abide by all provisions of this chapter as conditions governing the use of town water by the applicant. The application shall be accompanied by such fees as may,

from time to time, be required by the Town Council for the turning on of water service, and such related services as may be required, together with such user deposit as may be required.

(B) Submission of an application to the town for a water connection, or water service, shall constitute consent of the applicant for town employees, and agents, to enter upon the premises served at reasonable times, and in a reasonable manner, to perform such activities as may be required to fulfill the purposes, and intent, of this article, and to ensure compliance with the provisions hereof.

(C) So as to avoid the perpetuation of private wells and private septic tank systems, and to protect the health and safety of the residents of the town and the surrounding area, no application for water service, or sewer service, for any premises to which the town's water distribution system, or sanitary sewer system, are both available, as provided by this chapter, shall be granted unless the applicant requests both water and sewer service from the town.

(Ord. 2-86, passed 2-17-1986)

Cross-reference:

Plumbing code adopted, § 5-103; plumbing permit, § 5-201; town water tank, § 12-104.

§ 21-204 PLUMBING.

[Repealed]

§ 21-205 SEPARATE CONNECTIONS; OWNERSHIP.

Separate water connections are required for each business, or residence, receiving water service in the town. Connections to the town's water system, once made, shall be owned, operated, and maintained by the town. Service pipes running from the connection point with the town system to the premises served shall be, and remain owned by, the property owner, and the town shall have no responsibility therefor.

(Ord. 2-86, passed 2-17-1986)

§ 21-206 REQUIRED CONNECTIONS.

(A) All owners of property within the town's limits, and upon which an improved premises is located within 200 feet of any waterline owned, and operated, by the town, shall connect such premises with the town water system, and shall use town-supplied water as the primary water supply for the premises.

(B) Upon completion of any extension of the town water system, or upon any extension of the town's corporate limits, notice shall be sent to owners of property within the town limits, and within 200 feet of a town-owned waterline, advising such property owner of this chapter, and allowing such property owner 180 days from the date of such notice to submit a proper application for connection to the town's water system of any premises within 200 feet of any town-owned waterline.

(C) No property located within the town's extraterritorial jurisdiction shall be required to connect to the town's water system.

(Ord. 2-86, passed 2-17-1986; Ord. 17-92, passed 8-3-1992; Ord. 35-2001, passed 10-15-2001)

§ 21-207 SECONDARY TAPS AND WELLS.

(A) Upon proper application therefor, and the payment of such fees as may, from time to time, be required, a property owner who is otherwise in compliance with this article may be allowed a tap onto the town water system for noncommercial, non-household consumption, including, but not limited to, heating and cooling systems, irrigation, swimming pools, and other uses where any wastewater cannot reasonably be expected to enter the town's sanitary sewer system. The town will not assess sewer charges in connection with such a secondary water tap installed, and utilized, in accordance with this article.

(B) Owners of property subject to the mandatory connection requirements of this article shall also be allowed to have, and use, private wells as a secondary water supply, subject to the provisions hereof.

(1) Users of private wells shall notify the town, in writing, of the existence and location of each such well, and the uses made of the water therefrom. The town will not assess charges for consumption of water from private wells when no portion of the wastewater therefrom can reasonably be expected to enter the town's sanitary sewer system.

(2) When water from a private well is used in such fashion that wastewater can be expected to enter the town's sanitary sewer system, the user of such well shall be assessed a water availability charge equal to the town's minimum monthly water service charge. Further, the owner of such well shall be required to install, and maintain to town specifications, a water flow meter to measure the water flowing from the well. Water use from the well will be determined periodically, and the owner assessed sewer use charges at the prevailing town rate.

(3) In no event shall secondary water supply exceed 10% of the total water usage.

(C) No person shall use, or maintain, a private water well for human, or animal, consumption unless the well has been permitted by the county, and the water from such well is periodically analyzed, and found to be fit for such consumption as required by the county and state law.

(Ord. 2-86, passed 2-17-1986; Ord. 17-92, passed 8-3-1992)

§ 21-208 SALE AND RESALE.

No recipient of town-supplied water, and no producer of well water shall sell, resell, supply, or distribute water to any other person, or premises, except as specifically allowed by this article, except in case of emergency, it being the policy of the town that no person shall profit from the distribution of town-supplied water to third parties. Notwithstanding the foregoing, the Town Council may, in its discretion, authorize the commercial sale of town-supplied water to third parties.

(Ord. 2-86, passed 2-17-1986)

Statutory reference:

Contracts for the sale of water, G.S. § 160A-322.

§ 21-209 TAMPERING.

(A) Pursuant to G.S. § 14-151, it is a Class 1 misdemeanor to alter, tamper, or bypass a water meter.

(B) Additionally, it is unlawful for any person not authorized by the town to tamper with, use, alter, or injure any part of the town water storage, waterworks, water supply, and distribution system, meter, or fire hydrant.

(Ord. 2-86, passed 2-17-1986) Penalty, see §1-111

§ 21-210 SERVICE CONNECTION.

(A) No connection with the town's water distribution system shall be made without a permit therefor being issued, and 24 hours' notice being given, to the Director of Public Works. All such connections shall be made, and all such work done and materials used provided at the expense of the applicant. All such connections shall be made under the supervision of the Director of Public Works, by town employees, or plumbers licensed by the state. No connection shall be covered until approved by the Director of Public Works, or his or her designee.

(B) All service pipes from town distribution lines to the premises served shall be installed by, and at the cost of, the owner of the property to be served, or the applicant for service. Such installation shall be under the inspection of the Building Inspector.

(C) No service shall be installed except in conformity with applicable building and plumbing codes, and such reasonable requirements as the Building Inspector, or the Public Works Director, may demand for a particular premises for the protection of health, safety, or the town's water system.

(Ord. 2-86, passed 2-17-1986)

§ 21-211 MULTIPLE USERS.

It is the policy of the town that each property supplied with water from the town shall have a tap and meter installed at the point where the consumer's service line leaves the town's supply system. However, sub-metering is permitted to the extent it is allowed by, and in accordance with, state law, including all rules established by the State Utilities Commission.

(Ord. 2-86, passed 2-17-1986)

§ 21-212 NONRESIDENT CUSTOMERS.

Premises outside the town limits shall have no right to connect to the town's water supply system, but may be allowed to connect, upon application to the Town Manager, compliance with this article, and payment of such fees and charges, as may be set from time to time, for nonresident water customers.

(Ord. 2-86, passed 2-17-1986)

§ 21-213 WATER EMERGENCY MANAGEMENT.

Repealed and superseded by Chapter 21, Article II-A, "Water Conservation Practices".

(Ord. 10-77, passed 10-3-1977; Ord. 2-86, passed 2-17-1986; Ord. 23-2001, passed 7-2-2001)

§ 21-214 INSTALLATION.

[Repealed]

(Ord. 2-86, passed 2-17-1986)

§ 21-215 PIPES.

[Repealed]

(Ord. 2-86, passed 2-17-1986)

§ 21-216 REPAIRS.

All repairs for service pipes and plumbing systems owned by the property owner shall be made by, and at the expense of, the owner of the premises served. In the case of a public nuisance, the town may repair any service pipes; if this is done, the cost of such repair work shall be paid to the town by the owner, or water consumer of the premises served.

(Ord. 2-86, passed 2-17-1986)

§ 21-217 EXCAVATIONS.

Excavations for installing service pipes, or repairing the same, shall be made in compliance with town ordinances and policies relating to making excavations in streets or sidewalks. Water service pipes may be placed in the same excavation with a drain pipe or sewer pipe, only in accordance with the *State Building Code*.

(Ord. 2-86, passed 2-17-1986)

§ 21-218 SHUTOFF BOXES.

Shutoff boxes or service boxes shall be placed on every service pipe, and in accordance with the *State Building Code*.

(Ord. 2-86, passed 2-17-1986)

§ 21-219 DISCONTINUATION OF SERVICE.

Repealed. (See § 21-508, "Discontinuation of Service".)

(Ord. 2-86, passed 2-17-1986)

§§ 21-220 TO 21-240 RESERVED.

DIVISION 2. METERS

§ 21-241 METERS REQUIRED.

(A) All premises using the town water supply must be equipped with an adequate water meter furnished by the town, but paid for by the consumer. If, for any reason, a water meter is not, or cannot, be installed at the time water service is required, then upon approval of the Town Manager, water service may be supplied by the town at a flat rate until a meter may be installed.

(B) Before any premises is occupied, a water meter shall be installed therefor as required by this section, or the Town Manager shall have approved water service at a flat rate, or charge, until a meter can be installed.

(Ord. 2-86, passed 2-17-1986)

§ 21-242 INSTALLATION.

Meters shall be installed in a location that will be easy to access, and no person shall obstruct, damage, vandalize, tamper with, or do any other thing which could reasonably have the effect of defeating the purpose of the water meter, or inhibiting the reading thereof. Meters shall normally be installed at the point of connection between the town water distribution system and the pipe serving the consumer's premises.

(Ord. 2-86, passed 2-17-1986)

§ 21-243 READING METERS.

The Director of Public Works, or his or her designee, shall read, or cause to be read, every water meter used in the town at such times as are necessary so that the bills may be sent out at the proper time.

(Ord. 2-86, passed 2-17-1986)

§ 21-244 TESTING METERS.

(A) Any municipal water meter shall be taken out and tested upon written request of the consumer, and upon payment of such fee as may be set therefor, from time to time, by the Town Council. If test results indicate that the meter is not within 3% of being accurate, the meter shall be repaired, or replaced, and the testing fee returned to the consumer. If the test results that the meter is within 3% of being accurate, the consumer shall continue to use the existing meter, and the testing fee shall not be refunded.

(B) A written report of the test shall be furnished to the consumer within ten days of receipt of such results in the town office.

(C) Effective July 1, 2015, Any privately-owned water meter connected to the municipal water supply shall be tested, and calibrated, on an annual basis. The results of said tests shall be provided to the town within 30 days and/or July 1 (whichever comes first) of each year to ensure privately-owned meters are working properly.

(Ord. 2-86, passed 2-17-1986)

§§ 21-245 TO 21-260 RESERVED.

DIVISION 3. BILLING

§ 21-261 BILLING POLICIES.

(A) The town's policies regarding billing for utility services and procedures for handling consumer complaints regarding bills are set forth in Article V of this chapter, the provisions of which apply to the town's water utility service.

(B) In the event of a faulty water meter, or any other circumstance involving fault on the part of the town that renders an accurate measure of a consumer's water consumption unavailable, prior water consumption by the consumer, and the water consumption experience of similar consumers, shall be considered in fixing the charges to the consumer for any period in question.

(C) Breaks or leaks on the consumer's side of the water meter shall be the consumer's responsibility, and shall not be a reason to reduce the consumer's water charges from the town.

(D) The filing of a complaint regarding a water bill shall not affect the obligation of the consumer to pay, in a timely fashion, any bill rendered by the town for water service as required by this article.

(Ord. 2-86, passed 2-17-1986)

§ 21-262 RATES.

Any premises connected to the town's water system shall pay water connection fees, service charges, and water rates, as appropriate, as the same shall be determined, from time to time, by the Town Council, and kept on file in the office of the Town Clerk.

(Ord. 2-86, passed 2-17-1986; Ord. 35-2001, passed 10-15-2001)

§ 21-263 BILLS.

Bills for water used, and related charges, shall be dated and sent out at such times as may be authorized by the Town Council, and directed by the Town Manager.

(Ord. 2-86, passed 2-17-1986)

§ 21-264 CONSTRUCTION PROJECTS.

During the construction of any structure, and before any water system is installed therein, as is provided in this article, the contractor constructing the structure may be permitted to use the town water supply by making application therefor, and by paying such fees as may be prescribed by the Town Council.

(Ord. 2-86, passed 2-17-1986)

§ 21-265 NONPAYMENT.

The provisions of Article V of this chapter regarding discontinuation of service for nonpayment of charges apply to the town's water consumers.

(Ord. 2-86, passed 2-17-1986)

§ 21-266 COLLECTION.

The Town Manager and the Town Attorney are authorized to take such actions as they may deem appropriate to collect unpaid water, or sewer, fees and charges due the town.

(Ord. 2-86, passed 2-17-1986)

§§ 21-267 TO 21-280 RESERVED.

DIVISION 4. BACKFLOW PREVENTION AND CROSS-CONNECTION CONTROL

§ 21-281 PURPOSE.

(A) The purpose of this division is:

(1) To protect the town's water system from the possibility of contamination, or pollution, due to back siphonage or back pressure, by isolating within the customer's internal distribution system, or the customer's private water systems such contaminants or pollutants which could backflow into the town's water system;

(2) To define the authority of the town to eliminate cross-connections, new or existing, within its water system; and

(3) To provide a continuing program of cross-connection control which will systematically, and effectively, minimize any actual, or potential, hazardous cross-connections that may be installed in the future.

(B) This division may also be referred to as the town's "Policy for Backflow Prevention and Cross-Connection Control" (the "policy").

(Ord. 13-2004, passed 6-7-2004)

§ 21-282 DEFINITIONS.

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

BACKFLOW. Any flow of water, other liquids, gaseous or vaporous substances, other substances, or any combination thereof, into the water system from any source due to a cross-connection, back pressure, back siphonage, any combination thereof, or any other cause; provided, that the following activities by the town shall not be construed as **BACKFLOW**:

- (1) The introduction, or treatment, of raw water into the City of Hickory's water treatment plant; or
- (2) The introduction of such treated water by the city into the water system.

BACKFLOW PREVENTION ASSEMBLY or **ASSEMBLY.** An effective device, or method, used to prevent backflow.

CONTAMINATION. The impairment of the quality of potable water that creates an actual hazard to a degree that human consumption could result in poisoning, the spread of disease, serious illness, or death.

CROSS-CONNECTION. Any actual, or potential, physical connection or piping arrangement between the town's water system, and any other source, or private water system, sewer fixture, container, or device, through which it is possible to introduce into any part of the town's water system any used water, industrial fluids, gaseous or vaporous substances, or other substance which could be harmful, or hazardous, to the town's water system, whereby there exists the possibility for flow from one system to the other, with the direction of flow depending on the pressure differential between the systems.

CUSTOMER. The person, firm, corporation, or other entity who is an applicant of, or a recipient of, any service rendered by the town in connection with the operation of its water system.

DEGREE OF HAZARD. The evaluation of a risk within a private water system as existing high, imminent, or moderate.

EXISTING HAZARD. An actual contamination of the town's water system, or a customer's private water system, that could cause illness or death, or damage to the physical components comprising the town's water system.

HIGH HAZARD (SEVERE HAZARD). A potential threat of contamination to the town's water system, or to a customer's private water system, that could cause serious illness or death.

IMMINENT HAZARD. An actual threat of contamination to the town's water system, or to a customer's private water system.

MODERATE HAZARD. A potential threat of damage, contamination, or pollution to the town's water system, or a customer's private water system.

POLICY. The town's "Policy for Backflow Prevention and Cross-Connection Control", as approved, and administered, by the town's Public Works and Utilities Department.

POLLUTION. The impairment of the quality of the potable water to a degree that adversely, and detrimentally, affects the aesthetic qualities of such potable waters for domestic use.

PRIVATE WATER SYSTEM. A water distribution system privately-owned, and not directly controlled, by the town. For purpose of this policy, a **PRIVATE WATER SYSTEM** shall include a well situated on, and serving, an individual lot.

WATER SYSTEM. The water utility system owned, and operated, by the town, including all devices and facilities for the treatment, storage, and distribution of water.

(Ord. 13-2004, passed 6-7-2004)

§ 21-283 CROSS-CONNECTIONS PROHIBITED.

(A) It shall be unlawful for any person to cause, or permit, a cross-connection to be made, or to be made involving the customer's private water system, unless otherwise approved by the town.

(B) It shall be unlawful for any customer to fail to maintain, in good operating condition, through annual testing and maintenance, any backflow prevention assembly required by this division, and which is part of the customer's private water system.

(C) No private water system may be connected in any manner to the town's water system unless the requirements of this division, and all other applicable laws, have been satisfied.

(D) All connections to the town's water system shall be made in accordance with the town's "Policy for Cross-Connection Control and Contamination Prevention", and the town's standard details and specifications.

(E) The town shall revise the "Policy for Cross-Connection Control and Contamination Prevention" according to needs and requirements, as determined by the State Administrative Code, "Rules Governing Public Water Systems", and/or the *State Plumbing Code*.

(Ord. 03-441, passed 6-17-2003; Ord. 13-2004, passed 6-7-2004) Penalty, see § 1-111

§ 21-284 RIGHT OF ENTRY.

(A) Representatives of the town shall have the right to enter any property having a private water system which is served, in any manner, by the town's water system. Such entry shall be made at reasonable times, and for the purposes of inspecting, and observing, the private water system, determining the degree of hazard, testing and sampling of the water from such system, and any other duty which may be imposed on the town by this division.

(B) If a customer does not permit an authorized representative of the town to undertake, and complete, any inspection, observation, test, sample, or other duty of the representative concerning the customer's private water system, service to the private water system from the town's water system may be terminated.

(C) At the request of the town, a customer shall provide information that is reasonably necessary to determine the degree of hazard of the customer's private water system, all connections of the private water system to the town's water system, and any other information reasonably necessary to enforce the provisions of this division.

(Ord. 13-2004, passed 6-7-2004)

§ 21-285 NOTICE OF CONTAMINATION OR POLLUTION.

A customer shall immediately notify the town if the customer's private water system is contaminated or polluted, or if the customer has reason to believe that backflow has occurred from the customer's private water system to the town's water system.

(Ord. 13-2004, passed 6-7-2004)

§ 21-286 VIOLATIONS.

(A) A written notice of violation shall be given to any person who is determined to be in violation of any provision of this division.

(B) Such notice shall set forth the violation, and the time period within which the violation must be corrected. The violation shall be corrected within a reasonable time, not to exceed the time period specified in this division.

(C) If the town determines that the violation is occurring on a customer's private water system, and that such violation has created, or contributed to, the existence of an existing, or imminent, hazard, the customer will be required to correct the violation immediately.

(D) Water service may be terminated to a customer if the customer fails, in a timely manner, to correct a violation. Termination of water service will be without prejudice to the town's ability to assert any other remedy available against the customer, or any other person responsible for the violation, including declaring the violation to be a public nuisance to be corrected by the town, with a bill for the cost to repair being sent to the customer.

(E) Any person who violates the provisions of this division shall be subject to the following civil penalties:

(1) Any cross-connection not in compliance with this division involving a private water system, which is defined as an existing, imminent, or severe hazard, shall be liable for a penalty of \$750 per day that the violation continues;

(2) Any cross-connection not in compliance with this division involving a private water system, which is defined as a moderate hazard, shall be liable for a penalty of \$500 per day that the violation continues; and

(3) Any other violation of the provisions of this division shall subject the violator to a penalty of \$250 per day that the violation continues.

(F) Any person violating any provision of this division shall pay to the town all expenses incurred by the town in repairing any damage to the water system caused in whole, or in part, by such violation, and any expenses incurred by the town in investigating such violation.

(G) From, and after, the expiration of the time period specified by the town for correcting a violation of this division, each subsequent day that the violation continues in existence shall constitute a separate, and distinct, offense.

(H) Any violations of the provisions of this article shall constitute a Class 3 misdemeanor punishable by a fine not exceeding a maximum of \$500, as provided in G.S. § 14-4, and in addition thereto, such violation may be enjoined, and restrained, as provided in G.S. § 160A-175. The issuance of a criminal warrant shall not prohibit the imposition of civil penalties.

(Ord. 13-2004, passed 6-7-2004)

§ 21-287 SEVERANCE PROVISION.

If any section, subdivision, clause, or provision of this division shall be judged invalid, such adjudication shall only apply to such section, subdivision, clause, or provision so adjudged, and the remainder of this article's division be declared valid and in effect.

(Ord. 13-2004, passed 6-7-2004)

Section

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- 21-290 Definitions
- 21-291 Imposition of mandatory water conservation controls
- 21-292 Procedure for issuance of water shortage declaration
- 21-293 Stages of water conservation
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- 21-295 Stage 1
- 21-296 Stage 2
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- 21-298 Stage 4
- 21-299 Termination for leak in customer's plumbing
- 21-299.1 Temporary discontinuation of water connection
- 21-299.2 Variances
- 21-299.3 Enforcement
- 21-299.4 Applicability to combined distribution supply

§ 21-289 PURPOSE.

(A) It is the purpose, and intent, of this article to maintain, and protect, the water resources available to the town for essential, and community and business, water uses during a water shortage declaration. This article seeks to achieve that purpose by providing for the issuance of an official water shortage declaration, and the implementation of mandatory water conservation controls during the time when such declaration is in effect. This article shall be liberally construed to effectuate such purpose and intent.

(B) The majority of potable water used by the town is purchased from the City of Hickory per a contract entered into between the town and the City of Hickory, dated January 21, 2002. Therefore, the town will follow the actions of the HPUD with regard to water conservation regulations.

§ 21-290 DEFINITIONS.

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

COMMUNITY AND BUSINESS WATER USE. Any use of water from the town's water supply that meets either of the following criteria, with special emphasis on those uses which substantially minimize water use through recycling, or other means; critical to an institution's, or business's, function, and such use, or function, has a significant impact upon the economy of the county, or any municipality located therein; or critical to recreational, or other facilities, operated, or maintained, for community use. Examples of **COMMUNITY AND BUSINESS WATER USES** may be set forth in the Water Shortage Management Plan, and include, but are not limited to: watering stock or inventory at plant nurseries, garden centers, or tree farms; watering fairways, tees, and greens on golf courses; washing vehicles at commercial car washes; commercial pressure washing; commercial, agricultural applications; commercial manufacturing; fire hydrant and water line flushing; complying with applicable law for earth disturbing activity using no more water than is reasonably necessary; and other similar uses, as determined by the town.

CUSTOMER. Any person, or entity, in whose name the town maintains an account for water use. **CUSTOMER** also means, and includes, any person, or entity, who receives, or is capable of receiving, water from the town's water supply through the customer's private water supply, or by any other means, without regard to whether the town is aware of the existence of such **CUSTOMER**.

DISCRETIONARY WATER USE. Any use of water from the town's water supply that is elective, and is not a community and business, or essential, water use. Examples of **DISCRETIONARY WATER USES** may be set forth in the Water Shortage Management Plan, and include, but are not limited to: lawn/turf irrigation; residential car washing; non-commercial pressure washing; ornamental pools or fountains; and other similar uses as determined by the town.

DROUGHT MANAGEMENT ADVISORY GROUP. A team of owners of large water intakes in the county river basin, state agencies, and Duke Energy tasked with formulating a basin-wide response to low inflow conditions, as defined in the LIP.

EMERGENCY CONDITIONS. Any condition posing a substantial, and immediate, threat to the ability of the town to meet actual, or anticipated, demand for community and business, and/or essential, water uses, and requiring the immediate implementation of mandatory water conservation measures in order to protect the public health, and safety, including, without limitation, a major disruption, or failure, in any portion of said supply, or contamination of the water in any portion of

said supply, or of the raw water supply.

ESSENTIAL WATER USE. Any use of water from the town's water supply that is necessary to maintain public health and safety. Examples of **ESSENTIAL WATER USES** may be set forth in the Water Shortage Management Plan, and include, but are not limited to: sustaining human life; fighting fires; testing for public safety standards; patient care and rehabilitation; maintaining pressure in the town's water supply; maintaining operation of the town's water supply; and other similar uses as determined by the town.

HICKORY PUBLIC UTILITIES DEPARTMENT WATER SYSTEM (HPUD). The potable water supply, treatment, and distribution supply, or any portion thereof, operated by the City of Hickory.

IRRIGATION SERVICE CONNECTION. A service connection by which a customer receives water from the town's water supply for the sole purpose of watering vegetation, and is not connected directly, or indirectly, to any plumbing supply that discharges into the publicly-operated treatment works.

LOW INFLOW PROTOCOL (LIP). Prescribed levels of escalating response to drought conditions based on trigger points for use during periods of low inflow to the reservoirs on the county river.

SERVICE CONNECTION. The terminal end of a complete service connection or, in the absence of a complete service connection, the point at which water leaves the town's water supply, and enters a customer's water supply.

TOWN MANAGER. The Town Manager, or any acting or interim Town Manager.

TOWN PUBLIC WORKS DEPARTMENT WATER SUPPLY (MPWD). The potable water supply, storage, treatment, and distribution supply, or any portion thereof, within the town.

§ 21-291 IMPOSITION OF MANDATORY WATER CONSERVATION CONTROLS.

(A) The Town Manager is authorized to impose mandatory water conservation controls, as authorized by this article, on the usage of water obtained directly, or indirectly, from the town's water supply by declaring a water shortage. After receiving written recommendations from the MPWD, or the HPUD, the Town Manager may impose such controls, upon consideration of the following factors:

- (1) Pressure at monitoring locations of the town's water supply;
- (2) Ability to re-fill water storage tanks of the town's water supply;
- (3) Ability to maintain an amount of water in the town's ground level storage tanks which is adequate for fire protection purposes;
- (4) Ability to maintain adequate water pressure in every portion of the town's water supply;
- (5) Adequacy of the town's water supply in terms of quantity, and/or quality, for the foreseeable future to satisfy the anticipated demand for water;
- (6) Conditions downstream of the town's water intakes;
- (7) Regulatory requirements affecting the operation, repair, or maintenance of any portion of the town's water supply;
- (8) Such factors as are identified in a Water Shortage Management Plan adopted by the town pursuant to this article;
- (9) Such other factors as may affect the town's ability to supply, treat, and/or distribute water from its water supply;
- (10) Declaration of drought stages by the Drought Management Advisory Group, as defined by the low inflow protocol (LIP) based on preset trigger points; and
- (11) Declaration of drought stages by the State Department of Environment and Natural Resources if local water supply, and demand factors, indicate need.

(B) The town's, and/or the Hickory Public Utilities Department's (HPUD), recommendation to the Town Manager on the issuance, amendment, or termination of a water shortage declaration shall set forth the basis for such recommendation, including the factors leading to such recommendation.

(C) The town is authorized to adopt a Water Shortage Management Plan, which shall be consistent with, and guide, the Town Public Works Department (MPWD) in the implementation, and enforcement, of the provisions of this article.

§ 21-292 PROCEDURE FOR ISSUANCE OF WATER SHORTAGE DECLARATION.

(A) The Town Manager may issue a water shortage declaration by signing a notice of water shortage declaration. A water shortage declaration will take effect on the effective date, and time, specified in said notice. A water shortage declaration, including any amendment thereto, may be issued for the entire town's water distribution system, or for any designated portion(s) thereof. Upon issuance, a water shortage declaration shall remain in effect until amended, or terminated, in accordance with this article.

(B) A water shortage declaration may be amended, or terminated, by the issuance of a notice of such action signed by the Town Manager, and posted in accordance with this section. Water conservation controls imposed pursuant to this article, and/or the portion of the town's water distribution system, subject to an existing water shortage declaration, may be revised

by amending such a declaration. The termination of a water shortage declaration will automatically terminate all mandatory water conservation controls imposed by the declaration pursuant to this article.

(C) A notice required by this article must specify the effective date, and time, of said notice, and be publicly posted in the Town Hall, 19 N. Main Avenue, Maiden, North Carolina, or any other place designated by law or the Town Council for the posting of public notices for at least 12 hours before taking effect; provided, that the Town Manager may determine that the following notices need not be posted for any minimum period of time: A notice of termination of a water shortage declaration; a notice of amendment of a water shortage declaration that reduces the portion of the town's water distribution system subject to said declaration, and/or the mandatory water conservation controls in effect; and a notice of a water shortage declaration, or amendment thereto, under emergency conditions, as set forth therein. All notices posted pursuant to this article shall state the date, and time, of posting.

§ 21-293 STAGES OF WATER CONSERVATION.

(A) Any one of the following stages of water conservation may be implemented by the issuance of a water shortage declaration, or amendment of a previously issued declaration:

- (1) Stage 0, drought watch;
- (2) Stage 1, voluntary;
- (3) Stage 2, mandatory; outdoor irrigation limited to two times a week;
- (4) Stage 3, mandatory; outdoor irrigation limited to one time a week; and
- (5) Stage 4, emergency.

(B) A water shortage declaration, including, without limitation, an amendment thereto, imposing Stage 0, 1, 2, 3, or 4 water conservation controls, shall specify the controls imposed by such declaration. Customers, and users, shall comply with such mandatory controls as are specified in a water shortage declaration, including any amendment thereto, issued pursuant to this article.

(C) Violation of any mandatory control specified in a declaration issued pursuant to this article shall be subject to such enforcement action as is set forth in this article.

(D) No mandatory control imposed by a water shortage declaration shall apply to any public, or volunteer, Fire Department while fighting a fire.

(E) The Water Shortage Management Plan adopted pursuant to this article may include classifications of the uses made of water from the town's water supply as discretionary, community, and business and essential, and take such classifications into account in determining the water conservation controls that may be imposed pursuant to this article.

§ 21-294 STAGE 0.

A water shortage declaration, including an amendment thereto, may impose a Stage 0 drought watch at any time.

§ 21-295 STAGE 1.

(A) A water shortage declaration, including an amendment thereto, may impose Stage 1 water conservation controls at any time that, based upon a recommendation from MPWD and/or HPUD, the Town Manager determines that the town may not be able to meet all demand for discretionary, community, and business and essential water uses based on any one, or more, of the factors set forth in § 21-291(A)(1) through (A)(11).

(B) A water shortage declaration imposing Stage 1 water conservation controls may include: restrictions on the manner, day of the week, and time of day of one, or more, discretionary water uses, and/or complete prohibitions on one, or more, of such uses.

(C) Community athletic associations, golf courses, and similar customers whose use of water to irrigate large areas is a community and business water use may submit a plan for approval by MPWD and/or HPUD allowing alternatives to the water conservation controls imposed by a water shortage declaration. Approval of alternatives shall be limited to a customer's community and business water uses, and shall require such customers to comply with substantially equivalent controls on water usage. Violation of any portion of a customer's approved plan shall be considered as a violation of this article, and shall be subject to the provisions of § 21-299.3 in the same manner as any other violation of a water conservation control imposed pursuant to this article.

(D) Reduction of use goal is established at voluntary participation.

§ 21-296 STAGE 2.

(A) A water shortage declaration, including an amendment thereto, may impose Stage 2 water conservation controls at any time that, based upon a recommendation from MPWD and/or HPUD, the Town Manager determines that the town may not be able to meet all demand for discretionary, community, and business and essential water uses based on any one, or more, of the factors set forth in § 21-291(A)(1) through (A)(11).

(B) A water shortage declaration imposing Stage 2 water conservation controls may include: restrictions on the manner,

day of the week, and time of day of one or more discretionary water uses; and/or complete prohibitions on one, or more, of such uses.

(C) Community athletic associations, golf courses, and similar customers whose use of water to irrigate large areas is a community and business water use may submit a plan for approval by MPWD and/or HPUD allowing alternatives to the water conservation controls imposed by a water shortage declaration. Approval of alternatives shall be limited to a customer's community and business water uses, and shall require such customers to comply with substantially equivalent controls on water usage. Violation of any portion of a customer's approved plan shall be considered as a violation of this article, and shall be subject to the provisions of § 21-299.3 in the same manner as any other violation of a water conservation control imposed pursuant to this article.

(D) Reduction of use goal is established at 5% to 10%.

§ 21-297 STAGE 3.

(A) A water shortage declaration, including an amendment thereto, may impose Stage 3 water conservation controls at any time that, based upon a recommendation from MPWD and/or HPUD, the Town Manager determines that the town may not be able to meet all demand for community, and business and essential, water uses based on any one, or more, of the factors set forth in § 21-291(A)(1) through (A)(11).

(B) A water shortage declaration imposing Stage 3 water conservation controls may include: restrictions on the manner, day of the week, and time of day of one, or more, discretionary or community and business water uses; and/or complete prohibitions on one, or more, of such uses.

(C) Reduction of use goal is established at 10% to 20%.

§ 21-298 STAGE 4.

(A) A water shortage declaration, including an amendment thereto, may impose Stage 4 water conservation controls at any time that, based upon a recommendation from MPWD and/or HPUD, and the Town Manager, the Town Council determines that the town may not be able to meet all demand for essential water uses based on any one, or more, of the factors set forth in § 21-291(A)(1) through (A)(11); provided, that the Town Manager may impose Stage 4 water conservation controls without the approval of the Town Council at any time that, based upon a recommendation from MPWD and/or HPUD, the Town Manager determines that the town may not be able to meet all demand for essential water uses based on any one, or more, of the factors set forth in § 21-291(A)(1) through (A)(11), and also finds that emergency conditions exist. If the Town Manager imposes Stage 4 water conservation controls pursuant to this section, such controls shall be subject to amendment or termination by the Town Council.

(B) A water shortage declaration imposing Stage 4 water conservation controls may include: restrictions on the manner, day of the week, and/or time of day of one, or more, discretionary, community and business, or essential water uses; and/or complete prohibitions on one, or more, of such uses.

(C) The Town Manager, based upon a recommendation from MPWD and/or HPUD, shall determine the specific water conservation controls included in a water shortage declaration imposed pursuant to this section. The provisions of subsection (A) above shall not be construed under any circumstances to limit the authority of the Town Manager under this article to issue, amend, or terminate a water shortage declaration, or to require approval of the Town Council in order for the Town Manager to amend, or terminate, any water shortage declaration imposing Stage 4 water conservation controls, including, without limitation, amending a water shortage declaration to revise Stage 4 water conservation controls, or to impose Stage 2 or 3 water conservation controls.

(D) In addition to the controls authorized by subsection (A) above, the Town Manager shall also be authorized, based upon a recommendation from MPWD and/or HPUD, to take such actions as may be reasonably necessary, or convenient, to ration water among the town's customers, including, without limitation, suspending water service to customers pursuant to a plan approved by the Town Council.

(E) Reduction of use goal is established at 20% to 30%.

§ 21-299 TERMINATION FOR LEAK IN CUSTOMER'S PLUMBING.

It shall be unlawful for any customer, or owner, of a plumbing supply receiving water from the town's water supply to fail to repair a leak in such plumbing supply within a reasonable time while a water shortage declaration is in effect. Any customer, or owner, who fails to repair a leak in such plumbing supply within five calendar days after notice to do so from the town shall be subject to a civil penalty of \$100, termination of service, or both.

Penalty, see § 1-111

§ 21-299.1 TEMPORARY DISCONTINUATION OF WATER CONNECTION.

(A) *Duration.* During a declared mandatory (Stage 2, 3, or 4) water emergency, the Town Manager, or his or her designee, may direct that the issuance of zoning clearance permits, and/or divisions of land that involve waterline connections or extensions, or any upgrade for water usage be temporarily suspended for the duration of the water emergency.

(B) *Exceptions.* Notwithstanding subsections of this section, water connections to the water supply owned by the town

may continue to be made during a declared mandatory water emergency for the following facilities:

- (1) Public schools satisfying compulsory education requirements of the state;
- (2) Public facilities for police, sheriff, fire, or emergency medical services; and/or
- (3) Medical facilities.

(C) *Permits.* In any permit issued pursuant to this section, the town may impose such conditions and restrictions as are appropriate to require that water used from the town's water supply be minimized to the extent practical.

(D) *Termination of permit.* Unless otherwise expressly provided in a permit, any permit subject to this section shall automatically terminate upon the effective date, and time, of the imposition of Stage 4 water conservation controls.

(E) *Permits; violation.*

(1) Any person, or entity, receiving a permit subject to this section that violates the terms thereof shall be subject to a civil penalty pursuant to § 21-299.3(E), and to the revocation of the permit.

(2) Any person who has violated the term of any permit subject to this section, any variance issued pursuant to this article, or any mandatory water conservation control imposed pursuant to this article may be denied a permit, notwithstanding any provision of this section to the contrary.

§ 21-299.2 VARIANCES.

(A) The Town Manager, or his or her designee, is authorized to issue a variance in accordance with this article permitting any customer satisfying the requirements of this article to use water for a purpose that would otherwise be prohibited by water conservation controls then in effect.

(B) During any time that Stage 2 water conservation controls have been imposed pursuant to this article, and except as otherwise provided in this article, the Town Manager, or his or her designee, shall issue variances under the following circumstances: A customer with a new lawn and/or landscape installed within 30 days of the application for a variance (but not during any time when Stage 3 or Stage 4 water conservation controls are in effect) may be permitted to water such newly installed landscaping on the date of installation, and for up to 30 days after the date of installation and, during such time period, shall not be subject to restrictions on the days of the week, but shall be subject to any restrictions on the times of the day, when outdoor vegetation may be watered in accordance with the water conservation controls otherwise in effect. A variance issued pursuant to this subsection may be extended by the Town Manager, or his or her designee, under such terms and conditions as are set forth in the Water Shortage Management Plan.

(C) During any time that Stage 3 water conservation controls have been imposed pursuant to this article, and except as otherwise provided in this article, the Town Manager, or his or her designee, shall issue variances for the following uses: A customer with a new lawn and/or landscape installed within 30 days prior to the implementation of Stage 3 water conservation controls (but not during any time when Stage 4 water conservation controls are in effect) may be permitted to water such newly installed landscaping on the date of installation, and for up to 30 days after the date of installation, and during such days of the week, and times of the day, as designated in the variance.

(D) During any time that Stage 1, 2, or 3 water conservation controls have been imposed pursuant to this article, the Town Manager, or his or her designee, shall issue variances for the following uses:

- (1) A public, or volunteer, fire department during any training exercise using water from the town's water supply under circumstances when such training is reasonably necessary to maintain effective firefighting capabilities;
- (2) Any customer, or user, undertaking any activity required by applicable law; and
- (3) Any person or entity proposing to eliminate, or reduce, unsanitary conditions that pose a substantial risk of injury or disease.

(E) During any time that Stage 3 water conservation controls have been imposed pursuant to this article, the Town Manager, or his or her designee may, but shall be under no obligation to, issue variances for the uses listed in subsection (D) above.

(F) In any variance issued pursuant to this section, the Town Manager, or his or her designee, may impose such conditions, and restrictions, as are appropriate to require that water used from the town's water supply be minimized to the extent practical.

(G) Unless otherwise expressly provided in a variance, any variance issued pursuant to this section shall automatically terminate upon the effective date, and time, of the imposition of Stage 4 water conservation controls.

(H) Any person, or entity, receiving a variance pursuant to this section that violates the terms thereof shall be subject to a civil penalty pursuant to § 21-299.3(E), and to the revocation of the variance. Any person who has violated the term of any permit subject to this article, any variance issued pursuant to this section, or any mandatory water conservation control imposed pursuant to this article may be denied a variance, notwithstanding any provision of this section to the contrary.

§ 21-299.3 ENFORCEMENT.

(A) The use of water from the town's water supply in violation of any mandatory water conservation control imposed

pursuant to this article, the term of any permit subject to § 21-299.1, or the term of any variance issued pursuant to § 21-299.2, is unlawful. Further, the refusal, or failure, of a customer, or other person acting on the customer's behalf, to cease immediately a violation of a water conservation control, after being directed to do so by a person authorized to enforce the provisions of this article, is unlawful. Each customer is responsible for any use of water that passes through the service connection associated with the customer's account, or otherwise passes through the customer's private water supply.

(B) Any customer who violates, or permits the violation of, any mandatory water conservation control imposed pursuant to § 21-296 shall be subject to a civil penalty according to the following schedule of penalties:

Number of Offenses	One and One Half Inch Service Connection or Smaller	Two Inch Service Connection or Larger
First offense	\$100	\$200
Second offense	\$200	\$400
Third, and subsequent, offenses	\$300	\$600

(C) Any customer who violates, or permits the violation of, any mandatory water conservation control imposed pursuant to §§ 21-297 and 21-298 shall be subject to a civil penalty according to the following schedule of penalties:

Number of Offenses	One and One Half Inch Service Connection or Smaller	Two Inch Service Connection or Larger
First offense	\$200	\$400
Second offense	\$400	\$800
Third, and subsequent, offenses	\$600	\$1,200

(D) Any customer who violates, or permits the violation of, any term of a permit subject to § 21-299.1, or a variance issued pursuant to § 21-299.2, shall be subject to a civil penalty of \$500.

(E) Any customer, or other person acting on behalf of the customer, who refuses, or otherwise fails, to cease immediately a violation of a water conservation control after being directed to do so by a person authorized to enforce the provisions of this article, shall be subject to a civil penalty equal to twice the amount of the civil penalty applicable to the violation which such customer, or person, was directed to cease.

(F) In addition to the payment of any civil penalty assessed pursuant to this section, a customer shall be subject to termination of water service through any irrigation service connection used to violate any water conservation controls imposed pursuant to this article during any period of time during which a water shortage declaration is continuously in effect under the following circumstances:

(1) Five, or more, violations of any water conservation control, including, without limitation, the terms of any variance, or permit, issued pursuant to this article; or

(2) Two, or more, violations of any Stage 2 or Stage 3 water conservation control, including, without limitation, the terms of any variance, or permit, issued pursuant to this article.

(G) In the discretion of the Town Manager, or his or her designee, termination of such service may include one, or more, of the following actions: turnoff; meter removal; yoke removal; and turnoff at main. Water service will not be restored at such service connection until the customer agrees to such terms as the Town Manager, or his or her designee, determines are reasonably necessary, or advisable, to assure the customer's compliance with such water conservation controls, as are then in effect, or may be imposed, pursuant to this article, and the payment of all the customer's obligations, including, without limitation, all outstanding charges for water service, civil penalties, and all other fees, amounts, and penalties charged in accordance with the provisions of this article. If a customer violates such a term, or condition, the customer shall be subject to a civil penalty of up to \$1,000 in addition to any other remedy that may be authorized by law, or agreement, and termination of water service through such serviced connection for a minimum period of 15 days. Service may be restored thereafter in accordance with the provisions of this section.

(H) A customer whose water service is terminated pursuant to § 21-292.2(F) shall not be entitled to notice, and an opportunity for a hearing in advance of such termination. Notice of such termination shall be given as soon as reasonably possible after a decision is made by the Town Manager, or his or her designee, to terminate such service, but service of such notice, and an opportunity for a hearing, shall not be conditions precedent to such termination. A customer whose service is terminated pursuant to this section, or who receives notice of such a termination, shall have five calendar days after termination of service, or receipt of notice of termination, whichever is later, to appeal such termination to the Town Manager, or his or her designee, by delivering a written notice of appeal. A hearing shall be held on such appeal within three business days of receipt of the notice of appeal, or by such other date as approved by the Town Manager, or his or her

designee, and the customer.

(I) The violation of any water conservation control, or provision of this article, may be enforced by all remedies authorized by law for non-compliance with municipal ordinances, including the assessment of a civil penalty and action for injunction, order of abatement, or other equitable relief.

(J) Except as provided in this section, each day that a violation of a mandatory water conservation control occurs shall be considered to be a separate violation.

(K) If a customer, or other person acting on behalf of the customer, refuses, or otherwise fails, to cease immediately a violation of a water conservation control after being directed to do so by a person authorized to enforce the provisions of this article, such failure shall constitute a separate violation.

(L) After receiving a notice of violating a water conservation control, and ceasing such violation, a customer who resumes the violation of said water conservation control on the same day shall be guilty of a separate violation.

(M) MPWD, and any other town employees or persons designated by the Town Manager, shall be authorized to enforce the provisions of this article.

Penalty, see § 1-111

§ 21-299.4 APPLICABILITY TO COMBINED DISTRIBUTION SUPPLY.

Municipal customers, water corporations or company compliance municipalities, water corporations, or companies purchasing water from the town shall adopt, and enforce, this entire article as a condition of continuing existing water sales agreements. Upon declaration of a water emergency, such municipalities, and companies, shall enforce the appropriate water use restrictions for the level of declared emergency. Water service to such municipalities, and companies, shall be terminated for not enforcing the provisions of this section.

ARTICLE III: SEWER SYSTEM

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Cross-reference:

Water and sewer extensions and access charges, Ch. 21, Art. VI; plumbing code adopted, §5-103; plumbing permit, § 5-201.

Editor's note:

In 2007, The Pretreatment Emergency Response and Collection Systems Unit (PERCS Unit), which is a subdivision of the State Department of Environmental Resources (NCDENR), issued mandatory revisions and additions to all municipalities having a sewer use ordinance. Pursuant to the town Ord. 29-2008 (October 2008), the town sewer use ordinance has been revised to incorporate all of the required PERCS Unit changes; Ord. 33-2002, adopted Oct. 21, 2002, was not specifically amendatory of the code. The editor has treated these new provisions as superseding Ch. 21, Art. III, §§ 21-301 through 21-388, which contained similar provisions and which derived from Ord. 29-94, passed Nov. 21, 1994; Ord. 39-96, passed Dec. 16, 1996; Ord. 35-2001, passed Oct. 15, 2001; and Ord. 33-2002, passed Nov. 18, 2002.

DIVISION 1. GENERALLY

§ 21-301 PURPOSE AND POLICY.

(A) This article sets forth uniform requirements for direct, and indirect, contributors into the wastewater collection and treatment system for the town, hereafter referred to as "the town", and enables the town to comply with all applicable state and federal laws, including the Clean Water Act (33 U.S.C. §§ 1251 et seq.) and the General Pretreatment Regulations (40 C.F.R., part 403).

(B) The objectives of this article are:

(1) To prevent the introduction of pollutants into the municipal wastewater system which will interfere with the operation of the system, or contaminate the resulting sludge;

(2) To prevent the introduction of pollutants into the municipal wastewater system which will pass through the system, inadequately treated, into any waters of the state, or otherwise be incompatible with the system;

(3) To promote reuse, and recycling, of industrial wastewater and sludge from the municipal system;

(4) To protect both municipal personnel who may be affected by sewage, sludge, and effluent in the course of their employment, as well as protecting the general public;

(5) To provide for equitable distribution of the cost of operation, maintenance, and improvement of the municipal wastewater system; and

(6) To ensure that the municipality complies with its NPDES or non-discharge permit conditions, sludge use, and disposal requirements, and any other federal, or state, laws to which the municipal wastewater system is subject.

(C) This article provides for the regulation of direct, and indirect, contributors to the municipal wastewater system, through the issuance of permits to certain non-domestic users, and through enforcement of general requirements for the other users, authorizes monitoring and enforcement activities, requires user reporting, and provides for the setting of fees for the equitable distribution of costs resulting from the program established herein.

(D) This article shall apply to the town, and to persons outside the town who are, by permit or agreement with the town, users of the town publicly-owned treatment works ("POTW"). Except as otherwise provided herein, the POTW Director shall administer, implement, and enforce the provisions of this article.

(Ord. 33-2002, passed 10-21-2002)

§ 21-302 DEFINITIONS AND ABBREVIATIONS.

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

ACT or **THE ACT**. The Federal Water Pollution Control Act, also known as the Clean Water Act, as amended, 33 U.S.C. §§ 1251 et seq.

APPROVAL AUTHORITY. The Director of the Division of Water Quality of the State Department of Environment and Natural Resources, or his or her designee.

AUTHORIZED REPRESENTATIVE OF THE INDUSTRIAL USER.

(a) If the industrial user is a corporation, **AUTHORIZED REPRESENTATIVE** shall mean:

1. The president, secretary, or a vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy, or decision-making, functions for the corporation; or

2. The manager of one, or more, manufacturing, production, or operation facilities employing more than 250 persons, or having gross annual sales or expenditures exceeding \$25,000,000 (in second-quarter, 1980 dollars), if authority to sign documents has been assigned, or delegated, to the manager in accordance with corporate procedures.

(b) If the industrial user is a partnership or sole proprietorship, an **AUTHORIZED REPRESENTATIVE** shall mean a general partner or the proprietor, respectively.

(c) The individuals described in subsections (a) and (b) above may designate another **AUTHORIZED REPRESENTATIVE** if the authorization is in writing, the authorization specifies the individual, or position, responsible for the overall operation of the facility from which the discharge originates, or having overall responsibility for environmental matters for the company, and the written authorization is submitted to the town.

(d) If the designation of an **AUTHORIZED REPRESENTATIVE** is no longer accurate because a different individual, or position, has responsibility for the overall operation of the facility, or overall responsibility for environmental matters for the company, a new authorization satisfying the requirements of this section must be submitted to POTW Director prior to, or together with, any reports to be signed by an **AUTHORIZED REPRESENTATIVE**.

BIOCHEMICAL OXYGEN DEMAND (BOD). The quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedures for five days at 20C, usually expressed as a concentration (for example, mg/l).

BUILDING SEWER. A sewer conveying wastewater from the premises of a user to the POTW.

BYPASS. The intentional diversion of waste streams from any portion of a user's treatment facility.

CATEGORICAL STANDARDS. National categorical pretreatment standards, or pretreatment standard.

ENVIRONMENTAL PROTECTION AGENCY OR EPA. The U.S. Environmental Protection Agency, or where appropriate the term may also be used as a designation for the administrator, or other duly authorized official, of said agency.

GRAB SAMPLE. A sample which is taken from a waste stream on a one-time basis without regard to the flow in the waste stream, and over a period of time not to exceed 15 minutes.

HOLDING TANK WASTE. Any waste from holding tanks, including, but not limited to, such holding tanks as vessels, chemical toilets, campers, trailers, septic tanks, and vacuum-pump tank trucks.

INDIRECT DISCHARGE or DISCHARGE. The discharge, or the introduction, from any non-domestic source regulated under § 307(b), (c), or (d) of the Act, (33 U.S.C. § 1317), into the POTW (including holding tank waste discharged into the system).

INDUSTRIAL USER or USER. Any person which is a source of indirect discharge.

INTERFERENCE. The inhibition, or disruption, of the POTW treatment processes, operations, or its sludge process, use, or disposal, which causes, or contributes, to a violation of any requirement of the POTW's NPDES, or non-discharge, permit, or prevents sewage sludge use, or disposal, in compliance with specified applicable state and federal statutes, regulations, or permits. The term includes prevention of sewage sludge use, or disposal, by the POTW in accordance with § 405 of the Act, (33 U.S.C. § 1345), or any criteria, guidelines, or regulations developed pursuant to the Solid Waste Disposal Act (SWDA) (42 U.S.C. §§ 6901 et seq.), the Clean Air Act, the Toxic Substances Control Act (15 U.S.C. §§ 2601 et seq.), the Marine Protection Research and Sanctuary Act (MPRSA) (16 U.S.C. §§ 1431 et seq. and 33 U.S.C. §§ 1401 et seq.), or more stringent state criteria (including those contained in any state sludge management plan prepared pursuant to Title IV of SWDA) applicable to the method of disposal, or use, employed by the POTW.

MEDICAL WASTE. Isolation wastes, infectious agents, human blood and blood products, pathological wastes, sharps, body parts, contaminated bedding, surgical wastes, potentially contaminated laboratory wastes, and dialysis wastes.

NATIONAL POLLUTION DISCHARGE ELIMINATION SYSTEM or NPDES PERMIT. A permit issued pursuant to § 402 of the Act (33 U.S.C. § 1342), or pursuant to G.S. § 143-215.1 by the state under delegation from the EPA.

NATIONAL PROHIBITIVE DISCHARGE STANDARD or PROHIBITIVE DISCHARGE STANDARD. Absolute prohibitions against the discharge of certain substances; these prohibitions appear in § 21-306, and are developed under the authority of § 307(b) of the Act and 40 C.F.R. § 403.5.

NATURAL CATEGORICAL PRETREATMENT STANDARD or CATEGORICAL STANDARD. Any regulation containing pollutant discharge limits promulgated by EPA in accordance with § 307(b) and (c) of the Act (33 U.S.C. § 1317), which applies to a specific category of industrial users, and which appears in 40 C.F.R. chapter 1, subchapter N, parts 405 through 471.

NEW SOURCE.

(a) Any building, structure, facility, or installation from which there may be a discharge of pollutants, the construction of which commenced after the publication of proposed categorical pretreatment standards under § 307(c) of the Act, which will be applicable to such source if such standards are thereafter promulgated in accordance with § 307(c), provided that:

1. The building, structure, facility, or installation is constructed at a site at which no other source is located;
2. The building, structure, facility, or installation totally replaces the process, or production equipment that causes

the discharge of pollutants at an existing source; or

3. The production or wastewater generating processes of the building, structure, facility, or installation are substantially independent of an existing source at the same site. In determining whether these are substantially independent, factors such as the extent to which the new facility is integrated with the existing plant, and the extent to which the new facility is engaged in the same general type of activity as the existing source, should be considered.

(b) Construction on a site at which an existing source is located results in a modification rather than a **NEW SOURCE** if the construction does not create a new building, structure, facility, or installation meeting the criteria of subsections (a)2. or (a)3. above, but otherwise alters, replaces, or adds to existing process or production equipment.

(c) For purposes of this definition, construction of a **NEW SOURCE** has commenced if the owner, or operator, has:

1. Begun, or caused to begin, as part of a continuous on-site construction program:

a. Any placement, assembly, or installation of facilities or equipment; or

b. Significant site preparation work, including clearing, excavation, or removal of existing buildings, structures, or facilities which is necessary for the placement, assembly, or installation of **NEW SOURCE** facilities or equipment.

2. Entered into a binding contractual obligation for the purchase of facilities, or equipment, which are intended to be used in its operation within a reasonable time. Options to purchase, or contracts which can be terminated or modified without substantial loss, and contracts for feasibility, engineering, and design studies do not constitute a contractual obligation under this definition.

NON-CONTACT COOLING WATER. Water used for cooling which does not come into direct contact with any raw material, intermediate product, waste product, or finished product.

NON-DISCHARGE PERMIT. A disposal system permit issued by the state pursuant to G.S. § 143-215.1.

PASS THROUGH. A discharge which exits the POTW into waters of the state in quantities or concentrations which, alone or with discharges from other sources, causes a violation, including an increase in the magnitude, or duration, of a violation, of the POTW's NPDES, or non-discharge, permit, or a downstream water quality standard.

PERSON. Any individual, partnership, co-partnership, firm, company, corporation, association, joint stock company, trust, estate, governmental entity, or any other legal entity, or their legal representatives, agents, or assigns. This definition includes all federal, state, and local government entities.

pH. A measure of the acidity or alkalinity of a substance, expressed as standard units, and calculated as the logarithm (base 10) of the reciprocal of the concentration of hydrogen ions expressed in grams per liter of solution.

POLLUTANT. Any waste, as defined in G.S. § 143-213(18), and dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, medical wastes, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural waste, and certain characteristics of wastewater (for example, pH, temperature, TSS, turbidity, color, BOD, COD, toxicity, or odor).

POTW DIRECTOR. The Director of the town's publicly-owned treatment works.

POTW TREATMENT PLANT. The portion of the POTW designed to provide treatment to wastewater.

PRETREATMENT or **TREATMENT.** The reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater prior to, or in lieu of, discharging or otherwise introducing such pollution into a POTW. The reduction, or alteration, can be obtained by physical, chemical, or biological processes, or process changes or other means, except by diluting the concentration of the pollutants, unless allowed by an applicable pretreatment standard.

PRETREATMENT PROGRAM. The program for the control of pollutants introduced into the POTW from non-domestic sources which was developed by the town in compliance with 40 C.F.R. § 403.8, and approved by the approval authority as authorized by G.S. § 143-215.3(a)(14), in accordance with 40 C.F.R. § 403.11.

PRETREATMENT REQUIREMENTS. Any substantive or procedural requirement related to pretreatment, other than a pretreatment standard.

PRETREATMENT STANDARDS. Prohibited discharge standards, categorical standards, and local limits.

PUBLICLY-OWNED TREATMENT WORKS (POTW) or MUNICIPAL WASTEWATER SYSTEM. A treatment works, as defined by § 212 of the Act (33 U.S.C. § 1292), which is owned in this instance by the town. This definition includes any devices, or systems, used in the collection, storage, treatment, recycling, and reclamation of municipal sewage, or industrial wastes of a liquid nature. It also includes sewers, pipes, and other conveyances only if they convey wastewater to the POTW treatment plant. For the purposes of this article, **POTW** shall also include any sewers that convey wastewaters to the **POTW** from persons outside the town who are, by contract or agreement with the town, or in any other way, users of the town's **POTW**.

SEVERE PROPERTY DAMAGE. Substantial physical damage to property, damage to the user's treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. **SEVERE PROPERTY DAMAGE** does not mean economic loss caused by

delays in production.

SIGNIFICANT INDUSTRIAL USER. Any industrial user of the wastewater disposal system who:

- (a) Discharges an average of 25,000 gallons per day, or more, of process wastewater to the POTW (excluding sanitary, noncontact cooling, and boiler blowdown wastewaters);
- (b) Contributes process wastewater which makes up 5%, or more, of the NPDES or non-discharge permitted flow limit, or organic capacity of the POTW treatment plant. In this context, organic capacity refers to BOD, TSS, and ammonia;
- (c) Is required to meet a national categorical pretreatment standard; or
- (d) Is found by the town, the State Division of Water Resources, or the U.S. Environmental Protection Agency (EPA) to have the potential for impact, either singly or in combination with other contributing industrial users, on the wastewater treatment system, the quality of sludge, the system's effluent quality, or compliance with any pretreatment standards or requirements.

SIGNIFICANT NON-COMPLIANCE or **REPORTABLE NON-COMPLIANCE.** A status of non-compliance defined as follows.

(a) Violations of wastewater discharge limits:

1. For chronic violations, 66%, or more, of the measurements exceed (by any magnitude) the same daily maximum limit, or the same average limit in a six-month period;
2. For technical review criteria (TRC) violations, 33%, or more, of the measurements equal to, or greater than, the TRC times the limit (maximum or average) in a six-month period. There are two groups of TRCs: For the conventional pollutants, BOD, TSS, fats, oil and grease TRC = 1.4; for all other pollutants TRC = 1.2;
3. Any other violation(s) of an effluent limit (average or daily maximum) that the control authority believes has caused, alone or in combination with, other discharges, interference, or pass through; or endangered the health of the sewage treatment plant personnel, or the public; and/or
4. Any discharge of a pollutant that has caused imminent endangerment to human health/welfare, or to the environment, or has resulted in the POTW's exercise of its emergency authority to halt, or prevent, such a discharge.

(b) Violations of compliance schedule milestones, contained in a pretreatment permit or enforcement order, for starting construction, completing construction, and attaining final compliance by 90 days, or more, after the schedule date.

1. Failure to provide reports for compliance schedule, self-monitoring data, baseline monitoring reports, 90-day compliance reports, and periodic compliance reports within 30 days from the due date:
2. Failure to accurately report non-compliance; and
3. Any other violation, or group of violations, that the control authority considers to be significant.

SLUG LOAD or **DISCHARGE.** Any discharge at a flow rate, or concentration, which has a reasonable potential to cause interference or pass through, or in any other way violates the POTW's regulations, local limits, or industrial user permit conditions. This can include, but is not limited to, spills and other accidental discharges; discharges of a non-routine, episodic nature; a non-customary batch discharge; or any other discharges that can cause a violation of the prohibited discharge standards in § 21-306.

STANDARD INDUSTRIAL CLASSIFICATION (SIC). A classification pursuant to the *Standard Industrial Classification Manual* issued by the Executive Office of the President, Office of Management and Budget, 1987.

STORMWATER. Any flow occurring during, or following, any form of natural precipitation and resulting therefrom.

SUPERINTENDENT. The person designated by the town to supervise the operation of the publicly-owned treatment works, and who is charged with certain duties, and responsibilities, by this article, or his or her duly authorized representative.

SUSPENDED SOLIDS. The total suspended matter that floats on the surface of, or is suspended in, water, wastewater, or other liquids, and which is removable by laboratory filtering.

UPSET. An exceptional incident in which there is unintentional, and temporary, non-compliance with categorical pretreatment standards because of factors beyond the reasonable control of the user. An **UPSET** does not include non-compliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless, or improper, operation.

WASTEWATER. The liquid and water-carried industrial, or domestic, wastes from dwellings, commercial buildings, industrial facilities, mobile sources, treatment facilities and institutions, together with any groundwater, surface water, and stormwater that may be present, whether treated or untreated, which are contributed into, or permitted to enter, the POTW.

WASTEWATER PERMIT. As set forth in §21-336.

WATERS OF THE STATE. All streams, lakes, ponds, marshes, watercourse, waterways, wells, springs, reservoirs, aquifers, irrigation systems, drainage systems, and all other bodies or accumulations of water, surface or underground,

natural or artificial, public or private, which are contained within, flow through, or border upon the state, or any portion thereof.

(B) This article is gender neutral, and the masculine gender shall include the feminine, and vice-versa.

(C) Shall is mandatory; may is permissive or discretionary.

(D) The use of the singular shall be construed to include the plural, and the plural shall include the singular as indicated by the context of its use.

(E) The following abbreviations, when used in this article, shall have the designated meanings:

Abbreviations	Designation
BOD	Biochemical oxygen demand
C.F.R.	Code of Federal Regulations
COD	Chemical oxygen demand
EPA	Environmental Protection Agency
gpd	Gallons per day
G.S.	North Carolina General Statutes
l	Liter
mg	Milligrams
mg/l	Milligrams per liter
NPDES	National pollution discharge elimination system
O&M	Operation and maintenance
POTW	Publicly-owned treatment works
RCRA	Resource Conservation and Recovery Act
SIC	Standard industrial classification
SWDA	Solid Waste Disposal Act
TSS	Total suspended solids
TKN	Total kjeldahl nitrogen
U.S.C.	United States Code

(Ord. 33-2002, passed 10-21-2002; Ord. 29-2008, passed 10- -2008)

§§ 21-303 TO 21-305 RESERVED.

DIVISION 2. GENERAL SEWER USE REQUIREMENTS

§ 21-306 PROHIBITED DISCHARGE STANDARDS.

(A) *General prohibitions.* No user shall contribute, or cause to be contributed, into the POTW, directly or indirectly, any pollutant or wastewater which causes interference or pass through. These general prohibitions apply to all users of a POTW, whether or not the user is a significant industrial user, or subject to any national, state, or local pretreatment standards or requirements.

(B) *Specific prohibitions.* No user shall contribute, or cause to be contributed, into the POTW the following pollutants, substances, or wastewater:

- (1) Pollutants which create a fire, or explosive, hazard in the POTW, including, but not limited to, waste streams with a closed cup flashpoint of less than 140°F (60°C) using the test methods specified in 40 C.F.R. § 261.21;
- (2) Solid, or viscous, substances in amounts which will cause obstruction of the flow in the POTW resulting in interference, but in no case solids greater than one-half inch in any dimension;
- (3) Petroleum oil, non-biodegradable cutting oil, or products of mineral oil origin, in amounts that will cause interference or pass through;
- (4) Any wastewater having a pH less than 5.0 or more than 10.0, or wastewater having any other corrosive property capable of causing damage to the POTW or equipment;
- (5) Any wastewater containing pollutants, including oxygen-demanding pollutants, (BOD, and the like) in sufficient quantity (flow or concentration), either singly or by interaction with other pollutants, to cause interference with the POTW;
- (6) Any wastewater having a temperature greater than 150°F (66°C), or which will inhibit biological activity in the POTW

treatment plant resulting in interference, but in no case wastewater which causes the temperature, at the introduction into the treatment plant, to exceed 104°F (40°C);

(7) Any pollutants which result in the presence of toxic gases, vapors, or fumes within the POTW in a quantity that may cause acute worker health and safety problems;

(8) Any trucked or hauled pollutants, except at discharge points designated by the POTW Director in accordance with § 21-314;

(9) Any noxious or malodorous liquids, gases, or solids, or other wastewater which, either singly or by interaction with other wastes, are sufficient to create a public nuisance or hazard to life, or are sufficient to prevent entry into the sewers for maintenance and repair;

(10) Any substance which may cause the POTW's effluent, or any other product of the POTW such as residues, sludges, or scums, to be unsuitable for reclamation and reuse, or to interfere with the reclamation process. In no case shall a substance discharged to the POTW cause the POTW to be in non-compliance with sludge use or disposal regulations, or permits issued under § 405 of the Act, the Solid Waste Disposal Act (15 U.S.C. §§ 6901 et seq.), the Clean Air Act, the Toxic Substances Control Act (15 U.S.C. §§ 2601 et seq.), or state criteria applicable to the sludge management method being used;

(11) Any wastewater which imparts color which cannot be removed by the treatment process, including, but not limited to, dye wastes and vegetable tanning solutions, which consequently impacts sufficient color to the treatment plant's effluent to render the waters injurious to public health or secondary recreation, or to aquatic life and wildlife, or to adversely affect the palatability of fish or aesthetic quality, or impair the receiving waters for any designated uses;

(12) Any wastewater containing any radioactive wastes, or isotopes of such half-life or concentration, as may exceed limits established by the Superintendent in compliance with applicable state, and federal, regulations;

(13) Any substance which will cause the POTW to violate its NPDES and/or state disposal system permit, or the receiving water quality standards;

(14) Fats, oils, or greases of animal or vegetable origin in concentrations greater than 100 mg/l;

(15) Any sludges, screenings, or other residues from the pretreatment of industrial wastes;

(16) Any medical wastes, except as specifically authorized by the POTW Director in a wastewater discharge permit;

(17) Wastewater causing, alone or in conjunction with other sources, the treatment plant's effluent to fail a toxicity test;

(18) Any wastes containing detergents, surface active agents, or other substances which may cause excessive foaming in the municipal wastewater system;

(19) At no time shall two successive readings on an explosion hazard meter, at the point of discharge into the system (or at any point in the system), be more than 5%, nor any single reading over 10% of the lower explosive limit (LEL) of the meter;

(20) Stormwater, surface water, ground water, artesian well water, roof runoff, subsurface drainage, swimming pool drainage, condensate, deionized water, non-contact cooling water, and unpolluted industrial wastewater, unless specifically authorized by the POTW Director;

(21) Any material containing ammonia, ammonia salts, or other chelating agents which will produce metallic complexes that interfere with the municipal wastewater system;

(22) Recognizable portions of the human or animal anatomy; and

(23) Any wastewater causing the treatment plant effluent to violate State Water Quality Standards for toxic substances, as described in 15 N.C.A.C. 2B.0200.

(C) *Prohibited wastes.* Pollutants, substances, wastewater, or other wastes prohibited by this section shall not be processed, or stored, in such a manner that they could be discharged to the municipal wastewater system. All floor drains located in process, or materials storage, areas must discharge to the industrial user's pretreatment facility before connecting with the system.

(D) *Contributions by users.* When the POTW Director determines that a user(s) is contributing to the POTW any of the above enumerated substances in such amounts which may cause, or contribute to, interference of POTW operation or pass through, the POTW Director shall:

(1) Advise the user(s) of the potential impact of the contribution on the POTW in accordance with §1-372; and

(2) Take appropriate actions in accordance with division 4 for such user to protect the POTW from interference or pass through.

(Ord. 33-2002, passed 10-21-2002; Ord. 29-2008, passed 10- -2008)

§ 21-307 NATIONAL CATEGORICAL PRETREATMENT STANDARDS.

(A) Users subject to categorical pretreatment standards are required to comply with applicable standards, as set out in 40

C.F.R. chapter 1, subchapter N, parts 405 through 471, and incorporated herein.

(B) Where a categorical pretreatment standard is expressed only in terms of either the mass or the concentration of a pollutant in wastewater, the POTW Director may impose equivalent concentration, or mass limits, in accordance with 40 C.F.R. § 403.6(c).

(C) When wastewater subject to a categorical pretreatment standard is mixed with wastewater not regulated by the same standard, the POTW Director shall impose an alternate limit using the combined wastestream formula in 40 C.F.R. § 403.6(e).

(D) A user may obtain a variance from a categorical pretreatment standard if the user can prove, pursuant to the procedural and substantive provisions in 40 C.F.R. § 403.13, that factors relating to its discharge are fundamentally different from the factors considered by the EPA when developing the categorical pretreatment standard.

(E) A user may obtain a net gross adjustment to a categorical standard in accordance with 40 C.F.R. § 403.15.

(Ord. 33-2002, passed 10-21-2002)

§ 21-308 LOCAL LIMITS.

(A) An industrial waste survey is required prior to a user discharging wastewater containing in excess of the following average discharge limits:

<i>Discharge Limit</i>	<i>Measurement</i>	<i>Type of Discharge</i>
0.0003	mg/l	Mercury
0.003	mg/l	Arsenic
0.003	mg/l	Cadmium
0.005	mg/l	Selenium
0.005	mg/l	Silver
0.05	mg/l	Chromium
0.06	mg/l	Copper
0.010	mg/l	Molybdenum
0.015	mg/l	Cyanide
0.021	mg/l	Nickel
0.049	mg/l	Lead
0.175	mg/l	Zinc
25	mg/l	Ammonia
40	mg/l	TKN
100	mg/l	Oil and grease
250	mg/l	BOD
250	mg/l	TSS
500	mg/l	COD

(B) Industrial user-specific local limits for (appropriate pollutants of concern shall be included in wastewater permits, and are considered pretreatment standards.

(Ord. 33-2002, passed 10-21-2002; Ord. 29-2008, passed 10- -2008)

§ 21-309 STATE REQUIREMENTS.

State requirements and limitations on discharges shall apply in any case where they are more stringent than federal requirements and limitations, or those in this article.

(Ord. 33-2002, passed 10-21-2002)

§ 21-310 RIGHT OF REVISION.

The town reserves the right to establish limitations and requirements which are more stringent than those required by either state, or federal, regulation if deemed necessary to comply with the objectives presented in § 21-301, or the general and specific prohibitions in § 21-306, as is allowed by 40 C.F.R. § 403.4.

(Ord. 33-2002, passed 10-21-2002)

§ 21-311 DILUTION.

No user shall ever increase the use of process water or, in any way, attempt to dilute a discharge as a partial, or complete, substitute for adequate treatment to achieve compliance with the limitations contained in the national categorical pretreatment standards, unless expressly authorized by an applicable pretreatment standard, or in any other pollutant specific limitation developed by the town or state.

(Ord. 33-2002, passed 10-21-2002)

§ 21-312 PRETREATMENT OF WASTEWATER.

(A) *Pretreatment facilities.* Users shall provide necessary wastewater treatment as required to comply with all federal categorical pretreatment standards within the time limitations as specified by the POTW Director. Any facilities required to pretreat wastewater to a level acceptable to the town shall be provided, operated, and maintained at the user's expense. Detailed plans showing the pretreatment facilities and operating procedures shall be submitted to the town for review, and shall be acceptable to the POTW Director before construction of the facility. The review of such plans and operating procedures will, in no way, relieve the user from the responsibility of modifying the facility as necessary to produce an effluent acceptable to the town under the provisions of this article. Any subsequent changes in the pretreatment facilities, or method of operation, shall be reported to, and be acceptable to, the POTW Director prior to the user's initiation of the changes.

(B) *Additional pretreatment standards.*

(1) To equalize flows, and to avoid temporary overloads, any person who discharges into the sanitary sewer system waste having a volume in excess of 25,000 gallons in any 24-hour period may be required by the town to construct suitable storage tanks, or equivalent devices according to the town specifications relating to the type of construction, storage capacity, and similar matters. The control of the volume of discharges of waste shall be by a waterworks-type rate controller, or equivalent device, the setting and operations of which shall be subject to the reasonable direction of the administrator.

(2) Whenever the total volume of wastes to be discharged by any person in any one day has considerable variation in pollutional value, such person may be required to construct holding, or storage, tanks in order to control the discharge of wastes over a 24-hour period. Such tanks shall be in duplicate, and be so equipped as to mix the waste so thoroughly that its quality will be uniform when discharged into the sanitary sewer system.

(3) Grease, oil, and sand interceptors shall be provided when, in the opinion of the POTW Director, they are necessary for the proper handling of wastewater containing excessive amounts of grease and oil, or sand, except that such interceptors shall not be required for residential users. All interception units shall be of type and capacity approved by the POTW Director, and shall be so located as to be easily accessible for cleaning and inspection. Such interceptors shall be inspected, cleaned, and repaired regularly, as needed, by the person at his or her expense.

(4) Persons with the potential to discharge flammable substances may be required to install, and maintain, an approved combustible gas detection meter.

(Ord. 33-2002, passed 10-21-2002)

§ 21-313 ACCIDENTAL DISCHARGE/SLUG CONTROL PLANS.

(A) The POTW Director shall evaluate whether each significant industrial user ("SIU") needs a plan, or other action, to control, and prevent, slug discharges and accidental discharges, as defined in § 21-302(A).

(1) All SIUs must be evaluated within one year of being designated an SIU.

(2) The POTW Director may require any person to develop, submit for approval, and implement such a plan, or other specific action. Alternatively, the POTW Director may develop such a plan for any user.

(B) All SIUs are required to notify the POTW immediately of any changes at its facility affecting the potential for spills and other accidental discharge, discharge of a non-routine, episodic nature, a non-customary batch discharge, or a slug load. (See §§ 21-349 and 21-350.)

(C) Each person shall provide protection from accidental and/or slug load discharges of prohibited materials, or other substances, regulated by this article. Facilities, to prevent accidental and/or slug load discharges of prohibited materials, shall be provided, and maintained, at the owner's, or person's, own cost and expense. An accidental discharge/slug control plan shall address, at a minimum, the following:

(1) Description of discharge practices, including non-routine batch discharges;

(2) Description of stored chemicals; and

(3) Procedures for immediately notifying the POTW Director of any accidental, or slug, discharge, as required by §21-350.

(a) *Procedures to prevent adverse impact from any accidental or slug discharge.* Such procedures include, but are not limited to, inspection and maintenance of storage areas, handling and transfer of materials, loading and unloading operations, control of plant site runoff, worker training, building of containment structures or equipment, measures for containing toxic organic pollutants, including solvents, and/or measures and equipment for emergency response.

(b) *Slug control plan.* The slug control plan shall be submitted to the town for review, and shall be approved by the

town before the deadline established by the POTW Director for existing users. Review and approval of such plans shall not relieve the industrial user from the responsibility to modify the user's facility as necessary to meet the requirements of this article. In the case of an accidental and/or slug load discharge, it is the responsibility of the user to immediately notify the POTW by telephone of the incident. The notification shall include the location of discharge, type of waste, concentration and volume, and corrective actions.

(c) *Written notice.* Within five days following an accidental and/or slug load discharge, the user shall submit to the POTW Director a detailed written report describing the cause of the discharge, and the measures to be taken by the user to prevent similar future occurrences. Such notifications shall not relieve the user of any expense, loss, damage, or other liability which may be incurred as result of damage to the POTW, fish kills, or any other damage to person or property, nor shall such notification relieve the user of any fines, civil penalties, or other liability which may be imposed by this article or other applicable law.

(d) *Notice to employees.* A notice shall be permanently posted on the user's bulletin board, or other prominent place, advising employees who to call in the event of an accidental and/or slug load discharge. Employers shall ensure that all appropriate employees are advised of the emergency notification procedure.

(Ord. 33-2002, passed 10-21-2002; Ord. 29-2008, passed 10- -2008)

§ 21-314 HAULED WASTEWATER.

(A) The town must ensure that hauled industrial waste is adequately regulated, and take measures as needed to ensure that haulers of septic tank waste are not introducing industrial waste to the POTW.

(B) Septic tank waste may be introduced into the POTW only at locations designated by the POTW Director, and at such times as are established by the POTW Director. Such waste shall not violate Division 2 of this article, or any other requirements established by the town. The POTW Director may require septic tank waste haulers to obtain wastewater discharge permits.

(C) The POTW Director shall require haulers of industrial waste to obtain wastewater discharge permits. The POTW Director may require generators of hauled industrial waste to obtain wastewater discharge permits. The POTW Director also may prohibit the disposal of hauled industrial waste. The discharge of hauled industrial waste is subject to all other requirements of this article.

(D) Industrial waste haulers may discharge loads only at locations designated by the POTW Director. No load may be discharged without prior consent of the POTW Director. The POTW Director may collect samples of each hauled load to ensure compliance with applicable standards. The POTW Director may require the industrial waste hauler to provide a waste analysis of any load prior to discharge.

(E) Industrial waste haulers must provide a waste-tracking form for every load. This form shall include, at a minimum, the name and address of the industrial waste hauler, permit number, truck identification, names and addresses of sources of waste, and volume and characteristics of waste. The form shall identify the type of industry, known or suspected waste constituents, and whether any wastes are RCRA hazardous wastes.

(Ord. 33-2002, passed 10-21-2002; Ord. 29-2008, passed 10- -2008)

§ 21-315 GREASE TRAPS/INTERCEPTORS.

(A) *General.* In an effort to curb sanitary sewer overflows ("SSOs") from grease accumulations in its sanitary sewer mains, the town has adopted this section. Any nonresidential facility connected to the town sanitary sewer collection, and treatment system involved in the preparation or serving of foods, will be subject to the conditions of this section. This section may be referred to as the "Town Grease Control Ordinance".

(B) *Scope and purpose.* To aid in the prevention of sanitary sewer blockages and obstructions from contributions and accumulation of fats, oils, and greases into the town sewer system from industrial, or commercial, establishments, particularly food preparation and serving facilities.

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

COOKING ESTABLISHMENTS. Establishments primarily engaged in activities of preparing, serving, or otherwise making available for consumption foodstuffs, and that use one, or more, of the following preparation activities: cooking by frying (all methods); baking (all methods); grilling; sauteing; rotisserie cooking; broiling (all methods); boiling; blanching; roasting; toasting; or poaching. Also included are infrared heating, searing, barbecuing, and any other food preparation activity that produces a hot, non-drinkable food product in, or on, a receptacle that requires washing. **COOKING ESTABLISHMENTS** may also be referred to as **FOOD SERVICE ESTABLISHMENTS**.

FATS, OILS, AND GREASE. Organic polar compounds derived from animal and/or plant sources that contain multiple carbon chain triglyceride molecules. These substances are detectable and measurable using analytical test procedures established in 40 C.F.R. § 136, as may be amended from time to time. All substances are sometimes referred to herein as **GREASE** or **GREASES**.

GREASE TRAP or **INTERCEPTOR.** A device for separating, and retaining, waterborne greases and grease complexes prior to the wastewater exiting the trap and entering the sanitary sewer collection and treatment system. These devices also

serve to collect settleable solids, generated by, and from, food preparation activities, prior to the water exiting the trap and entering the sanitary sewer collection and treatment system. **GREASE TRAP** and **INTERCEPTORS** are sometimes referred to herein as **GREASE INTERCEPTORS**.

MINIMUM DESIGN CAPABILITY. The design features of a grease interceptor and its ability, or volume, required to effectively intercept and retain greases from grease-laden wastewaters discharged to the public sanitary sewer.

NON-COOKING ESTABLISHMENTS. Those establishments primarily engaged in the preparation of precooked foodstuffs that do not include any form of cooking. These include cold dairy and frozen foodstuffs preparation, and serving, establishments.

USER. Any person, including those located outside the jurisdictional limits of the town, who contributes, causes, or permits the contribution, or discharge, of wastewater into the POTW, including persons who contribute such wastewater from mobile sources, such as those who discharge hauled wastewater.

(D) *General requirements.*

(1) All food service establishments shall have grease-handling facilities approved by the town. Grease interceptors may also be required in non-cooking, or cold dairy and frozen foodstuffs, establishments, and other industrial or commercial establishments when they are deemed necessary by the Director/Superintendent for the proper handling of liquid wastes containing grease. Establishments whose grease-handling facilities, or methods, are not adequately maintained to prevent floatable oils, fat, or grease from entering the sewerage system shall be notified, in writing, of any non-compliance, and shall be required to provide a schedule whereby corrections will be accomplished.

(2) All food service establishments' grease-handling facilities shall be subject to review, evaluation, and inspection by the town representatives during normal working hours. Results of inspections will be made available to the facility owner, leaseholder, or operator.

(3) Food service establishments receiving two consecutive unsatisfactory evaluations or inspections may be subject to penalties, or other corrective actions as provided for in the sewer use article.

(4) Food service establishments who continue to violate the Town Grease Control Ordinance may be considered grounds for discontinuance of sewer service.

(5) Food service establishments whose operations cause, or allow, excessive grease to discharge, or accumulate, in the town collection system may be liable to the town for costs related to the town service calls for line blockages, line cleanings, line and pump repairs, and the like, including labor, materials, and equipment. Failure to pay all service-related charges may also be grounds for sewer discontinuance.

(6) Regularly scheduled maintenance of grease-handling facilities is required to ensure adequate operation. Grease-handling facilities shall be serviced, and emptied, of accumulated waste content as required in order to maintain minimum design capability, or effective volume of the grease interceptor, but not less often than every 90 days. In the maintenance of these grease interceptors, the owner, leaseholder, or operator shall be responsible for the proper removal, and disposal, of grease by appropriate means, and shall maintain on-site records of dates, and means of disposal. Records shall be maintained for a period of three years.

(7) The exclusive use of enzymes, grease solvents, emulsifiers, and the like, is not considered acceptable grease trap maintenance practice.

(8) The town shall inspect, and review, maintenance records for all grease interceptors on an annual basis. The user shall reimburse the town all costs associated with the inspections (sample collection, sample analysis, reporting, and the like).

(9) All grease traps/interceptors shall be designed, and installed, to allow for complete access for inspection, maintenance, and sampling.

(E) *Construction standards.*

(1) For new facilities:

(a) All new food service establishments shall be required to install a grease interceptor, approved by the town. Grease interceptors shall be adequately sized, with no interceptor less than 1,000 gallons' total capacity unless otherwise approved by the town;

(b) No new food service establishments will be allowed to initiate operations until grease-handling facilities are installed, and approved, by the town;

(c) All grease interceptors, whether singular or two tanks in series, must have each chamber directly accessible from the surface to provide means for servicing, and maintaining, the interceptor in working and operating condition; and

(d) Wastewater from garbage grinders should not be discharged to grease traps/interceptors.

(2) For existing facilities:

(a) All existing food service establishments shall have grease-handling facilities approved by the town. Food service establishments without any grease-handling facilities will be given a compliance deadline not to exceed 12 months from date

of notification to have approved, and installed, grease-handling equipment in compliance with this section. Failure to do so will be considered a violation of the Town Grease Control Ordinance, and may subject the facility to penalties and corrective actions. Said installations shall meet the same requirements for design as for new facilities. (See subsection (E)(1)(a) above);

(b) In the event an existing food service establishment's grease-handling facilities are either under-designed, or substandard, in accordance with this policy, the owner(s) will be notified, in writing, of the deficiencies and required improvements, and given a compliance deadline not to exceed six months to conform with requirements of this section;

(c) For cases in which outdoor type grease interceptors are infeasible to install, existing food service establishments will be required to install adequate, and approved, under-the-counter grease traps for use on individual fixtures including dishwashers, sinks, and other potentially grease-containing drains;

(d) Sizing of under-the-counter grease trap units will be in accordance with recommended ratings for commercial grease traps. The grease retention capacity rating in pounds shall be at least two times the GPM flow rate of the type fixture it serves. Flow control fittings must be provided to the inlet side of all under-the-counter units to prevent overloading of the grease trap, and to allow for proper operation;

(e) Town approval of flow control devices and grease trap design must be obtained prior to installation;

(f) The location of under-the-counter units must be as near to the source of the wastewater as physically possible;

(g) Wastewater from garbage grinders should not be discharged to grease traps/interceptors; and

(h) In maintaining grease traps/interceptors, the owner(s) shall be responsible for the proper removal, and disposal, by appropriate means of the captured material, and shall maintain records of the dates, and means of disposal, that are subject to review by the town. (See subsection (D)(6) above).

(3) For new food service establishments in existing buildings:

(a) Where practical, new food service establishments locating in existing buildings will be required to comply with the grease trap standards applicable to new facilities. (See subsection (E)(1)(a) above); and

(b) Where physically impossible to install outdoor units, under-the-counter units may be allowed as with existing food service establishments; provided, prior approval of unit type, size, location, and the like is approved by the town. (See subsections (E)(2)(b) and (E)(2)(c) above.)

(Ord. 33-2002, passed 10-21-2002)

§§ 21-316 TO 21-324 RESERVED.

DIVISION 3. FEES

§ 21-325 PURPOSE.

It is the purpose of this division to provide for the recovery of costs from users of the town's wastewater disposal system for the implementation of the program established herein. The applicable charges, or fees, shall be set forth in the town's schedule of charges and fees by the POTW Director, and approved by the Town Board. A copy of these charges and fees will be made available from the POTW Director.

(Ord. 33-2002, passed 10-21-02; Ord. 29-2008, passed 10- -2008)

§ 21-326 USER CHARGES.

(A) A user charge shall be levied on all users including, but not limited to, persons, firms, corporations, or governmental entities that discharge, cause, or permit the discharge of sewage into the POTW.

(B) The user charge shall reflect, at least, the cost of debt service, operation, and maintenance (including replacement) of the POTW.

(C) Each user shall pay his or her proportionate cost based on volume of flow.

(D) The Town Manager shall review annually the sewage contributions of users, the total costs of debt service, operation, and maintenance of the POTW, and will make recommendations to the Town Council for adjustments in the schedule of charges and fees as necessary.

(E) Charges for flow to the POTW not directly attributable to the users shall be distributed among all users of the POTW based upon the volume of flow of the users.

(Ord. 33-2002, passed 10-21-2002)

§ 21-327 SURCHARGES.

(A) All industrial users of the POTW are subject to industrial waste surcharges on discharges which exceed the following levels:

(1) BOD, 250 mg/l; and

(2) TSS, 200 mg/l.

(B) The amount of surcharge will be based upon the mass emission rate (in pounds per day) discharged above the levels referred to in subsections (A)(1) and (A)(2) above. The amount charged per pound of excess will be set forth in the schedule of charges and fees.

(C) The volume of flow used in determining the total discharge of wastewater for payment of user charges and surcharges shall be based on the following:

(1) Metered water consumption, as shown in the records of meter readings maintained by the town;

(2) If required by the town or at the individual discharger's option, other flow monitoring devices which measure the actual volume of wastewater discharged to the sewer. Such devices shall be accessible and safely located, and the measuring system shall be installed in accordance with plans approved by the town. The metering system shall be installed, and maintained, at the user's expense, according to arrangements that may be made with the town; or

(3) Where any user procures all, or part, of his or her water supply from sources, other than the town, the user shall install, and maintain, at his or her own expense, a flow measuring device of a type approved by the town.

(a) The character and concentration of the constituents of the wastewater used in determining surcharges shall be determined by samples collected, and analyzed, by the town. Samples shall be collected in such a manner as to be representative of the actual discharge, and shall be analyzed using procedures set forth in 40 C.F.R. part 136.

(b) The determination of the character, and concentration, of the constituents of the wastewater discharge by the POTW Director, or his or her duly appointed representatives, shall be binding as a basis for charges.

(Ord. 33-2002, passed 10-21-2002)

§ 21-328 PRETREATMENT PROGRAM ADMINISTRATION CHARGES.

The schedule of charges and fees adopted by the town may include charges and fees for:

(A) Reimbursement of costs of setting up, and operating, the pretreatment program;

(B) Monitoring, inspections, and surveillance procedures;

(C) Reviewing slug control plans, including accidental and/or slug load discharge procedures, and construction plans and specifications;

(D) Permit fee to cover the cost of administering the pretreatment permit system, there will be a fee for each discharge permit at the time of issuance. This fee will cover the length (time) of the permit; and

(E) Other fees as the town may deem necessary to carry out the requirements of the pretreatment program.

(Ord. 33-2002, passed 10-21-2002; Ord. 29-2008, passed 10- -2008)

§§ 21-329 TO 21-334 RESERVED.

DIVISION 4. WASTEWATER DISCHARGE PERMIT APPLICATION AND ISSUANCE

§ 21-335 WASTEWATER DISCHARGES.

It shall be unlawful for any person to connect, or discharge, to the POTW without first obtaining the permission of the town. When requested by the POTW Director/Superintendent, a user must submit information on the nature, and characteristics, of his or her wastewater within 30 days of the request. The POTW Director is authorized to prepare a form for this purpose, and may periodically require users to update this information.

(Ord. 33-2002, passed 10-21-2002) Penalty, see §1-111

§ 21-336 WASTEWATER PERMITS.

(A) *General.* All significant industrial users shall obtain a significant industrial user permit prior to the commencement of discharge to the POTW. Existing industrial users who are determined by the POTW Director/Superintendent to be significant industrial users shall obtain a significant industrial user permit within 180 days of receiving notification of the POTW Director's determination. Industrial users who do not fit the significant industrial user criteria may, at the discretion of the POTW Director, be required to obtain a wastewater discharge permit for nonsignificant industrial users.

(B) *Significant industrial user determination.* All persons proposing to discharge non-domestic wastewater, or proposing to change the volume or characteristics of an existing discharge of non-domestic wastewater, shall request from the POTW Director a significant industrial user determination. If the POTW Director determines, or suspects, that the proposed discharge fits the significant industrial user criteria, he or she will require that a significant industrial user permit application be filed.

(C) *Significant industrial user permit application.* Users required to obtain a significant industrial user permit shall complete, and file with the town, an application in the form prescribed by the POTW Director, which shall be accompanied by an application fee in the amount prescribed in the schedule of charges and fees. Significant industrial users shall apply for a

significant industrial user permit within 90 days after notification of the POTW Director's determination in subsection (B) above. In support of the application, the user shall submit, in units and terms appropriate for evaluation, the following information:

- (1) Name, address, and location (if different from the address);
- (2) Standard industrial classification (SIC) codes for pretreatment, the industry as a whole, and any processes for which categorical pretreatment standards have been promulgated;
- (3) Analytical data on wastewater constituents and characteristics including, but not limited to, those mentioned in division 2 of this article, any of the priority pollutants (§ 307(a) of the Act) which the applicant knows, or suspects, are present in the discharge, as determined by a reliable analytical laboratory, and any other pollutant of concern to the POTW. Sampling and analysis shall be performed in accordance with procedures established by the EPA pursuant to § 304(g) of the Act and contained in 40 C.F.R. part 136, as amended, and as required in §§ 21-354 and 21-355;
- (4) Time and duration of the indirect discharge;
- (5) Average daily, and 30-minute peak, wastewater flow rates, including daily, monthly, and seasonal variations, if any;
- (6) Site plans, floor plans, mechanical and plumbing plans, and details to show all sewers, floor drains, sewer connections, direction of flow, and appurtenances by the size, location, and elevation;
- (7) Description of activities, facilities, and plant processes on the premises including all materials which are, or could be, accidentally, or intentionally, discharged;
- (8) Where known, the nature and concentration of any pollutants in the discharge which are limited by any town, state, or federal pretreatment standards, and a statement regarding whether or not the pretreatment standards are being met on a consistent basis and if not, whether additional operation and maintenance (O&M), and/or additional pretreatment, is required for the user to meet applicable pretreatment standards;
- (9) If additional pretreatment and/or O&M will be required to meet the pretreatment standards the shortest schedule by which the user will provide such additional pretreatment. The completion date in this schedule shall not be longer than the compliance date established for the applicable pretreatment standard. The following conditions apply to this schedule:
 - (a) The schedule shall contain progress increments in the form of dates for the commencement, and completion, of major events leading to the construction, and operation, of additional pretreatment required for the user to meet the applicable pretreatment standards. No increment in the schedule shall exceed nine months; and
 - (b) No later than 14 days following each date in the schedule and the final date for compliance, the user shall submit a progress report to the POTW Director including, at a minimum, whether or not it complied with the increment of progress, the reason for any delay, and if appropriate, the steps being taken by the user to return to the established schedule. In no event shall more than nine months elapse between such progress reports to the POTW Director.
- (10) Each product produced by type, amount, process or processes, and rate of production;
- (11) Type and amount of raw materials processed (average and maximum per day);
- (12) Number and type of employees, and hours of operation of plant and proposed, or actual, hours of operation of pretreatment system;
- (13) If subject to a categorical standard, a baseline monitoring report in accordance with 40 C.F.R. § 403.12(b) and 15A N.C.A.C. 2H.0908(a), as outlined in § 21-345; and
- (14) Any other information as may be deemed by the POTW Director to be necessary to evaluate the permit application.

(D) *Application signatories and certification.* All wastewater discharge permit applications and user reports must be signed by the current authorized representative of the user on file with the town, as defined in § 21-302(A), and contain the following certification statement:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

(E) *Application review and evaluation.* The POTW Director will evaluate the data furnished by the user and may require additional information.

(1) The POTW Director is authorized to accept applications for the town, and shall refer all applications to the POTW staff for review and evaluation.

(2) Within 30 days of receipt, the POTW Director shall acknowledge, and accept, the complete application; or if not complete, shall return the application to the applicant with a statement of what additional information is required.

(F) *Tentative determination and draft permit.*

(1) The POTW staff shall conduct a review of the application and an on-site inspection of the significant industrial user, including any pretreatment facilities, and shall prepare a written evaluation, and tentative determination, to issue or deny the significant industrial user permit.

(2) If the staff's tentative determination in subsection (F)(1) above is to issue the permit, the following additional determinations shall be made in writing:

(a) Proposed discharge limitations for those pollutants proposed to be limited;

(b) A proposed schedule of compliance, including interim dates, and requirements for meeting the proposed limitations; and

(c) A brief description of any other proposed special conditions which will have significant impact upon the discharge described in the application.

(3) The staff shall organize the determinations made pursuant to subsections (F)(1) and (F)(2) above, and the general permit conditions of the town, into a significant industrial user permit.

(G) *Permit synopsis.* A fact sheet providing a brief synopsis of the application shall be prepared by the POTW staff for submission to the applicant and the approval authority, and shall be made available to the public upon request. The contents of such fact sheets shall include at least the following information:

(1) A sketch and detailed description of the industrial facilities and pretreatment facilities, including the location of all points of discharge to the POTW and all established compliance monitoring points; and

(2) A quantitative description of the discharge described in the application which includes at least the following:

(a) The rate or frequency of the proposed discharge; if the discharge is continuous, the average daily flow;

(b) The actual average daily discharge in pounds per day of any limited pollutant, and any pollutant identified in the application as known, or suspected, present; and

(c) The basis for the pretreatment limitations including the documentation of any calculations in applying categorical pretreatment standards.

(H) *Final action on significant industrial user permit applications.*

(1) The POTW Director shall take final action on all applications not later than 90 days following receipt of a complete application.

(2) The POTW Director is authorized to:

(a) Issue a significant industrial user permit containing such conditions as are necessary to effectuate the purposes of this division and G.S. § 143-215.1;

(b) Issue a significant industrial user permit containing time schedules for achieving compliance with applicable pretreatment standards and requirements;

(c) Modify any permit upon not less than 60 days notice and pursuant to subsection (J) below;

(d) Revoke any permit pursuant to §21-372;

(e) Suspend a permit pursuant to §21-372; or

(f) Deny a permit application when, in the opinion of the POTW Director, such discharge may cause, or contribute, to pass through or interference of the wastewater treatment plant, or where necessary to effectuate the purposes of G.S. § 143-215.1.

(I) *Hearings.*

(1) An applicant whose permit is denied, or is granted subject to conditions he or she deems unacceptable, a permittee/user assessed a civil penalty under § 21-373, or one issued an administrative order under §21-372, shall have the right to an adjudicatory hearing before a hearing officer designated by the POTW Director upon making written demand, identifying the specific issues to be contested, to the POTW Director within 30 days following receipt of the significant industrial user permit, civil penalty assessment, or administrative order. Unless such written demand is made within the time specified herein, the action shall be final and binding. The hearing officer shall make a final decision on the contested permit, penalty, or order within 30 days of the receipt of the written demand for a hearing. The POTW Director shall transmit a copy of the hearing officer's decision by registered, or certified, mail.

(a) Upon appeal, including judicial review in the General Courts of Justice, of the terms or conditions of a newly

issued permit, the terms and conditions of the entire permit are stayed, and the permit is not in effect until either the conclusion of judicial review, or until the parties reach a mutual resolution.

(b) Upon appeal, including judicial review in the General Courts of Justice of the terms or conditions of a renewed permit, the terms and conditions of the existing permit remain in effect until either the conclusion of judicial review, or until the parties reach a mutual resolution.

(2) Any decision of a hearing officer made as a result of an adjudicatory hearing held under subsection (I)(1) above may be appealed to the Town Council upon filing a written demand within ten days of receipt of notice of the decision. Hearings held under this subsection (I) shall be conducted in accordance with local hearing procedures. Failure to make written demand within the time specified herein shall bar further appeal. The Town Council shall make a final decision on the appeal within 90 days of the date the appeal was filed, and shall transmit a written copy of its decision by registered or certified mail.

(3) When a final decision is issued under subsection (I)(2) above, the Town Council shall prepare an official record of the case that includes:

- (a) All notices, motions, and other like pleadings;
- (b) A copy of all documentary evidence introduced;
- (c) A certified transcript of all testimony taken, if testimony is transcribed. If testimony is taken and not transcribed, then a narrative summary of any testimony taken; and
- (d) A copy of the final decision of the Town Council.

(4) Any person against whom a final order, or decision, of the Town Council is entered, pursuant to the hearing conducted under subsection (I)(2) above, may seek judicial review of the order, or decision, by filing a written petition within 30 days after receipt of notice by registered, or certified, mail of the order or decision, but not thereafter, with the Superior Court of the county, along with a copy to the town. Within 30 days after receipt of the copy of the petition of judicial review, the Town Council shall transmit to the reviewing court the original, or a certified, copy of the official record.

(J) *Permit modification.*

(1) (a) Modifications of permits shall be subject to the same procedural requirements as the issuance of permits, except as listed below:

1. Changes in the ownership of the discharge when no other change in the permit is indicated;
2. A single modification of any compliance schedule not in excess of four months; or
3. Modification of compliance schedules (construction schedules) in permits for new sources where the new source will not begin to discharge until control facilities are operational.

(b) Any changes or new conditions in the permit shall include a reasonable time schedule for compliance.

(2) Within nine months of the promulgation of a national categorical pretreatment standard, the wastewater discharge permit of users subject to such standards shall be revised to require compliance with such standard within the timeframe prescribed by such standard. Where a user, subject to a national categorical pretreatment standard, has not previously submitted an application for a wastewater discharge permit, as required by subsection (C) above, the user shall apply for a wastewater discharge permit within 180 days after the promulgation of the applicable national categorical pretreatment standard.

(3) A request for a modification by the permittee shall constitute a waiver of the 60-day notice required by G.S. § 143-215.1(b) for modifications.

(K) *Permit conditions.*

(1) The POTW Director shall have the authority to grant a permit with such conditions attached as he or she believes necessary to achieve the purpose of this division and G.S. § 143-215.1. Wastewater permits shall contain, but are not limited to, the following:

- (a) A statement of duration (in no case more than five years);
- (b) A statement of non-transferability;
- (c) Applicable effluent limits based on categorical standards or local limits, or both;
- (d) Applicable monitoring, sampling, reporting, notification, and record keeping requirements. These requirements shall include an identification of pollutants to be monitored, sampling location, sampling frequency, and sample type based on federal, state, and local law;
- (e) Requirements for notifying the POTW in the event of an accidental discharge or slug load, as defined in § 21-302(A);
- (f) Requirements to implement a plan, or other controls, for prevention of accidental discharges and/or slug loads, as defined in § 21-302(A), if determined by the POTW Director to be necessary for the user;

(g) Requirements for immediately notifying the POTW of any changes at its facility affecting the potential for spills and other accidental discharges or slug load, as defined in § 21-302(A). (See §§ 21-349 and 21-350); and

(h) A statement of applicable civil and criminal penalties for violation of pretreatment standards and requirements, and any applicable compliance schedule.

(2) In addition, permits may contain, but are not limited to, the following:

(a) Limits on the average and/or maximum rate of discharge, and/or requirements for flow regulation and equalization;

(b) Limits on the instantaneous, daily, and monthly average and/or maximum concentration, mass, or other measure of identified wastewater pollutants or properties;

(c) Requirements for the installation of pretreatment technology, or construction of appropriate containment devices, and the like, designed to reduce, eliminate, or prevent the introduction of pollutants into the treatment works;

(d) Development and implementation of waste minimization plans to reduce the amount of pollutants discharged to the municipal wastewater system;

(e) The unit charge or schedule of user charges and fees for the management of the wastewater discharged to the system;

(f) Requirements for installation and maintenance of inspection and sampling facilities and equipment;

(g) Specifications for monitoring programs which may include sampling locations, frequency of sampling, number, types, and standards for tests, and reporting schedules;

(h) Requirements for immediate reporting of any instance of non-compliance, and for automatic re-sampling and reporting within 30 days where self-monitoring indicates a violation(s);

(i) Compliance schedules for meeting pretreatment standards and requirements;

(j) Requirements for submission of periodic self-monitoring, or special, notification reports;

(k) Requirements for maintaining, and retaining, plans and records relating to wastewater discharges, as specified in § 21-357, and affording the POTW Director, or his or her representatives, access thereto;

(l) Requirements for prior notification, and approval, by the POTW Director of any new introduction of wastewater pollutants, or of any significant change in the volume, or character, of the wastewater prior to introduction in the system;

(m) Requirements for the prior notification, and approval, by the POTW Director of any change in the manufacturing and/or pretreatment process used by the permittee;

(n) A statement that compliance with the permit does not relieve the permittee of responsibility for compliance with all applicable federal, and state, pretreatment standards, including those which become effective during the terms of the permit; and

(o) Other conditions as deemed appropriate by the POTW Director to ensure compliance with this division, and state and federal laws, rules, and regulations.

(L) *Permit duration.* Permits shall be issued for a specified time period, not to exceed five years. A permit may be issued for a period less than a year, or may be stated to expire on a specific date.

(M) *Permit transfer.* Wastewater permits are issued to a specific user for a specific operation. A wastewater discharge permit shall not be reassigned or transferred, or sold, to a new owner, new user, different premises, or a new, or changed, operation.

(N) *Permit re-issuance.* A significant industrial user shall apply for permit re-issuance by submitting a complete permit application, in accordance with this section, a minimum of 180 days prior to the expiration of the existing permit.

(Ord. 33-2002, passed 10-21-2002; Ord. 29-2008, passed 10- -2008)

§§ 21-337 TO 21-344 RESERVED.

DIVISION 5. REPORTING REQUIREMENTS.

§ 21-345 BASELINE MONITORING REPORTS.

(A) Within either 180 days after the effective date of a categorical pretreatment standard, or the final administrative decision on a category determination under 40 C.F.R. § 403.6(a)(4), whichever is later, existing categorical users currently discharging to, or scheduled to discharge to, the POTW shall submit to the POTW Director a report which contains the information listed in subsection (B) below. At least 90 days prior to commencement of their discharge, new sources, and sources that become categorical, users subsequent to the promulgation of an applicable categorical standard shall submit to the POTW Director a report which contains the information listed in subsection (B) below. A new source shall report the method of pretreatment it intends to use to meet applicable categorical standards. A new source also shall give estimates of its anticipated flow, and quantity of pollutants to be discharged.

(B) Users described above shall submit the information set forth below:

- (1) *Identifying information.* The name and address of the facility, including the name of the operator and owner;
- (2) *Environmental permits.* A list of any environmental control permits held by, or for, the facility;
- (3) *Description of operations.* A brief description of the nature, average rate of production, and standard industrial classifications of the operation(s) carried out by such user. This description should include a schematic process diagram which indicates points of discharge to the POTW from the regulated processes;
- (4) *Flow measurement.* Information showing the measured average daily and maximum daily flow, in gallons per day, to the POTW from regulated process streams and other streams, as necessary, to allow use of the combined wastestream formula set out in 40 C.F.R. § 403.6(e);
- (5) *Measurement of pollutants.*
 - (a) The categorical pretreatment standards applicable to each regulated process; and
 - (b) The results of sampling and analysis identifying the nature and concentration, and/or mass, where required by the standard or by the POTW Director, of regulated pollutants in the discharge from each regulated process. Instantaneous, daily maximum, and long-term average concentrations, or mass, where required, shall be reported. The sample shall be representative of daily operations, and shall be analyzed in accordance with procedures set out in § 21-355, and 40 C.F.R. § 403.12(b) and (g), including 40 C.F.R. § 403.12(g)(4).
- (6) *Certification.* A statement, reviewed by the user's current authorized representative, as defined in §21-302(A), and certified by a qualified professional, indicating whether pretreatment standards are being met on a consistent basis, and, if not, whether additional operation and maintenance ("O&M"), and/or additional pretreatment, is required to meet the pretreatment standards and requirements;
- (7) *Compliance schedule.* If additional pretreatment and/or O&M will be required to meet the pretreatment standards, the shortest schedule by which the user will provide such additional pretreatment and/or O&M. The completion date in this schedule shall not be later than the compliance date established for the applicable pretreatment standard. A compliance schedule pursuant to this section must meet the requirements set out in § 21-346; and
- (8) *Signature and certification.* All baseline monitoring reports must be signed, and certified, in accordance with §21-336(C).

(Ord. 33-2002, passed 10-21-2002; Ord. 29-2008, passed 10- -2008)

§ 21-346 COMPLIANCE SCHEDULE PROGRESS REPORTS.

The following conditions shall apply to the compliance schedule required by §21-345(B)(7):

- (A) The schedule shall contain progress increments in the form of dates for the commencement and completion of major events leading to the construction, and operation, of additional pretreatment required for the user to meet the applicable pretreatment standards. Such events include, but are not limited to, hiring an engineer, completing preliminary and final plans, executing contracts for major components, commencing, and completing, construction, and beginning, and conducting, routine operation;
- (B) No increment referred to above shall exceed nine months;
- (C) The user shall submit a progress report to the POTW Director no later than 14 days following each date in the schedule, and the final date of compliance including, as a minimum, whether or not it complied with the increment of progress, the reason for any delay, and, if appropriate, the steps being taken by the user to return to the established schedule; and
- (D) In no event shall more than nine months elapse between such progress reports to the POTW Director.

(Ord. 33-2002, passed 10-21-2002)

§ 21-347 REPORTS ON COMPLIANCE WITH CATEGORICAL PRETREATMENT STANDARD; DEADLINE.

Within 90 days following the date for final compliance with applicable categorical pretreatment standards, or in the case of a new source following commencement of the introduction of wastewater into the POTW, any user subject to such pretreatment standards, and requirements, shall submit to the POTW Director a report containing the information described in § 21-345(B)(4). For users subject to equivalent mass, or concentration, limits established in accordance with the procedures in 40 C.F.R. § 403.6(c), this report shall contain a reasonable measure of the user's long-term production rate. For all other users subject to categorical pretreatment standards expressed in terms of allowable pollutant discharge per unit of production (or other measure of operation), this report shall include the user's actual production during the appropriate sampling period. All compliance reports must be signed, and certified, in accordance with § 21-336(D).

(Ord. 33-2002, passed 10-21-2002)

§ 21-348 PERIODIC COMPLIANCE REPORTS.

- (A) Municipalities may sample, and analyze, user discharges in lieu of requiring the users to conduct sampling and

analysis.

(B) All significant industrial users shall, at a frequency determined by the POTW Director, but in no case less than once every six months, submit a report indicating the nature, and concentration, of pollutants in the discharge which are limited by pretreatment standards, and the applicable flows for the reporting period. Sampling and analysis must be performed in accordance with procedures set out in §§ 21-354 and 21-355. All periodic compliance reports must be signed, and certified, in accordance with § 21-336(D).

(C) All wastewater samples must be representative of the user's discharge. Wastewater monitoring and flow measurement facilities shall be properly operated, kept clean, and maintained in good working order at all times. The failure of a user to keep his or her monitoring facility in good working order shall not be grounds for the user to claim that sample results are unrepresentative of his or her discharge.

(D) If a user, subject to the reporting requirement in this section, monitors any pollutant more frequently than required by the POTW Director, using the procedures prescribed in §§ 21-354 and 21-355, the results of this monitoring shall be included in the report.

(Ord. 33-2002, passed 10-21-2002; Ord. 29-2008, passed 10- -2008)

§ 21-349 REPORTS OF CHANGED CONDITIONS.

(A) Each user must notify the POTW Director of any planned significant changes to the user's operations or system which might alter the nature, quality, or volume of its wastewater at least 30 days before the change. (See § 21-350 for other reporting requirements.)

(B) The POTW Director may require the user to submit such information as may be deemed necessary to evaluate the changed condition, including the submission of a wastewater discharge permit application under § 21-336.

(C) The POTW Director may issue a wastewater discharge permit under §21-336, or modify an existing wastewater discharge permit under § 21-336 in response to changed conditions, or anticipated changed conditions.

(D) For purposes of this requirement, significant changes include, but are not limited to, flow increases of 20% or greater, and the discharge of any previously unreported pollutants.

(Ord. 33-2002, passed 10-21-2002; Ord. 29-2008, passed 10- -2008)

§ 21-350 REPORTS OF POTENTIAL PROBLEMS.

(A) In the case of any discharge, including, but not limited to, accidental discharges, discharges of a non-routine, episodic nature, a non-customary batch discharge, or a slug load, as defined in § 21-302(A), that may cause potential problems for the POTW, the user shall immediately telephone and notify the POTW Director of the incident. This notification shall include the location of the discharge, type of waste, concentration and volume, if known, and corrective actions taken by the user.

(B) Within five days following such discharge, the user shall, unless waived by the POTW Director, submit a detailed written report describing the cause(s) of the discharge, and the measures to be taken by the user to prevent similar future occurrences. Such notification shall not relieve the user of any expense, loss, damage, or other liability which may be incurred as a result of damage to the POTW, natural resources, or any other damage to person or property, nor shall such notification relieve the user of any fines, penalties, or other liability which may be imposed pursuant to this division.

(C) A notice shall be permanently posted on the user's bulletin board, or other prominent place, advising employees whom to call in the event of a discharge described in subsection (A) above. Employers shall ensure that all employees who may cause such a discharge to occur are advised of the emergency notification procedure.

(D) All SIUs are required to notify the POTW immediately of any changes at his or her facility affecting the potential for spills and other accidental discharge, discharge of a non-routine, episodic nature, a non-customary batch discharge, or a slug load as defined in § 21-302(A).

(Ord. 33-2002, passed 10-21-2002; Ord. 29-2008, passed 10- -2008)

§ 21-351 REPORTS FROM UNPERMITTED USERS.

All users not required to obtain a wastewater discharge permit shall provide appropriate reports to the POTW Director, as the POTW Director may require.

(Ord. 33-2002, passed 10-21-2002)

§ 21-352 NOTICE OF VIOLATION/REPEAT SAMPLING AND REPORTING.

(A) If sampling performed by a user indicates a violation, the user must notify the POTW Director within 24 hours of becoming aware of the violation. The user shall also repeat the sampling and analysis, and submit the results of the repeat analysis to the POTW Director within 30 days after becoming aware of the violation. If allowed by the POTW Director, the user is not required to resample:

- (1) If the POTW Director monitors at the user's facility at least once a month; or
- (2) If the POTW Director samples between the user's initial sampling and when the user receives the results of this

sampling.

(B) If the POTW Director does not require the user to perform any self-monitoring, and the POTW sampling of the user indicates a violation, the POTW Director shall repeat the sampling and obtain the results of the repeat analysis within 30 days after becoming aware of the violations, unless one of the following occurs:

(1) The POTW Director monitors at the user's facility at least once a month;

(2) The POTW Director samples the user between his or her initial sampling, and when the POTW receives the results of this initial sampling; or

(3) The POTW Director requires the user to perform sampling, and submit the results to the POTW Director within the 30-day deadline of the POTW becoming aware of the violation.

(Ord. 33-2002, passed 10-21-2002; Ord. 29-2008, passed 10- -2008)

§ 21-353 NOTIFICATION OF THE DISCHARGE OF HAZARDOUS WASTE.

(A) Any user who commences the discharge of hazardous waste shall notify the POTW, the EPA Regional Waste Management Division Director, and state hazardous waste authorities, in writing, of any discharge into the POTW of a substance which, if otherwise disposed of, would be a hazardous waste under 40 C.F.R. part 261. Such notification must include the name of the hazardous waste as set forth in 40 C.F.R. part 261, the EPA hazardous waste number, and the type of discharge (continuous, batch, or other). If the user discharges more than 100 kilograms of such waste per calendar month to the POTW, the notification also shall contain the following information to the extent such information is known and readily available to the user: An identification of the hazardous constituents contained in the wastes; an estimation of the mass and concentration of such constituents in the wastestream discharge during the calendar month; and an estimation of the mass of constituents in the wastestream expected to be discharged during the following 12 months. All notifications must take place no later than 180 days after the discharge commences. Any notification under this subsection (A) need be submitted only once for each hazardous waste discharge. However, notifications of changed conditions must be submitted pursuant to § 21-349. The notification requirement in this section does not apply to pollutants already reported by users subject to categorical pretreatment standards under the self-monitoring requirements of §§ 21-345, 21-347, and 21-348.

(B) Dischargers are exempt from the requirements of subsection (A) above during a calendar month in which they discharge no more than 15 kilograms of hazardous wastes, unless the wastes are acute hazardous wastes, as specific in 40 C.F.R. §§ 261.30(d) and 261.33(e). Discharge of more than 15 kilograms of non-acute hazardous wastes in a calendar month, or of any quantity of acute hazardous wastes as, specified in 40 C.F.R. §§ 261.30(d) and 261.33(e), requires a one-time notification. Subsequent months during which the user discharges more than such quantities of any hazardous waste do not require additional notification.

(C) In the case of any new regulation under § 3001 of RCRA, being the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901 et seq., identifying additional characteristics of hazardous waste, or listing any additional substance as a hazardous waste, the user must notify the POTW Director, the EPA Regional Waste Management Waste Division Director, and state hazardous waste authorities of the discharge of such substance within 90 days of the effective date of such regulations.

(D) In the case of any notification made under this section, the user shall certify that he or she has a program in place to reduce the volume, and toxicity, of hazardous wastes generated to the degree he or she has determined to be economically practical.

(E) This provision does not create a right to discharge any substance not otherwise permitted to be discharged by this division, a permit issued thereunder, or any applicable federal or state law.

(Ord. 33-2002, passed 10-21-2002)

§ 21-354 ANALYTICAL REQUIREMENTS.

All pollutant analyses, including sampling techniques, to be submitted as part of a wastewater discharge permit application, or report, shall be performed in accordance with the techniques prescribed in 40 C.F.R. part 136, unless otherwise specified in an applicable categorical pretreatment standard. If 40 C.F.R. part 136 does not contain sampling, or analytical, techniques for the pollutant in question, sampling and analyses must be performed in accordance with procedures approved by the EPA.

(Ord. 33-2002, passed 10-21-2002)

§ 21-355 SAMPLE COLLECTION.

(A) All wastewater samples must be representative of the user's discharge. Wastewater monitoring and flow measurement facilities shall be properly operated, kept clean, and maintained in good working order at all times. The failure of a user to keep his or her monitoring facility in good working order shall not be grounds for the user to claim that sample results are unrepresentative of his or her discharge.

(B) Grab samples must be used for pH, cyanide, total phenols, oil and grease, sulfide, volatile organic compounds, and any other pollutants, as required by 40 C.F.R. part 136. The POTW Director shall determine the number of grabs necessary to be representative of the user's discharge (see 40 C.F.R. § 403.12(g)(5) for additional grab sample number requirements

for BMR and 90 day compliance reports). Additionally, the POTW Director may allow collection of multiple grabs during a 24-hour period which are composited prior to analysis as allowed under 40 C.F.R. part 136.

(C) All wastewater composite samples shall be collected with a minimum of hourly aliquots or grabs for each hour that there is a discharge. All wastewater composite samples shall be collected using flow proportional composite collection techniques, unless time-proportional composite sampling or grab sampling is authorized by the POTW Director. When authorizing time-proportional composites or grabs, the samples must be representative, and the decision to allow the alternative sampling must be documented.

(Ord. 33-2002, passed 10-21-2002; Ord. 29-2008, passed 10- -2008)

§ 21-356 TIMING.

Written reports will be deemed to have been submitted on the date postmarked. For reports which are not mailed, postage prepaid, into a mail facility serviced by the United States Postal Service, the date of receipt of the report shall govern.

(Ord. 33-2002, passed 10-21-2002)

§ 21-357 RECORD KEEPING.

Users subject to the reporting requirements of this division shall retain, and make available for inspection and copying, all records of information obtained pursuant to any monitoring activities required by this division, and any additional records of information obtained pursuant to monitoring activities undertaken by the user independent of such requirements. Records shall include the date, exact place, method, and time of sampling, and the name of the person(s) taking the samples; the dates analyses were performed; who performed the analyses; the analytical techniques or methods used; and the results of such analyses. These records shall remain available for a period of at least three years. This period shall be automatically extended for the duration of any litigation concerning the user or the town, or where the user has been specifically notified of a longer retention period by the POTW Director.

(Ord. 33-2002, passed 10-21-2002)

§§ 21-358 TO 21-360 RESERVED.

DIVISION 6. COMPLIANCE MONITORING

§ 21-361 MONITORING FACILITIES.

(A) The town requires the user to provide and operate, at the user's own expense, monitoring facilities to allow inspection, sampling, and flow measurement of the building sewer, and/or internal drainage systems. The monitoring facility should normally be situated on the user's premises, but the town may, when such a location would be impractical, or cause undue hardship on the user, allow the facility to be constructed in the public street or sidewalk area, and located so that it will not be obstructed by landscaping or parked vehicles.

(B) There shall be ample room in, or near, such sampling manhole, or facility, to allow accurate sampling and preparation of samples for analysis. The facility, sampling, and measuring equipment shall be maintained at all times in a safe, and proper, operating condition at the expense of the user.

(C) Whether constructed on public or private property, the sampling and monitoring facilities shall be provided in accordance with the requirements of the town, and all applicable local construction standards and specifications. Construction shall be completed within 90 days following written notification by the town.

(Ord. 33-2002, passed 10-21-2002)

§ 21-362 INSPECTION AND SAMPLING.

The town will inspect the facilities of any user to ascertain whether the purpose of this division is being met, and all requirements are being complied with. Persons or occupants of premises where wastewater is created, or discharged, shall allow the town, approval authority, and EPA, or their representatives, ready access at all reasonable times to all parts of the premises for the purposes of inspection, sampling, records examination and copying, or in the performance of any of their duties. The town, approval authority, and EPA shall have the right to set up on the user's property such devices as are necessary to conduct sampling, inspection, compliance monitoring, and/or metering operations. Where a user has security measures in force which would require proper identification and clearance before entry into his or her premises, the user shall make necessary arrangements with his or her security guards so that, upon presentation of suitable identification, personnel from the town, approval authority, and EPA will be permitted to enter, without delay, for the purposes of performing their specific responsibilities. Denial of the POTW Director's/Superintendent's, approval authority's, or EPA's access to the user's premises shall be a violation of this division. Unreasonable delays may constitute denial of access.

(Ord. 33-2002, passed 10-21-2002)

§ 21-363 SEARCH WARRANTS.

If the POTW Director, approval authority, or EPA has been refused access to a building, structure, or property, or any part thereof, and is able to demonstrate probable cause to believe that there may be a violation of this division, or that there is a need to inspect and/or sample as part of a routine inspection and sampling program of the town designed to verify

compliance with this division or any permit, or order issued hereunder, or to protect the overall public health, safety, and welfare of the community, then the POTW Director, approval authority, or EPA may seek issuance of an administrative search warrant from the any County Magistrate, pursuant to G.S. § 15-27.2.

(Ord. 33-2002, passed 10-21-2002)

§§ 21-364 TO 21-368 RESERVED.

DIVISION 7. CONFIDENTIAL INFORMATION

§ 21-369 RESTRICTION OF INFORMATION.

(A) Information and data on a user obtained from reports, questionnaires, permit applications, permits, and monitoring programs, and from inspections, shall be available to the public, or other governmental agency, without restriction unless the user specifically requests, and is able to demonstrate to the satisfaction of the POTW Director/Superintendent, that the release of such information would divulge information, processes, or methods of production entitled to protection as trade secrets of the user, pursuant to G.S. § 132-1.2. Any such request must be asserted at the time of submission of the information or data.

(B) When requested by the person furnishing a report, the portions of a report which might disclose trade secrets, or secret processes, shall not be made available for inspection by the public, but shall be made available upon written request to governmental agencies for uses related to this division, the national pollutant discharge elimination system (NPDES) permit, non-discharge permit, and/or the pretreatment programs, or as otherwise authorized pursuant to G.S. Chapter 132; provided, however, that such portions of a report shall be available for use by the state, or any state agency, in judicial review, or enforcement proceedings, involving the person furnishing the report. Wastewater constituents and characteristics will not be recognized as confidential information.

(C) All records relating to compliance with pretreatment standards shall be made available to officials of the approval authority and EPA upon request.

(Ord. 33-2002, passed 10-21-2002)

§§ 21-370 TO 21-371 RESERVED.

DIVISION 8. ENFORCEMENT

§ 21-372 ADMINISTRATIVE REMEDIES.

(A) *Notification of violation.* Whenever the POTW Director finds that any industrial user has violated, or is violating, this division, wastewater permit, or any prohibition, limitation, or requirements contained therein, or any other pretreatment requirement, the POTW Director may serve upon such a person a written notice stating the nature of the violation. Within 30 days from the date of this notice, an explanation for the violation, and a plan for the satisfactory correction thereof shall be submitted to the town by the user. Submission of this plan does not relieve the discharger of liability for any violations occurring before, or after, receipt of the notice of violation.

(B) *Consent orders.* The POTW Director is hereby empowered to enter into consent orders, assurances of voluntary compliance, or other similar documents establishing an agreement with the person responsible for the non-compliance. Such orders will include specific action to be taken by the discharger to correct the non-compliance within a time period also specified by the order. Consent orders shall have the same force, and effect, as an administrative order issued pursuant to subsection (D) below.

(C) *Show cause hearing.* The POTW Director may order any industrial user who causes, or is responsible for, an unauthorized discharge, has violated this division, or is in non-compliance with a wastewater discharge permit, to show cause why a proposed enforcement action should not be taken. In the event the POTW Director determines that a show cause order should be issued, a notice shall be served on the user specifying the time, and place, for the hearing, the proposed enforcement action, the reasons for such action, and a request that the user show cause why this proposed enforcement action should not be taken. The notice of the hearing shall be served personally, or by registered or certified mail (return receipt requested), at least ten days before the hearing. Service may be made on any agent, or officer, of a corporation.

(1) The POTW Director shall review the evidence presented at the hearing, and determine whether the proposed enforcement action is appropriate.

(2) A show cause hearing under this section is not a prerequisite to the assessment of a civil penalty under §21-373, nor is any action or inaction taken by the POTW Director under this section subject to an administrative appeal under § 21-336(l).

(D) *Administrative orders.* When the POTW Director finds that an industrial user has violated, or continues to violate, this division, permits, or orders issued hereunder, or any other pretreatment requirement, the POTW Director may issue an order to cease and desist all such violations, and direct those persons in non-compliance to do any of the following:

- (1) Immediately comply with all requirements;
- (2) Comply in accordance with a compliance time schedule set forth in the order;

(3) Take appropriate remedial or preventive action in the event of a continuing, or threatened, violation; or

(4) Disconnect sewer service unless adequate treatment facilities, devices, or other related appurtenances are installed, and properly operated, within a specified time period.

(E) *Emergency suspensions.*

(1) The POTW Director may suspend the wastewater treatment service and/or wastewater permit when such suspension is necessary in order to stop an actual, or threatened, discharge which presents, or may present, an imminent, or substantial, endangerment to the health, or welfare, of persons or the environment, interferes with the POTW, or causes the POTW to violate any condition of its NPDES or non-discharge permit.

(2) Any user notified of a suspension of the wastewater treatment service and/or the wastewater permit shall immediately stop, or eliminate, the contribution. A hearing will be held within 15 days of the notice of suspension to determine whether the suspension may be lifted, or the user's waste discharge permit terminated. In the event of a failure to comply voluntarily with the suspension order, the POTW Director shall take such steps as deemed necessary, including immediate severance of the sewer connection, to prevent, or minimize, damage to the POTW system, or endangerment to any individuals. The POTW Director shall reinstate the wastewater permit and the wastewater treatment service upon proof of the elimination of the non-compliant discharge. The industrial user shall submit a detailed written statement describing the causes of the harmful contribution, and the measures taken to prevent any future occurrence to the POTW Director prior to the date of the above-described hearing.

(F) *Termination of permit or permission to discharge.*

(1) The POTW Director may revoke a wastewater discharge permit, or permission to discharge for good cause, including, but not limited to, the following reasons:

(a) Failure to accurately report the wastewater constituents and characteristics of his or her discharge;

(b) Failure to report significant changes in operations, or wastewater constituents and characteristics;

(c) Refusal of reasonable access to the user's premises for the purpose of inspection or monitoring; or

(d) Violation of conditions of the permit or permission to discharge, conditions of this division, or any applicable state and federal regulations.

(2) Non-compliant industrial users will be notified of the proposed termination of their wastewater permit, and will be offered an opportunity to show cause, under subsection (C) above, why the proposed action should not be taken.

(Ord. 33-2002, passed 10-21-2002; Ord. 29-2008, passed 10- -2008)

§ 21-373 CIVIL PENALTIES.

(A) Any user who is found to have failed to comply with any provision of this division, or the orders, rules, regulations, and permits issued hereunder, may be fined up to \$25,000 per day per violation. Penalties between \$10,000 and \$25,000 per day per violation may be assessed against a violator only if:

(1) For any class of violation, only if a civil penalty has been imposed against the violator within the five years preceding the violation; or

(2) In the case of failure to file, submit, or make available, as the case may be, any documents, data, or reports required by this division, or the orders, rules, regulations, and permits issued hereunder, only if the POTW Director determines that the violation was intentional, and a civil penalty has been imposed against the violator within the five years preceding the violation.

(B) In determining the amount of the civil penalty, the POTW Director shall consider the following:

(1) The degree and extent of the harm to the natural resources, to the public health, or to public or private property resulting from the violation;

(2) The duration and gravity of the violation;

(3) The effect on ground or surface water quality, or on air quality;

(4) The cost of rectifying the damage;

(5) The amount of money saved by non-compliance;

(6) Whether the violation was committed willfully or intentionally;

(7) The prior record of the violator in complying, or failing to comply, with the pretreatment program; and

(8) The costs of enforcement to the town.

(C) Appeals of civil penalties assessed in accordance with this section shall be as provided in §21-336(I).

(Ord. 33-2002, passed 10-21-2002; Ord. 29-2008, passed 10- -2008)

Statutory reference:

Civil penalty assessments, G.S. § 143-215.6A.

§ 21-374 OTHER AVAILABLE REMEDIES.

(A) Remedies, in addition to those previously mentioned in this division, are available to the POTW Director who may use any single one, or combination, against a non-compliant user.

(B) Additional available remedies include, but are not limited to:

(1) *Criminal violations.* The District Attorney for the County Judicial District may, at the request of the town, prosecute non-compliant users who violate the provisions of G.S. § 143-215.6B;

(2) *Injunctive relief.* Whenever a user is in violation of the provisions of this division, or an order or permit issued hereunder, the POTW Director, through the Town Attorney, may petition the Superior Court of Justice for the issuance of a restraining order, or a preliminary and permanent injunction which restrains, or compels, the activities in question;

(3) *Water supply severance.* Whenever an industrial user is in violation of the provisions of this division, or an order or permit issued hereunder, water service to the industrial user may be severed, and service will only recommence, at the user's expense, after he or she has satisfactorily demonstrated ability to comply; and

(4) *Public nuisances.* Any violation of the prohibitions or effluent limitations of this division, or of a permit or order issued hereunder, is hereby declared a public nuisance, and shall be corrected or abated as directed by the POTW Director. Any person(s) creating a public nuisance shall be subject to the provisions of Chapter 14 of the town code governing such nuisances, including reimbursing the POTW for any costs incurred in removing, abating, or remedying said nuisance.

(Ord. 33-2002, passed 10-21-2002)

§ 21-375 REMEDIES NON-EXCLUSIVE.

The remedies provided for in this division are not exclusive. The POTW Director may take any, all, or any combination of these actions against a non-compliant user. Enforcement of pretreatment violations will generally be in accordance with the town's enforcement response plan. However, the POTW Director may take other action against any user when the circumstances warrant. Further, the POTW Director is empowered to take more than one enforcement action against any non-compliant user.

(Ord. 33-2002, passed 10-21-2002)

§§ 21-376 TO 21-379 RESERVED.

DIVISION 9. ANNUAL PUBLICATION OF SIGNIFICANT NON-COMPLIANCE

§ 21-380 PUBLICATION.

At least annually, the POTW Director shall publish in a newspaper of general circulation that provides meaningful public notice within the jurisdiction(s) served by the POTW, a list of those industrial users which were found to be in significant non-compliance, also referred to as reportable non-compliance, in 15A N.C.A.C. 2H.0903(b)(10), with applicable pretreatment standards and requirements, during the previous 12 months.

(Ord. 33-2002, passed 10-21-2002; Ord. 29-2008, passed 10- -2008)

§§ 21-381 TO 21-382 RESERVED.

DIVISION 10. AFFIRMATIVE DEFENSES TO DISCHARGE VIOLATIONS

§ 21-383 UPSET.

(A) An upset shall constitute an affirmative defense to an action brought for non-compliance with categorical pretreatment standards if the requirements of subsection (B) below are met.

(B) A user who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence, that:

(1) An upset occurred, and the user can identify the causes of the upset;

(2) The facility was at the time being operated in a prudent and workman-like manner, and in compliance with applicable operation and maintenance procedures; and

(3) The user has submitted the following information to the POTW Director within 24 hours of becoming aware of the upset (if this information is provided orally, a written submission must be provided within five days):

(a) A description of the indirect discharge and cause of non-compliance;

(b) The period of non-compliance, including exact dates and times or, if not corrected, the anticipated time the non-compliance is expected to continue; and

(c) Steps being taken and/or planned to reduce, eliminate, and prevent recurrence of the non-compliance.

(C) In any enforcement proceeding, the user seeking to establish the occurrence of an upset shall have the burden of proof.

(D) Users will have the opportunity for a judicial determination on any claim of upset only in an enforcement action brought for non-compliance with categorical pretreatment standards.

(E) Users shall control production of all discharges to the extent necessary to maintain compliance with categorical pretreatment standards upon reduction, loss, or failure of their treatment facility until the facility is restored, or an alternative method of treatment is provided. This requirement applies in the situation where, among other things, the primary source of power of the treatment facility is reduced, lost, or fails.

(Ord. 33-2002, passed 10-21-2002)

§ 21-384 PROHIBITED DISCHARGE STANDARDS DEFENSE.

A user shall have an affirmative defense to an enforcement action brought against him or her for non-compliance with the general prohibitions in § 21-306(A), or the specific prohibitions in §21-306(B)(2), (B)(3), (B)(5) through (B)(7), and (B)(9) through (B)(23), if he or she can prove that he or she did not know, or have reason to know, that his or her discharge, alone or in conjunction with discharges from other sources, would cause pass through or interference, and that either:

(A) A local limit exists for each pollutant discharged, and the user was in compliance with each limit directly prior to, and during, the pass through or interference; or

(B) No local limit exists, but the discharge did not change substantially in nature, or constituents from the user's prior discharge when the town was regularly in compliance with its NPDES permit, and in the case of interference, was in compliance with applicable sludge use or disposal requirements.

(Ord. 33-2002, passed 10-21-2002; Ord. 29-2008, passed 10- -2008)

§ 21-385 BYPASS.

(A) A user may allow any bypass to occur which does not cause pretreatment standards or requirements to be violated, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provision of subsections (B) and (C)(1) below.

(B) (1) If a user knows in advance of the need for a bypass, he or she shall submit, prior notice, to the POTW Director at least ten days before the date of the bypass, if possible.

(2) A user shall submit oral notice to the POTW Director of an unanticipated bypass that exceeds applicable pretreatment standards within 24 hours from the time he or she becomes aware of the bypass. A written submission shall also be provided within five days of this time the user becomes aware of the bypass. The written submission shall contain a description of the bypass and its cause; the duration of the bypass, including exact dates and times, and, if the bypass has not been corrected, the anticipated time it is expected to continue; and steps taken, or planned, to reduce, eliminate, and prevent reoccurrence of the bypass. The POTW Director may waive the written report on a case-by-case basis if the oral report has been received within 24 hours.

(C) (1) A bypass is prohibited, and the POTW Director may take an enforcement action against a user for a bypass, unless:

(a) A bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

(b) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and

(c) The user submitted notices as required under subsection (B) above.

(2) The POTW Director may approve an anticipated bypass, after considering its adverse effects, if the POTW Director determines that it will meet the three conditions listed in subsection (C)(1) above.

(Ord. 33-2002, passed 10-21-2002)

§§ 21-386 TO 21-387 RESERVED.

DIVISION 11. SEVERABILITY

§ 21-388 SEVERABILITY.

If any provision, paragraph, word, or section of this article is invalidated by any court of competent jurisdiction, the remaining provisions, paragraphs, words, sections, and articles shall not be affected and shall continue in full force and effect.

(Ord. 33-2002, passed 10-21-2002)

§§ 21-389 TO 21-390 RESERVED.

DIVISION 12. CONFLICT

§ 21-391 CONFLICTING PROVISIONS.

All other ordinances, and parts of other ordinances, inconsistent or conflicting with any part of this article are hereby repealed to the extent of such inconsistency or conflict.

(Ord. 33-2002, passed 10-21-2002)

§§ 21-392 TO 21-399 RESERVED.

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Cross-reference:

Electrical code adopted, § 5-105; electrical permit required, §5-201.

DIVISION 1. GENERALLY

§ 21-401 DEFINITIONS.

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

APPLICANT. Any person, group of persons, association, partnership, firm, or corporation requesting a supply of electricity from the town.

CUSTOMER. Any person, group of persons, association, partnership, firm, or corporation purchasing electricity from the town.

DELIVERY POINT. The point where the town's conductors for supplying electricity are connected to the customer's conductors for receiving the electricity, unless otherwise specified in the agreement with the customer for the purchase of electricity.

(Code 1976, § 6-2A.1) (Ord. 6-83, passed 9-19-1983)

Cross-reference:

Definitions and rules of construction generally, §1-102.

§ 21-402 CONTROL VESTED IN COUNCIL.

The electric power system owned by the town shall be under the ultimate control of the Town Council. The duty of securing and enforcing full compliance with all rules, and regulations, governing the same is delegated to the Town Manager, subject to the supervision of the Town Council. The Town Manager may further delegate responsibility for the same to the Director of Public Works, or such other person as may be appropriate. If responsibility has been delegated to a person other than the Town Manager, all references in this article to the Town Manager shall also include his or her delegate.

(Code 1976, § 6-2A.11) (Ord. 6-83, passed 9-19-1983)

§ 21-403 DUTIES OF TOWN MANAGER.

(A) The Town Manager shall see that the rules, and regulations, adopted or authorized by the Town Council are enforced, and that all contracts and specifications are fulfilled. The Town Manager shall have general supervision of all the

operation of the electric power system, and shall report its working conditions to the Mayor and Town Council as required, and make such suggestions and plans for improvement and extension, as may be advantageous to the system. He or she shall see that all employees perform their duties according to the regulations of the Council.

(B) The Town Manager shall have full and entire charge of the substation, and all transmission stations, lines, machinery, and equipment, and shall report the condition of the same to the Town Council, as required.

(Code 1976, § 6-2A.12) (Ord. 6-83, passed 9-19-1983)

Cross-reference:

Town Manager, § 2-403.

§ 21-404 VISITORS TO SUBSTATION PROHIBITED.

No visitors shall be permitted to enter the substation without being accompanied by the engineer in charge, and under no circumstances shall anyone not specifically authorized by the Town Manager be allowed to handle, or in any way come in contact with, any part of the machinery.

(Code 1976, § 6-2A.13) (Ord. 6-83, passed 9-19-1983)

§ 21-405 TREE TRIMMING.

All trees, including any portion of their canopies, shall be a minimum of 15 feet from all electrical distribution lines. Any tree, or any portion thereof, located closer than 15 feet to such lines may be trimmed, pruned, or removed by the town without notice to the property owner. Notwithstanding the foregoing, and in non-emergency situations (for example, where there is no unplanned electrical outage), the town shall endeavor to provide property owners reasonable notice of any anticipated tree trimming, pruning, or removal. The town shall have no liability for damage to trees that results from trimming, pruning, or removal pursuant to this section.

§§ 21-406 TO 21-410 RESERVED.

DIVISION 2. CONNECTIONS

§ 21-411 APPLICATION FOR ELECTRICITY.

The town reserves the right to require the applicant, before any electricity is delivered, to execute an application or agreement for the purchase of electricity in the form used by the town. Whether or not a written application, or agreement, is executed, the applicant, by accepting the electricity, agrees to be bound by the applicable schedule of rates, and the terms and conditions as, from time to time, are in effect.

(Code 1976, § 6-2A.20) (Ord. 6-83, passed 9-19-1983)

§ 21-412 INSTALLATIONS ACCORDING TO STATE BUILDING CODE.

All electrical construction, all material and appliances used in connection with electrical work, and the operation of all electrical apparatus within the town shall conform to such special rules as may be adopted by the Town Council, and to the rules and requirements as set forth in the current issue of the *State Building Code* for the installation of workings and apparatus for electrical purposes. No electrical current will be furnished until the premises to be served has been inspected, and approved, as to the wiring of the premises and electrical apparatus, and the same has been found in such proper condition as to meet the requirements of the above and applicable insurance laws.

(Code 1976, § 6-2A.21) (Ord. 6-83, passed 9-19-1983)

§ 21-413 INSPECTION AND CONDITIONS OF SERVICE.

The town will supply electricity to an applicant only when the following conditions shall have been complied with:

(A) The applicant's installation shall have been made in accordance with this division, and such other terms and conditions of electric service, as may be imposed by the town;

(B) The town has received from the applicant, or, if the town so elects, has obtained for itself a certificate signed by the local inspection authority having jurisdiction certifying that the wiring on the premises of the applicant has been installed in compliance with the requirements of the *State Building Code*, and such other requirements as may be imposed by an appropriate governmental entity. All fees, or other charges, required to be paid in connection with the issuance of such certificates shall be borne by the applicant;

(C) Any changes in, or additions to, the wiring, equipment, or appliances of an applicant, or customer, must be installed in compliance with the requirements of the *State Building Code*; and

(D) In no event shall the town be under any obligation to inspect the wiring, equipment, or appliances of an applicant, or customer.

(Code 1976, § 6-2A.22) (Ord. 6-83, passed 9-19-1983)

§ 21-414 SERVICE CONNECTIONS.

(A) Normally the town will supply and meter, at one delivery point, electricity of the characteristics desired by the customer at the delivery point.

(B) The town will make application for the permits and acquire the easements necessary to build its supply facilities for the property occupied by the applicant, or customer, and the applicant, or customer, will apply for, obtain, and deliver to the town all other permits, or certificates, necessary to give the town the right to connect its conductors to the applicant's, or customer's, wiring, and access for all other proper purposes, including an easement from the landowner for the town's facilities. The town shall not be required to supply electricity until a reasonable time has elapsed after the town has obtained, or received, all necessary permits, certificates, and easements.

(C) Should any change or changes in the service connection furnished to the customer by the town be made necessary by any requirement of public authority, the entire cost of such changes on the customer's side of the delivery point shall be borne by the customer.

(D) Whenever a customer requests the town to supply electricity to a single premises, as described in subsection (D)(1) below, in a manner which requires equipment and facilities in excess of those which the town would normally provide, and the town finds it practicable, such excess equipment and facilities may be provided under the following conditions:

(1) Electricity will be supplied only to a single premises consisting of contiguous property not divided by any dedicated public street, road, highway, or alley, or by property not owned, or leased, by the customer;

(2) The facilities supplied shall be of a kind, and type, of transmission or distribution line, or substation equipment normally used by, or acceptable to, the town, and shall be installed in a place and manner satisfactory to the town. All equipment furnished, and installed, by the town shall be, and remain, the property of the town. When excess facilities are provided to supply electricity at more than one delivery point, the facilities interconnecting the delivery points shall be located on the customer's premises;

(3) The customer agrees to pay the town a one-time excess facilities charge equal to the estimated new installed cost of all facilities provided by the town, in addition to those the town would normally provide to supply electricity to the customer at one delivery point. The excess facilities charge will be in addition to the charge for electricity in accordance with the applicable rate schedule;

(4) Payment of the excess facilities charge may be made in installments over such period of time, as may be negotiated between the customer and the Town Manager; provided, that payment in full shall be made in not more than 60 months; unpaid charges shall bear interest at the legal rate; and the Town Council shall approve the agreement. Unpaid excess facilities charges shall be a debt of the applicant;

(5) Whenever a customer requests the town to furnish an alternate source of supply that the town would not normally furnish, the facilities charge for the alternative supply facilities shall be calculated as in subsection (D)(3) or (D)(4) above. When the facilities used to provide alternate services to a customer are also used to serve other customers, the cost of such facilities shall be included in the calculation of the excess facilities charge only in the proportion that the capacity reserved for alternate service to the customer bears to the operating capacity of such facilities;

(6) All electricity will normally be metered at the voltage delivered to the customer; however, the town reserves the right, where it desires for its own purposes, to meter the electricity on the town's side of the transformer, or transformers, and to adjust for losses. Irrespective of how the town meters electricity, the same rates and fees shall apply to each customer within a specified class of service; and

(7) The town shall not be required to make such installations of equipment and facilities in addition to those normally provided until the customer has signed such agreements, and fulfilled such other conditions as may be required by the town.

(Code 1976, § 6-2A.23) (Ord. 6-83, passed 9-19-1983)

§ 21-415 CHARGES FOR CONNECTIONS.

The town will furnish meters and meter bases, but reserves the right of access to, and control of, the same for the purpose of inspection and readings of meters, and for any other lawful purpose. The town may remove any fixtures so placed for any connection larger than a ten kilowatt load. The town, and the subscriber, may negotiate a 360-day contract guaranteeing that the town will receive a part of its initial investment. This contract should establish deposits, conditions of service, type of service (whether three-phase, delta, ER, and the like), specify whether a primary, or secondary, connection, and set out all other conditions of the agreement.

(Code 1976, § 6-2A.24) (Ord. 6-83, passed 9-19-1983)

§ 21-416 LOCATION OF TOWN'S EQUIPMENT.

(A) The town shall have the right to install any poles, lines, transformers, or any other equipment on the property occupied by the customer which, in its judgment, are necessary in supplying electricity to the customer. Upon notice from the town, the customer shall grant any easements necessary for the installation of said equipment.

(B) The town shall have the right to place its transformers, and such other apparatus as may be needed in connection with supplying such electricity, at a convenient point on the property, or in the building of the customer.

(C) The customer shall provide suitable space for the installation of the necessary metering apparatus, which space shall

be:

- (1) Substantially free from vibration;
 - (2) An outside location for all residential service. For commercial, industrial, or large residential apartment premises, an outdoor location is preferred; however, the location for such metering equipment must be acceptable to the town;
 - (3) Readily and accessible, and convenient for reading, testing, and servicing;
 - (4) The apparatus will be protected from injury by the elements or the negligent, or deliberate, acts of persons; and
 - (5) Located, and agreed to, by the town prior to wiring installation.
- (D) All equipment furnished, and installed, by the town shall be, and remain, the property of the town.

(Code 1976, § 6-2A.25) (Ord. 6-83, passed 9-19-1983)

§§ 21-417 TO 21-420 RESERVED.

DIVISION 3. BILLING

§ 21-421 SELECTION OF SCHEDULE.

- (A) The schedule of electric rates and fees for each service class of electrical user shall be established by the Town Council from time to time, and on file in the Town Clerk's Office.
- (B) The town, upon request, will provide any applicant, or customer, with a copy of the rate schedules, and terms and conditions under which electricity is supplied.
- (C) The town will make a good-faith effort to assign each customer to the service class that most accurately fits the customer's type of electrical service. The town may allow the customer to assist in making this selection, but final responsibility for the selection rests exclusively with the town. The customer shall remain on the rate so selected for a period of at least 12 months, unless good cause for an earlier change is shown.
- (D) An investigation will be made by the town if, and when, the customer notifies the town, in writing, of changes in the customer's connected load, demand, operating conditions, or other factors which may affect the selection of service class, and the town will determine whether a change in class is advisable.
- (E) The town cannot guarantee that the customer will be served under the most favorable applicable schedule, and no refund will be made by the town to the customer of the difference in the charge made under the original schedule designated and that which would have been made if a different schedule had been chosen and applied.

(Code 1976, § 6-2AAO) (Ord. 6-83, passed 9-19-1983)

§ 21-422 DEPOSITS GUARANTEEING CREDIT.

- (A) The town will require the applicant, or customer, to make an initial deposit, based on published schedules, as a guarantee of payment for electricity used.
- (B) The collection, retention, and refund of all such deposits shall be in accordance with the town's utility customer service policy, as it may be amended by the town from time to time, for various classes of users. The town shall pay no interest on any refunded deposit.

(Code 1976, § 6-2AA1) (Ord. 6-83, passed 9-19-1983)

§ 21-423 METERING AND BILLING.

- (A) When meters are installed by the town to measure the electricity used by its customers, all charges for electricity used, except certain minimum charges, shall be calculated from the readings of such meters. All meters shall be read monthly.
- (B) Electricity will be furnished through one delivery point and one set of metering apparatus, and will be billed separately on the applicable rate schedule approved by the town. However, the town reserves the right, where it desires for its own purposes because of the amount, or characteristics, of electricity required, to install two, or more, sets of metering apparatus, to combine the readings of meters so installed for billing purposes, and to bill these combined readings on the applicable schedule approved by the town. Irrespective of how the town meters electricity, the same rates and fees shall apply to each customer within a specified class of service.
- (C) When one, or more, transformers are installed at one delivery point by the town for the town's convenience to supply electricity to a single customer at one nominal voltage, the town reserves the right, where it desires for its own purposes because of the amount of characteristics of electricity required, to meter the electricity on the town's side of the transformer, or transformers, and adjust for losses. Irrespective of how the town meters electricity, the same rates and fees shall apply to each customer within a specified class of service.

- (D) The use of master meters for electricity in multiple dwelling units is prohibited except that if dwelling units are centrally cooled, or heated, with a central unit that has solar-assisted, or other energy saving design, the owner seeking to use a

master meter may apply to the State Utilities Commission for approval. This does not apply to hotels, motels, dormitories, rooming houses, hospitals, nursing homes, or homes for the aged, in which cases master meters may be used without prior special approval.

(E) Meters in service may be tested by the town, or any other lawfully constituted authority having jurisdiction. When, as the results of such a test, a meter is found to be less than 2% fast or slow, no adjustment will be made in the customer's bills. If the meter is found to be more than 2% fast or slow because of incorrect calibration, the town will re-bill the customer for the correct amount as calculated for a period of not more than 60 days.

(F) Whenever it is found that for any reason other than incorrect calibration the metering apparatus has not registered the true amount of electricity which has been used by the customer, billing adjustments will be made in accordance with State Utilities Commission Rule R8-44, a copy of which is included in Appendix H to this code.

(G) If, during the term of agreement for furnishing electricity to a customer, the customer is unable to operate his or her facilities, in whole or in part, because of an accident, act of God, or fire occurring at the location where electricity is supplied, the charge for electricity used during the period reasonably necessary to correct any such conditions may, in the discretion of the Town Council, be reasonably adjusted in accordance with all pertinent facts and conditions.

(Code 1976, § 6-2A.42) (Ord. 6-83, passed 9-19-1983)

Statutory reference:

Master meters prohibited, G.S. § 143-151.42.

§ 21-424 SUBMETERING.

The town will furnish electricity to the customer for use only for the customer's own purposes, and only on the premises occupied through ownership, or lease, by the customer. Electricity supplied to any customer shall not be resold, but may be furnished to a tenant of the customer only when the charge therefor is included as a part of the rent with no variation on account of the quantity of electricity use by the tenant, except that the customer may, not more frequently than annually, revise the charge prospectively. The electricity furnished by the town shall not be remetered or submetered by the customer for distribution to a tenant, except that annual checks of a tenant's demand, or consumption, may be made where necessary to determine prospective revisions of charges.

(Code 1976, § 6-2A.43) (Ord. 6-83, passed 9-19-1983)

§ 21-425 PAYMENTS.

(A) The supply of electricity by the town is contingent upon payment of all charges due from the customer, in accordance with the town's utility customer service policy.

(B) The town will render bills to the customer at regular intervals. Bills are due and payable on the fifteenth day of each month in which the bill is rendered, but not later than final due date, the twenty-fifth day of that month. The final due date for each town account will be available to the customer at the time service is first rendered, or any time thereafter upon request.

(C) Bills are payable at the office of the town, or to any collector or collection agency duly authorized by the town, except that when discontinuance of service for nonpayment has been made, payment must be made at the town office. Payments shall be paid without regard to any setoff or counterclaim whatever.

(D) The town reserves the right to apply any payment, or payments, made by the customer in whole, or in part, to any account due the town by the customer in connection with the furnishing of electric service, except as prohibited by § 21-508(E) and G.S. § 160A-314.

(Code 1976, § 6-2A.44) (Ord. 6-83, passed 9-19-1983)

§ 21-426 DETERMINATION OF EXCESS FACILITIES CHARGES AND OTHER CHARGES.

For the convenience of customers and the efficient administration of the delivery of electrical services, the Town Council may, from time to time, establish standard or presumptive fees, or charges for the provision of various services contemplated by this article, and for which this article requires that a customer pay an excess facilities charge, or some other special fee or charge other than the charges for electric service provided by the electric rate schedules applied to that customer. Such standard or presumptive fees, or charges, shall be established by the Town Council based upon its findings as to the average, or approximate, costs incurred by the town in providing the service in question. Such fees or charges, when established, shall be presumed to be the cost of excess cost, as appropriate, to the town of providing the service in question, and shall be charged to, and paid by, the customer unless, in any given instance, the Town Manager shall find that the established fee, or charge, is not appropriate. Such finding shall, upon request of the customer, be made in writing and, upon request of the customer, shall be reviewed by the Town Council, and the determination of the Council shall be final. Standard or presumptive fees, or charges, provided for by this section shall be set forth in the schedule of electric rates and fees on file in the Town Clerk's office, and available upon request.

(Code 1976, § 6-2A.45) (Ord. 6-83, passed 9-19-1983)

§ 21-427 NEW COMMERCIAL OR INDUSTRIAL LOADS AFTER SEPTEMBER 1, 2004.

(A) *Availability.* This section is available only to new commercial, or industrial, loads which begin receiving service after September 1, 2004, and is available in conjunction with service under any of the town's commercial, or industrial, electric rate schedules. The demand of the new load must equal, or exceed, 1,000 kW during at least three months of a 12-month period.

(B) *Written notification.* Any customer desiring to receive service under this section shall provide written notification to the town of such desire. Such notice shall provide the town with information concerning the load to be served and the customer's facilities, and shall provide the basis of the town representation that the characteristics of the load will meet the minimum eligibility requirements of the electric rate schedule to which this section applies. All terms and conditions of the applicable electric rate schedule, whichever is applicable to the customer, shall apply to service supplied to the customer, except as modified by this section.

(C) *Monthly credit.* The customer will receive a monthly credit on the bill calculated on the then-effective electric rate, whichever is applicable to the customer. The schedule of monthly credits will be calculated as described in subsection (D) below.

(D) *Application of credit.* Beginning with the date on which service under the then-effective electric rate is to commence for the eligible load, a monthly credit based on the following schedule will be applied to the total bill, including basic facilities charge, demand charges, energy charges, or minimum bill, excluding other applicable riders and special charges, if any.

<i>Period</i>	<i>Discount</i>
After month 48	0%
Months 1-2	20%
Months 3-4	15%
Months 25-36	10%
Months 37-48	5%

(E) *Contract period.* Customers receiving service under this section will be subject to a seven-year contract period.

(Ord. 27-2004, passed 10-4-2004)

§§ 21-428 TO 21-430 RESERVED.

DIVISION 4. VOLTAGE

§ 21-431 CHARACTERISTICS OF ELECTRICITY SUPPLIED.

(A) The town will supply 60-cycle alternating current within the voltage range set forth below. Other voltages may, at the option of the town, be supplied when requested.

(B) The characteristics at which electricity will be furnished at each installation will be given in writing to the applicant upon request therefor.

(C) To eliminate the possibility of error or loss, the applicant or customer, before purchasing motors or other equipment, or undertaking to install wiring, should secure from the town, in writing, all necessary data relating to the characteristics of the electricity and service connections which will be supplied.

(Code 1976, § 6-2A.30) (Ord. 6-83, passed 9-19-1983)

§ 21-432 VOLTAGE.

(A) (1) For the purpose of this article, the following definitions shall apply unless the context clearly indicates, or requires, a different meaning.

BASE VOLTAGE. The reference level of service voltage.

MAXIMUM VOLTAGE. The greatest five-minute mean, or average, voltage.

MINIMUM VOLTAGE. The least five-minute mean, or average, voltage.

(2) The standard base service to voltage available from the town is shown in §21-431.

(B) The town will endeavor to supply voltages within the following limits, but shall not be liable for its failure to do so:

(1) For electricity supplied for residential service, or specifically for lighting purposes, the variation from base voltage to minimum voltage will not be more than 5% of the base voltage, and the variation from base voltage to maximum voltage will not be more than 5% of the base voltage; and

(2) For electricity supplied for other services, the variation from base voltage to minimum voltage will not exceed 10% of base voltage, and the variation from base voltage to maximum voltage will not exceed 10% of base voltage.

(C) Variations in voltages in excess of those specified caused by addition of customer equipment without proper

notification to the town, by the operation of customer's equipment, by action of the elements, by infrequent and unavoidable fluctuations of short duration due to system operations, by conditions which are part of practical operations and are of limited extent, frequency, and duration, or by emergency operations shall not be construed as a departure from the limits within which the town will endeavor to supply electricity.

(D) Customers shall install, and operate, their electrical equipment in accordance with the town's terms and conditions.

(Code 1976, § 6-2A.31) (Ord. 6-83, passed 9-19-1983)

§§ 21-433 TO 21-440 RESERVED.

DIVISION 5. CUSTOMER CONCERNS

§ 21-441 USE OF ELECTRICITY BY CUSTOMERS.

(A) Electricity supplied by the town shall not be used in conjunction with any other source of electricity without previous written notice to, and consent of, the Town Manager, except that whenever the customer has another source of electricity, such source may be used without prior permission from the Town Manager during periods when the electricity supplied by the town fails, or is interrupted.

(B) Because the town's facilities used in supplying electricity to the customer have a definite limited capacity, and can be damaged by overloads, the customer shall give adequate notice to the town and obtain the Town Manager's written consent before making any substantial change in the amount, or use, of the load connected to the town's service.

(C) The customer shall not use electricity in any manner which will be detrimental to the town's supply of electricity to other customers. The town reserves the right, but shall have no duty, to determine the suitability of apparatus or appliances to be connected to its service by the customer, and to refuse to continue to supply electricity if it shall determine that the operation of such apparatus, or appliances, may be detrimental to its electric system, or to the supply of electricity to any other customer.

(Code 1976, § 6-2A.50) (Ord. 6-83, passed 9-19-1983)

§ 21-442 CUSTOMER'S RESPONSIBILITY.

(A) The customer shall be responsible at all times for the safekeeping of all town property installed on the customer's premises, and to that end, the customer shall give no one, except authorized town employees, access to such property.

(B) The customer shall be liable for the cost of repairs or damage to the town property on the customer's premises resulting from the negligence of, or misuse by, others other than the town's employees.

(C) Electricity is supplied by the town and purchased by the customer upon the express condition that after it passes the delivery point, it becomes the property of the customer to be used only as provided in this article; and the town shall not be liable for loss, or damage, to any person, or property whatsoever, resulting directly, or indirectly, from the use, misuse, or presence of the electricity after it passes the delivery point; or for any loss, or damage, resulting from the presence, character, or condition of the wires, or equipment, of the customer, or for the inspection or repair thereof.

(D) The customer shall be responsible for the maintenance, and repair, of the customer's wiring and equipment. Should the customer report trouble with the supply of electricity, the town will endeavor to respond with reasonable dispatch to such call with the purpose only of correcting such trouble as may be in the town's equipment supplying the customer. If the trouble appears to be in the customer's wiring or appliances, the town's employees may, if requested by the customer, make such inspection of the customer's wiring or equipment, as the town's employees are prepared to make, but any inspection of the customer's wiring or equipment by the town's employees is made upon the express condition that the customer assumes the entire, and sole, risk, liability, and responsibility for all acts, omissions, and negligence of the town's employees. The town retains responsibility only with respect to the action of its employees in connection with property owned by the town.

(Code 1976, § 6-2A.51) (Ord. 6-83, passed 9-19-1983)

§ 21-443 RIGHT OF ACCESS.

The town shall have the right of access to the customer's premises at all reasonable times for the purpose of reading meters of the town and of removing its property, and for any other proper purpose in connection with the electric service; and the town shall have the right to discontinue the supply of electricity without notice if such access, at any time, is not provided.

(Code 1976, § 6-2A.52) (Ord. 6-83, passed 9-19-1983)

§ 21-444 DISCONTINUANCE OF THE SUPPLY OF ELECTRICITY.

(A) The town reserves the right to discontinue furnishing electricity to a customer at any time without notice in accordance with the town's utility customer policy, and upon the occurrence of any one, or more, of the following events:

(1) Whenever the town, in its opinion, has reasonable cause to believe that the customer is receiving electricity without paying therefor, or that its meter, wires, or other apparatus have, in any manner, been tampered with;

(2) Whenever, in the town's opinion, the condition of the customer's wiring, equipment, and appliances is either unsafe

or unsuitable for receiving electricity, or is a potential safety or health hazard to the town's property or personnel, or the public, or when the customer's use of electricity or equipment interferes with, or may be detrimental to, the town's electric system or to the supply of electricity by the town to any other customer;

(3) Where electricity is being furnished over a line which is not owned, or leased, by the town, whenever, in its opinion, such line is either not in a safe and suitable condition, or is inadequate to receive electricity;

(4) Whenever the customer has denied an authorized town representative access to the town's meter, wires, or other apparatus installed on the customer's premises;

(5) Whenever, in the opinion of the town, it is necessary to prevent fraud upon the town; and

(6) After reasonable notification, and warning, by the town of an inability to read the electric meter because of vicious dogs or of shrubs, or other obstacles, and the customer fails to take corrective action to allow the town to read the meter.

(B) (1) The town reserves the right to discontinue furnishing electricity to a customer, in accordance with the town's utility customer service policy, upon the occurrence of either one, or both, of the following events:

(a) For nonpayment of past due bills, regardless of any amount of money on deposit with the town, or for failure of the customer to make a deposit or guarantee payment of charges, or to increase a deposit as required; and

(b) For failure to comply with any of the town's terms and conditions, or with any of the conditions or obligations of any agreement with the town for the purpose of electricity.

(2) Restrictions on when electrical service may be discontinued are set forth in §21-508(E).

(C) The town will discontinue the supply of electricity to a customer whenever requested by any public authority having jurisdiction.

(D) The town reserves the right to discontinue the supply of electricity under any of the above conditions, irrespective of any claims of a customer pending against the town, or any amounts of money on deposit with the town, as required by § 21-422.

(E) Whenever the supply of electricity is discontinued in accordance herewith, the town shall not be liable for any damages, direct or indirect, that may result from such discontinuance. In all cases where the supply of electricity is discontinued by reason of violation by the customer of any of the provisions hereof, or of any agreement with the town for the purchase of electricity, they shall then become due and payable, in addition to the bills in default, an amount equal to the monthly minimum charge for the unexpired term of the agreement, not as a penalty, but in lieu of the income reasonably to be expected during the unexpired term of the agreement.

(Code 1976, § 6-2A.53) (Ord. 6-83, passed 9-19-1983)

§ 21-445 RECONNECTION OF THE SUPPLY OF ELECTRICITY.

(A) If the supply of electricity has been discontinued for any of the reasons covered by §21-444, the town shall have a reasonable period of time in which to reconnect the customer's service after the conditions causing the discontinuance have been corrected.

(B) If the supply of electricity has been discontinued because of improper use or if, in the town's opinion, its meter or other apparatus have been tampered with, the town may refuse to reconnect the customer's service until the customer shall have:

(1) Paid all delinquent bills;

(2) Paid to the town an amount estimated by the town to be sufficient to cover the electricity used, but not recorded by the meter and not previously paid for, plus a reconnection charge, as set from time to time by the Town Council; and

(3) Made such changes in wiring or equipment as may, in the opinion of the town, be proper for its protection.

(C) If the supply of electricity has been discontinued by the town at the request of any public authority having jurisdiction, the customer's service will not be reconnected until authorization to do so has been obtained from the public authority.

(D) If the supply of electricity has been discontinued by the town for nonpayment of past due bills, the charge for reconnection shall be in accordance with the town's utility customer service policy.

(E) If the supply of electricity has been discontinued due to a second violation of §21-444(A)(1), the town requires that only the property owner may contract for future electrical services thereafter.

(Code 1976, § 6-2A.54) (Ord. 6-83, passed 9-19-1983; Ord. 4-2015, passed 2-6-15)

§ 21-446 INTERRUPTIONS TO SUPPLY OF ELECTRICITY.

(A) The town will use its best efforts to furnish an uninterrupted supply of electricity, but it does not undertake to guarantee such an uninterrupted supply. Should the supply of electricity fail or be interrupted, or become defective for any reason, including, but not limited to, an act of God or the public enemy, or action by federal, state, county, or other public authority, or because of accident or strike, the town shall not be liable for such failure, interruption, or defect.

(B) In the event of a power shortage or an adverse condition, or disturbance on the system of the town, or any other directly, or indirectly, interconnected system, the town may, without incurring liability, take such emergency action as, in the judgment of the town, may be necessary. Such emergency action may include, but not be limited to, reduction or interruption of the supply of electricity to some customers or areas in order to compensate for a power supply shortage on the town's system, or to limit the extent, or duration, of the adverse condition or disturbance on the town's system, or to prevent damage to the customer's equipment or the town's facilities, or to expedite the restoration of service. The town may also reduce the supply of electricity to compensate for an emergency condition on an interconnected system.

(C) If the town in good faith believes that, because of civil disorder, riot, insurrection, war, fire, or other conditions beyond the reasonable control of the town in the vicinity of its energized facilities, it is necessary to de-energize a portion of its facilities for the protection of the public, or if ordered by duly constituted public authority so to do, the town may, without incurring liability, de-energize its facilities in such vicinity, or in such related area as may be practically required, and the town shall not be obligated to furnish electric service through such facilities, but the town shall be prompt and diligent in re-energizing its facilities and restoring its service as soon as it believes, in the exercise of reasonable care for the protection of the public and the employees of the town, that such action can be taken with reasonable safety.

(Code 1976, § 6-2A.55) (Ord. 6-83, passed 9-19-1983)

§§ 21-447 TO 21-450 RESERVED.

DIVISION 6. TESTING

§ 21-451 TESTING FACILITIES AND EQUIPMENT.

(A) The town will provide for, or have available, such laboratory, meter testing shop, standard meters, and instruments, and other equipment and facilities as may be necessary, to make the tests required by this division.

(B) Testing instruments and standards may be tested, and certified, by any standardizing laboratory.

(Code 1976, § 6-2A.60) (Ord. 6-83, passed 9-19-1983)

§ 21-452 PERIODIC TESTS AND CHECKS.

(A) Single-phase alternating current meters in service shall be tested as follows: A random sampling procedure will be used in the selection of single-phase meters for test each year.

(B) Polyphase alternating current meters in service shall be tested as follows:

(1) Self-contained polyphase meters up to, and including, 50 kW rated capacity, shall be tested at least once every 72 months;

(2) Self-contained polyphase meters of over 50 kW rated capacity shall be tested at least once every 72 months;

(3) Polyphase meters, connected through current transformers or current, and potential, transformers to circuits, up to, and including, 50 kW rated capacity, shall be tested at least once every 48 months; and

(4) Polyphase meters, connected through current transformers or current, and potential, transformers, to circuits of over 50 kW rated capacity shall be tested at least once every 48 months.

(C) Meter standards and instruments shall be checked in accordance with standard procedures.

(Code 1976, § 6-2A.61) (Ord. 6-83, passed 9-19-1983)

§ 21-453 REQUESTED METER TESTS.

Meter tests requested by the customer will be made as follows:

(A) Upon written request by a customer, the town will conduct a test of the customer's meter. The town will charge a fee for each such test according to a schedule adopted by the Town Council, and set forth in the town's schedules of rates and fees in Appendix G. If the test results indicate that the percentage registration of the meter exceeds 102%, then the test fee will be reimbursed to the customer;

(B) The customer, or his or her representative, may be present when the meter is tested; and

(C) A written report of the test results shall be provided the customer within ten days of the receipt of such results in the town office.

(Code 1976, § 6-2A.62) (Ord. 6-83, passed 9-19-1983)

§§ 21-454 TO 21-460 RESERVED.

DIVISION 7. SERVICE LINES

§ 21-461 ELECTRIC LINE EXTENSIONS.

(A) The town will make electric overhead line extensions to such points, and will provide sufficient continuing revenue to

justify such overhead line extensions, or in lieu of sufficient continuing revenue, the town may require such definite, and written, guarantees of revenue from a customer, or group of customers, in addition to any minimum payments required by the rate schedules, as may be necessary to justify such overhead line extensions. The town shall not be obligated to construct, or own, any overhead line extension, or other facilities, to provide any customer with electricity, the cost of which shall exceed four times the continuing annual revenue, excluding approved fuel charge revenue, that can reasonably be expected by the town from any such overhead line extension. Where line extensions cannot be justified based on revenue forecast, and in lieu of revenue guarantees, a customer, or group of customers, may receive electrical service from the town; provided, they agree to finance the installation of lines and other equipment by the town necessary to provide the requested electrical service.

(B) Notwithstanding the provisions specified in subsection (A) above, the town will make single-phase electric overhead line extensions to residential customers without cost to such customers, except that the customer may be required to secure rights-of-way on private property without cost to the town, or to assist the town in obtaining rights-of-way. The town shall be under no obligation to construct such single-phase electric overhead extensions unless rights-of-way are so obtained.

(C) The town will provide underground electric service in accordance with §21-463.

(D) If, in the town's opinion, the anticipated revenue from a proposed line extension is temporary, or if the customer, or customers, to be supplied are unable to establish a credit standing satisfactory to the town, the town reserves the right to determine finally the advisability of making such line extension.

(E) The town shall not be required to make any electric line extension until the customer, or customers, to be supplied from such line extension have signed such applications or agreements, as may reasonably be required by the town, and fulfilled such other conditions for the connection of electricity, as may be reasonably required by these terms and conditions, and until all premises to be supplied have been wired for service.

(F) The town shall not be required to make any electric line extension on private property until the property owner shall have granted to the town an easement of right-of-way for the construction, operation, and maintenance of such line extension.

(G) (1) Whenever it is determined that a line extension on private property to serve one customer will be built by the customer, such line extension:

- (a) Shall start within 100 feet of the town's line;
- (b) Shall be constructed in compliance with the town's standards, and be approved by the town;
- (c) Shall be maintained by the customer at all times in a manner satisfactory to the town; and
- (d) The customer shall assume the liability for the maintenance and operation of the line.

(2) If the line owned by the customer is not operated and maintained in a manner satisfactory to the town, or, in the town's opinion, may interfere with, or be detrimental to, the town's electric system, or the supply of electricity to any other customer, then the town may discontinue the supply of electricity as provided in § 21-444. After such discontinuance, the supply will not be restored until conditions are made satisfactory to the town, as provided in § 21-445.

(H) These general rules and regulations shall not be construed as prohibiting the town from making electric line extensions of greater length or higher cost; provided, there is no discrimination between customers using electricity under the same classification.

(Code 1976, § 6-2A.70) (Ord. 6-83, passed 9-19-1983)

§ 21-462 TEMPORARY SERVICE.

Upon request of the customer, temporary service shall be supplied under the following conditions:

(A) The customer shall pay to the town, prior to connection of the service, a temporary service charge which shall be the estimated net cost, including all applicable overhead costs, of installing and removing the service facilities furnished by the town both on, and off, the customer's premises, but in no case shall such charge be less than the amount listed on the fee schedule in Appendix G, except as modified by subsection (B) below; and

(B) Where temporary service is furnished at a permanent service location, the temporary service charge will be the net cost to the town, including overhead costs, which is in excess of the estimated cost of furnishing the permanent service, but in no case shall such charge be less than the amount listed on the fee schedule in Appendix G.

(Code 1976, § 6-2A.71) (Ord. 6-83, passed 9-19-1983)

§ 21-463 UNDERGROUND ELECTRIC SERVICE.

(A) *Intent.* The intent of this policy is to:

(1) Set forth a developer's installation requirements, and an owner's service charges for underground electric distribution systems and services in residential, commercial, and industrial areas;

(2) Outline the requirements for individual underground services supplied from existing overhead distribution systems; and

(3) Provide proper compensation to the town for the differential cost between underground and overhead service.

(B) *Residential subdivisions.*

(1) Where a development within the service area of the town is to be subdivided into residential lots and has been approved, the electrical distribution system will be installed underground at the direction of the town, or at the request of the subdivision developer; provided, that:

(a) The subdivision developer shall provide the town with a copy of the approved plans of the subdivision, and the easements necessary for the most efficient installation of the required distribution system. The installation will be installed from the final recorded plat, or from a preliminary plat upon the written authorization of the developer. Any charges resulting from re-division of lots will be borne by the developer;

(b) If the subdivision or section to be developed requires the installation of underground facilities for not more than 50 building lots, the installation will be made using pad-mounted transformers with an excess facilities charge payable in advance of construction. The town will determine the excess facilities charge for each lot in accordance with § 21-414;

(c) After at least two-thirds of the initial or previous section of 50 lots have been utilized (construction started), installation of underground facilities using pad-mounted transformers will be made to an additional 50 lots with the excess facilities charge payable in advance of construction;

(d) If the subdivision developer elects to use submersible transformers in lieu of pad-mounted transformers, he or she must pay the town, in advance of construction, a further excess facilities charge per lot, in addition to all other charges stated above, for an underground electric distribution system;

(e) Where three-phase power is requested by the developer for a special application, the developer shall pay, prior to the installation, the excess facilities charge for an underground three-phase system over a single-phase system, as determined by the town; and

(f) Any variance from the above requirements will be referred to the Town Council for consideration.

(2) Homeowners, or home builders, requesting permanent underground electric service for single-family dwellings in subdivisions, or areas provided with underground electric distribution systems, or requesting underground service from an overhead distribution system within a subdivision approved by the Planning Commission, shall pay to the town an excess facilities charge in accordance with § 21-414 for each individual service at the time the application for service is made. The underground service connection fee will be the same for all sizes of underground electric service. The town will determine the size of the underground electric service conductors to be installed in accordance with the customer's connected electrical load.

(C) *Multi-family dwellings.*

(1) Owners, or builders, requesting underground electric service for duplex family dwellings shall, prior to the installation of underground electric facilities, pay to the town the differential cost between installation of an underground and overhead single-phase electric system, the excess facilities charge per service (meter) to be provided.

(2) (a) Owners, or builders, requesting underground electric service for multi-family dwellings shall, prior to the installation of underground electric facilities, pay to the town as the differential cost between installation of an underground and overhead single-phase electric system, and services the excess facilities charge per meter for gang metering with the complex development.

(b) Where three-phase power is not required for the distribution system, but is requested by the owner, or builder, for a special application, the complex owner shall pay, prior to the installation, the excess facilities charge, which is the differential cost of an underground three-phase system over a single-phase system, as determined by the town.

(c) The owner, or builder, shall provide the town with the easements necessary for the most efficient installation of the required distribution system.

(D) *Mobile homes.*

(1) Where a mobile home park has been approved, the park owner requesting underground electric service shall, prior to the installation of underground electric facilities, pay to the town the excess facilities charge which is the differential cost between the installation of an underground and overhead single-phase electric system and services, for each mobile home space service to be provided in the mobile home park development. If the park owner provides and installs town-approved loop-feed-type meter pedestals, a deduction based on the estimated savings to the town will be allowed. The town will not be responsible for any maintenance, or replacement, of these meter pedestals.

(2) Where three-phase power is not required for the distribution system, but is requested by the owner for a special application, the owner shall pay, prior to the installation, an excess facilities charge equal to the differential cost of an underground three-phase system over a single-phase system, as determined by the town.

(3) The mobile home park owner shall provide the town with the easements necessary for the most efficient installation of the required distribution system.

(4) Where a mobile home owner requests underground electric service, and is not in an approved mobile home park, the owner shall, prior to the installation of underground electric facilities, pay to the town an excess facilities charge equal to

the differential cost between an underground and overhead service for the permanent service.

(E) *Individual services.*

(1) Where a homeowner, or builder, requests underground service for a single-family dwelling, and is not in a subdivision already approved for underground service, the owner shall, prior to the installation of underground electric facilities, pay to the town an excess facilities charge equal to the differential cost between an underground and overhead service for the permanent service.

(2) Where, in the opinion of the Town Manager, a residential service does not meet the above requirements, the town will determine the exact difference in cost of underground to overhead, and charge this amount for service.

(F) *Commercial and industrial areas.*

(1) Where the town has, on the property, an existing overhead or underground electric distribution system in a commercial area, the town will extend underground secondary services for the excess facilities charge equal to the differential cost between the town's standard three-phase overhead delivery and underground installation.

(2) Where a development within the service area of the town is to be subdivided into commercial lots and has been approved, and has no existing underground electric distribution system, the electrical distribution system will be installed underground at the direction of the town, or the written request of the subdivision developer; provided:

(a) The subdivision developer shall provide the town with all easements necessary for the most efficient installation of the required distribution system;

(b) The subdivider's written request shall specify whether three-phase, or single-phase, service is to be provided to each lot in the subdivision;

(c) The developer shall pay, in advance of construction, the differential cost between overhead and underground facilities in the street or access area required to make service available to each lot or section; and

(d) Individual services within the subdivision shall be handled as services in an existing commercial area.

(3) Where all services are installed initially, such as shopping centers, industrial sites, office, and institutional complexes, and where a development within the service of the town has been approved, the electric distribution system will be installed underground at the written request of the developer; provided:

(a) The developer shall provide the town with the easements necessary for the most efficient installation of the required distribution system;

(b) The developer's written request shall specify single-phase or three-phase voltage requirements, and load data from each service point; and

(c) The developer shall pay, in advance of construction, the differential cost between overhead and underground service for the entire installation, as determined by the town.

(4) (a) The additional cost for underground electric service to an industrial site or building will be the differential cost between an underground and overhead distribution, as determined by the town. These charges are payable in advance of construction.

(b) The owner shall provide the town with the easements necessary for most efficient installation of the required distribution system.

(5) (a) Where available from existing overhead or underground electric facilities, temporary service for construction purposes will be provided in underground areas. There will be no additional underground electric service charge for temporary services.

(b) Where temporary service is requested prior to the installation of permanent, underground electrical facilities, or in a location not serviceable by these facilities, the applicant shall pay, prior to installation, the cost of labor to construct, and remove, a temporary line, and any non-salvageable material from the line as determined by the town.

(6) (a) Where an owner of residential, or commercial, property requests that an existing overhead service be changed to underground, and the owner makes electrical system additions that will require an increase in the town's service conductor size, underground charges will be those charges on new service of the same type.

(b) Where an owner of residential, or commercial, property requests that an existing overhead service be changed to underground, and no increase in the town's service conductors is required, the owner shall, prior to the change, pay to the town the cost of removing the existing overhead service (less salvage).

(c) The cost of installation of the new underground service in accordance with the estimate prepared by the town.

(Code 1976, § 6-2A.80) (Ord. 6-83, passed 9-19-1983)

§§ 21-464 TO 21-470 RESERVED.

DIVISION 8. JOINT MUNICIPAL ASSISTANCE AGENCY

§ 21-471 FINDINGS.

The governing board hereby finds that participation in the proposed Joint Municipal Assistance Agency will result in economies, efficiencies, and other benefits with respect to the construction, ownership, maintenance, expansion, and operation of the town's electric system, and that participation in such agency by the town as a member is desirable.

(Code 1976, § 6-2B.1) (Ord. 7-83, passed 9-6-1983)

§ 21-472 AUTHORITY.

The towns' councils are authorized, and directed, to take such action as may be necessary, or desirable, to effect the town's membership in the Joint Municipal Assistance Agency to be formed, pursuant to an application to the Secretary of State by two, or more, council members from the municipalities proposed as members of the same.

(Code 1976, § 6-2B.2) (Ord. 7-83, passed 9-6-1983)

§ 21-473 INITIAL MEMBERS.

(A) The names of the towns which are proposed to be the initial members of the Joint Municipal Assistance Agency are: Albemarle, Apex, Ayden, Belhaven, Benson, Black Creek, Cherryville, Hamilton, Hertford, High Point, Hobgood, Hookerton, Huntersville, Kinston, Oak City, Pikeville, Pinetops, Pineville, Red Springs, Robersonville, Rocky Mount, Clayton, Concord, Cornelius, Dallas, Drexel, Edenton, Elizabeth City, Farmville, Forest City, Fountain, Fremont, Gastonia, Granite Falls, Greenville, La Grange, Laudis, Laurinburg, Lexington, Lincolnton, Louisburg, Lucama, Lumberton, Macclesfield, Maiden, Monroe, Morganton, New Bern, Newton, Scotland Neck, Selma, Sharpsburg, Shelby, Smithfield, Southport, Stantonsburg, Statesville, Tarboro, Wake Forest, Walstonburg, Washington, Wilson, Windsor, and Winterville.

(B) The failure of any one, or more, of the proposed initial members to actually join the Joint Municipal Assistance Agency shall, in no way, impair, or affect, the findings, or determinations, made in this division, or the authority, granted in this division.

(Code 1976, § 6-2B.3) (Ord. 7-83, passed 9-6-1983)

§ 21-474 TRANSFER FROM ELECTRICITIES.

The town does hereby authorize the transfer to the newly formed Joint Municipal Assistance Agency of its interest in such of the assets of ElectriCities of the state, a voluntary association, as may be determined by the Board of Directors of ElectriCities of the state.

(Code 1976, § 6-2B.4) (Ord. 7-83, passed 9-6-1983)

§§ 21-475 TO 21-499 RESERVED.

ARTICLE V: CUSTOMER SERVICE AND ENFORCEMENT

Section

- 21-501 Residential customer deposit
- 21-502 Business, commercial, and industrial customer deposits
- 21-503 Exemptions from deposit requirements
- 21-504 Amount of deposit
- 21-505 Refund of deposit
- 21-506 Final disposition of deposit
- 21-507 Voluntary discontinuance of service
- 21-508 Discontinuance of service
- 21-509 Procedure for discontinuance of service; format of bills
- 21-510 Special billings
- 21-511 Payment of charges
- 21-512 Penalties for violation

§ 21-501 RESIDENTIAL CUSTOMER DEPOSIT.

(A) The town shall require an applicant for new residential utility service to pay a utility deposit, or satisfactorily establish credit, with the town before utility service will be made. The town may waive the payment of a cash deposit in lieu of, and based upon, an individual applicant's establishment of credit as follows:

(1) If the applicant owns the premises to be served, or other real estate within the town utilizing town utilities, unless the applicant is an unsatisfactory credit risk;

(2) The applicant demonstrates that he or she is a satisfactory credit risk by appropriate means which may be quickly, and inexpensively, checked by the town;

(3) The applicant has been a customer of the town for a similar type of service within a period of 24 consecutive billings preceding the date of application, and during the last 12 consecutive billings for that prior service has not had service discontinued for nonpayment of a bill, or had more than two occasions in which a bill was not paid when it became due; provided, the average periodic bill for such previous service was equal to at least 50% of that estimated for the new service; and, provided further, that the credit of the applicant is unimpaired; or

(4) The applicant furnishes a satisfactory guarantor to secure payment of bills for the service requested in an amount as prescribed below in the town's utility deposit rate schedule. If an applicant elects to offer a guarantor in lieu of paying a deposit, the town will require a written commitment from the guarantor in an amount as mentioned above. If an applicant becomes delinquent in his or her utility payments, and is utilizing a guarantor, payment will be required of the guarantor within 15 days from notice to the guarantor that the customer has been delinquent. If any guarantor ever fails to render payment under this section, he or she may not serve as a guarantor for anyone thereafter.

(B) The establishment of credit under the provisions of this policy shall not relieve the applicant for service, or the customer from compliance with the reasonable regulations of the town including, but not limited to, the prompt payment of bills, and the rules for discontinuance of service for the nonpayment of bills due for service furnished.

(C) Other applicants for new residential utility service shall be required to make a deposit guaranteeing payment of charges for utility service, as provided in this article.

(D) The town shall require a deposit from a customer who was not required to make a deposit when he or she applied for, and obtained, new residential utility service if, during any consecutive 12 billings for that prior service, he or she had service discontinued for nonpayment of a bill; or had more than two occasions in which a bill was not paid when it became due; or had one of his or her checks given in payment of a bill dishonored. The town may require any customer who has had a check dishonored in payment of a bill to pay all utility bills in cash only.

(E) No money given to the town as utility deposit shall be placed in an interest-bearing account, and upon refund of any deposit, a customer shall not be entitled to any interest thereon.

(Code 1976, § 6.101) (Ord. 12-79, passed 11-5-1979)

§ 21-502 BUSINESS, COMMERCIAL, AND INDUSTRIAL CUSTOMER DEPOSITS.

Applicants for new business, commercial, or industrial utility service shall be required to make a deposit guaranteeing payment of charges for utility service, or for reestablishment of service. The town shall have the right to require such customer to adjust such deposits after the expiration of any four consecutive billing periods to reflect actual, rather than estimated, usage.

(Code 1976, § 6.102) (Ord. 12-79, passed 11-5-1979)

§ 21-503 EXEMPTIONS FROM DEPOSIT REQUIREMENTS.

Colleges, public schools, hospitals, and public agency customers shall be exempt from furnishing deposits for utility services.

(Code 1976, § 6.103) (Ord. 12-79, passed 11-5-1979)

§ 21-504 AMOUNT OF DEPOSIT.

(A) Whenever an applicant, or customer, is required to make a deposit pursuant to these rules either for guaranteeing payment of charges for service, or for reestablishment of service, the amount of the deposit shall be a sum equal to the average bill for service as estimated for two billing periods, but shall not be less than those fees outlined in the schedule in Appendix G.

(B) The actual amount of deposit to be made by customers for various types of service shall be determined, at least annually, by the Town Manager based upon his or her determination of an average bill for service of two billing periods for the type, and anticipated, volume of service requested. The deposit requirement determinations of the Town Manager shall be spread upon the minutes of the Town Council during the month of June of each year, and shall be in effect until altered by the Town Manager in accordance with the procedures set forth in this article.

(1) Outside customers rates will be double the inside rates for customers utilizing rate number I or number II. Outside customers utilizing rate number III or number IV will pay the same as inside customers.

(2) If a customer uses only electricity, his or her deposit rate shall be either rate number III or number II, based upon his or her residence being all electric or not all-electric.

(3) Commercial customer rates shall be an amount equal to the customer's estimated consumption for one full billing cycle. The town shall consider any seasonal characteristics of the customer's utility consumption in determining the amount of the deposit.

(C) Deposits from any customers of the town shall accrue no interest while held by the town.

(Code 1976, § 6.104) (Ord. 12-79, passed 11-5-1979; Ord. 5-2000, passed 2-21-2000)

§ 21-505 REFUND OF DEPOSIT.

(A) Existing residential customers may apply for, and receive, refunds of their deposit, or have their deposits credited to their accounts, if the customer during the last 12 consecutive billing periods for prior service has not had service discontinued for nonpayment of bill, or had more than two occasions in which a bill was not paid when it came due, or had one of their checks given in payment of a bill dishonored.

(B) The deposits of existing residential customers who are not entitled to a refund of their deposit under subsection (A) above, shall continue to be held by the town until the customer qualifies for a refund, or until service is discontinued or terminated.

(C) The town shall have the right to refund the deposits of residential customers who qualify for refunds, but who do not apply for such refunds, or to credit their accounts with the amount of the deposit.

(D) The deposits of existing business, commercial, or industrial customers shall not be subject to refund, and shall continue to be held by the town until service is discontinued or terminated.

(Code 1976, § 6.105) (Ord. 12-79, passed 11-5-1979)

§ 21-506 FINAL DISPOSITION OF DEPOSIT.

When a customer has furnished a deposit to guarantee payment of bills and service has been terminated, the deposit will be applied to any unpaid charges, or indebtedness due, to the town and the balance refunded.

(Code 1976, § 6.106) (Ord. 12-79, passed 11-5-1979)

§ 21-507 VOLUNTARY DISCONTINUANCE OF SERVICE.

In order to assure discontinuance of service at a time requested by the customer, notice to the town in advance of the proposed time of discontinuance shall be required. When a customer desires to discontinue service, he or she shall give notice to the town at least 24 hours in advance, and the customer will be responsible for all service consumed within the 24 hours following the time of his or her notice to the town.

(Code 1976, § 6.107) (Ord. 12-79, passed 11-5-1979)

§ 21-508 DISCONTINUATION OF SERVICE.

(A) *Discontinuation.* The town may discontinue utility service to a customer or premises for one, or more, of the following reasons:

(1) Failure of a customer to pay any bill, fee, or charge rendered in connection with the provision of a utility service within the time allowed by this chapter or town policy. An account must be delinquent for more than ten days before service may be disconnected;

(2) Failure of a customer to make a deposit or to guarantee payment of charges for utility service, or to increase a previously-paid deposit when required to do so;

(3) Determination by the Town Manager that the property owner, or customer, has a prior unpaid bill for any utility service due to the town;

(4) Refusal to permit access by town employees, or agents, to a premises when such access is required under this chapter;

(5) Damage to, or loss of, town-owned property, equipment, or facilities due to action or negligence of the customer, or discharges from the customer's premises; and

(6) Determination by the Town Manager that the property owner, or customer, has violated, or is violating, any provision of the code, or other applicable law relating to the utilization of town utility services.

(B) *Reinstatement.* When it becomes necessary for the town to discontinue utility service to a customer for any of the reasons provided in subsection (A) above, service will be reinstated only after all bills for service then due have been paid, any deposit required has been made, any required reconnection fee has been paid, and the customer has reimbursed the town for any expenses incurred in connection with the proceedings to discontinue service.

(C) *Multiple locations.* If a customer is receiving service at more than one location, service at any or all locations may be discontinued if bills for service at any one, or more, locations are not paid within the time specified by this article, or town policy. However, residential electric service shall not be discontinued for nonpayment of bills for other nonresidential classes of service.

(D) *Proceedings.* Whenever a proceeding is initiated pursuant to this article to discontinue a utility service to a customer, and that proceeding is terminated, or suspended, before service is actually discontinued, but there is a finding, or agreement, that the customer has violated some provision of this chapter which, unless abated, could result in termination of service, the continuation of utility service to the customer shall be conditioned upon the customer's paying, or reimbursing, the town for such fees and expenses as the town may have incurred in connection with the subject proceeding.

(E) *Restrictions.*

(1) In accordance with 11 U.S.C. § 366, if a delinquent customer files for bankruptcy, the town shall not discontinue service solely on the basis of delinquency; provided, that the debtor or bankruptcy trustee furnishes an adequate assurance of payment for continued water service within 20 days after filing the bankruptcy petition.

(2) If a delinquent customer is not the owner of the premises to which the services are delivered, the payment of the delinquent account may not be required before providing services at the request of a new, and different, tenant or occupant of the premises, but this restriction shall not apply when the premises are occupied by two, or more, tenants whose services are measured by the same meter.

(3) The town shall not suspend, or disconnect, service to a customer because of a past-due, and unpaid, balance for service incurred by another person who resides with the customer after service has been provided to the customer's household, unless one, or more, of the following apply:

(a) The customer and the person were members of the same household at a different location when the unpaid balance for service was incurred;

(b) The person was a member of the customer's current household when the service was established, and the person had an unpaid balance for service at that time; or

(c) The person is, or becomes, responsible for the bill for the service to the customer.

(Code 1976, § 6.108) (Ord. 5-86, passed 2-17-1986)

§ 21-509 PROCEDURE FOR DISCONTINUATION OF SERVICE; FORMAT OF BILLS.

(A) It is the policy of the town to interrupt utility services to a customer, or premises, by reason of nonpayment of the charges incurred for any billing period. An interruption in service may also be made for any other reason, but only after adequate notice has been given to the customer that charges are due and owing to the town, and a meaningful opportunity has been afforded to the customer to be heard on any disputed bill or other issue.

(B) Bills for charges and services related to the municipal utilities shall normally be rendered monthly, and shall be mailed to the person who applied for service to the subject premises, unless service has been transferred into the name of another person upon proper request therefor, and approved by the town.

(C) It shall be the responsibility of any person receiving a utility service from the town to keep the town advised of a current address where notices and bills, rendered in connection with the provision of utility service, may be mailed.

(D) Town utility bills shall contain, in addition to the title, address and telephone number of the town official in charge of utility billing, clearly visible and easily readable provisions to the effect that:

(1) All bills are due and payable upon receipt, and are considered past due on the fifteenth day of the month;

(2) Any customer who fails to remit payment by the twenty-sixth day of each month for charges incurred during the billing period shall incur late penalties as set forth, and amended from time to time, by the Town Council. In the event the twenty-sixth day of the month falls on a weekend or holiday, late penalties shall be applied on the next working day;

(3) All bills shall clearly include a statement that utility services will be interrupted for nonpayment if the charges incurred during the billing period are not remitted to the town on, or before, the last day of the month. In the event payment is not remitted before the last day of the month, reconnect fees, as set forth and amended from time to time by the Town Council, will be applied to the customer's bill. In the event the final day of the month falls on a Friday, weekend, or day preceding, or during, a holiday, the customer shall have until the next working day. All delinquent charges, late fees, and reconnect fees must be paid in full before utility services are restored by the town;

(4) All bills shall clearly include a statement that a second notice will not be required prior to the interruption of services;

(5) Utility services that have been interrupted will not be reconnected after normal business hours of the town, on weekends, or during town holidays; and

(6) Any customer disputing the correctness of his or her bill shall have a right to a hearing, at which time he or she may be represented, in person, and by counsel or any other person of his or her choosing, and may present orally, or in writing, his or her complaint and contentions to the town official in charge of utility billing who shall be authorized to order that the customer's service not be interrupted, and shall have authority to make a final determination of the customer's complaint. All appeals must be submitted to the town on, or before, the twenty-fifth day of the month for which the bill is due.

(E) Requests for delays, or waiver of payment, will not be entertained; only questions of proper, and correct, billing will be considered. In the absence of payment of the bill rendered, or resort to the hearing procedure provided herein, service will be interrupted at the time specified.

(Ord. 12-79, passed 11-5-1979; Ord. 5-86, passed 2-17-1986; Ord. 8-2005, passed 3-21-2005; Ord. 2-2008, passed 1-07-2008)

§ 21-510 SPECIAL BILLINGS.

Bills for special services, or expenses, incurred in connection with the provision of a utility service, including, but not

limited to, such things as connection fees, cut-off fees, reconnection fees, surcharges, testing fees, inspection fees, and the like, may be rendered at such times as may be convenient by separate bill, or on the customer's regular bill for service. Special bills are due, and payable, upon receipt, and are otherwise subject to the same provisions of this article as regular bills.

(Ord. 5-86, passed 2-17-1986)

§ 21-511 PAYMENT OF CHARGES.

(A) Customers may make payment for utility service and related charges to the town at Town Hall, either in person or by mail. Payment may be made by cash, check, or money order, or online.

(B) Checks which are returned to the town after being dishonored shall be subject to a returned check fee equal to the maximum allowed by law, and the returned check service fee may be added to the customer's utility bill.

(C) The town reserves the right to require payments in the form of cash or money order when a customer remits a check that is returned for non-sufficient funds. (See § 21-501(D).)

(Ord. 5-86, passed 2-17-1986; Ord. 8-2005, passed 3-21-2005)

§ 21-512 PENALTIES FOR VIOLATION.

(A) Except as provided in subsection (E) below, any violation of this article shall subject the offender to a civil penalty in the amount of \$50. Violators shall be issued a written citation which must be paid within 72 hours from the time it is issued and served.

(B) Each day's continuing violation shall be a separate, and distinct, offense.

(C) Notwithstanding subsection (A) above, provisions of this article may be enforced through equitable remedies issued by a court of competent jurisdiction.

(D) In addition to, or in lieu of, remedies authorized in subsections (A) and (C) above, violations of this article may be prosecuted as a misdemeanor in accordance with G.S. § 14-4.

(E) In accordance with G.S. § 160A-314(b) through (d), the town shall have the power to collect delinquent accounts by any remedy provided by law for collection, and enforcing, private debts, but it shall not have the authority to seek to collect on delinquent accounts through the assessment of civil penalties.

(Ord. 5-86, passed 2-17-1986)

ARTICLE VI: WATER AND SEWER EXTENSIONS AND ACCESS CHARGES

Section

- 21-601 General policies of water and sewer line extension
- 21-602 Definitions
- 21-603 Extension policies within town service area
- 21-604 Extensions within town limits; assessment basis
- 21-605 Requests for service; extraterritorial and non-assessment
- 21-606 Miscellaneous policies
- 21-607 Access charges
- 21-608 Statutory procedures

Cross-reference:

Water and sewer systems, Ch. 21, Arts. II and III.

Editor's note:

Ord. 35-2001, adopted Oct. 15, 2001, changed the name of this title from "Water and Sewer Extensions and Availability Charges".

§ 21-601 GENERAL POLICIES OF WATER AND SEWER LINE EXTENSION.

(A) No sewer line or water main may be connected to the town's water or sewer system unless such line or main:

(1) Is properly designed, and constructed, to service the properties intended to be served directly by such line or main; and

(2) Is of a size and design sufficient to accommodate any necessary expansion of the water and sewer system to serve other properties, including fire protection, which can reasonably be anticipated.

(B) The town shall own, and control, any and all water mains, sewer lines, and related facilities connected to, and serviced by, its water or sewer system, except for those water mains, sewer lines, or facilities of other public bodies connected to, and serviced by, the town's water or sewer system under contracts approved by the Council between the town and other public bodies.

(C) Because the extension of water mains or sewer lines to certain properties benefits the owners of such properties by raising property values, the cost to such extension should be borne substantially by the owners of such properties, except in instances when the Council makes a determination that the town is obligated, by law, to extend such utilities. However, notwithstanding the above, or any provisions contained herein, the town shall not levy assessments against a property for water or sewer services provided pursuant to an involuntary annexation.

(D) To comply with municipal obligations imposed by state statutes, or in cases of emergency where it is found to be in the public interest, or necessary to protect the public health, the town may authorize extensions of water and/or sanitary sewer into specific areas.

(E) All extensions, expansions, and new facilities must be economically feasible, and must be constructed in accordance with town engineering criteria, standards, and specifications, and in conformity with any existing, or future, policies and plans which are adopted by the town.

(Ord. 5-89, passed 6-19-1989)

§ 21-602 DEFINITIONS.

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

ACCESS CHARGES. A charge for connection to the town's water distribution or sewer collection system, which charge equals the front footage construction charge which a party requesting service to the premises would be charged had a new line or main had to be installed to serve the subject property. Front footage in excess of 200 feet shall not be considered in determining the **ACCESS CHARGES** for each utility connection to a single-family residential structure on a single lot or parcel. The minimum access fee shall be based on 40 feet of front footage. **ACCESS CHARGES** shall be adjusted annually on July 1 so as to maintain a reasonable relationship between the charges and actual construction costs, and shall be based on cost estimates prepared by the Town Engineer, approved by the Town Manager, and placed into effect as provided herein.

APPLICANT. Those receiving services, other than through involuntary annexation.

ELIGIBLE REFUND. The portion of the project cost for reimbursement to the applicant, according to the provisions of this article.

EXTENSION. Any water main or sewer line lengthening required to connect a water service to a large main, or sewer lateral to an outfall sewer or major trunk sewer.

FEASIBLE PROJECT (EXISTING DEVELOPMENT). A water line or sewer main extension project within the corporate limits of the town for which a majority in number of the abutting property owners have signed a petition, which majority must own at least a majority of all lineal feet of frontage of the lands abutting either side of the proposed project, or a project outside the corporate limits of the town for which a deposit has been received in accordance with § 21-603(b).

LARGE MAIN. Any water main larger than eight inches in diameter, serving an area, sized and located so that additional service connections beyond the limits of any associated development can be made without lowering the level of service.

MAJOR TRUNK SEWER. A gravity sewer line extending directly from an outfall which is located and sized, so that additional gravity sewer lines can be connected thereto.

OUTFALL. Any sewer line serving a drainage area, located and sized so that additional lateral connections beyond the limits of any associated development can be made without lowering the level of service.

TOWN'S SERVICE AREA. All areas inside and outside the corporate limits of the town serviced by the town's water or sewer system, and any future extensions thereof; however, areas serviced by water mains or sewer lines of other public bodies connected to, and serviced by, the town's water or sewer system shall not be included in the **TOWN'S SERVICE AREA**.

(Ord. 5-89, passed 6-19-1989)

§ 21-603 EXTENSION POLICIES WITHIN TOWN SERVICE AREA.

(A) The town will provide the following basic water and sewer facilities within the town's service area utilizing bond funds, grant funds, current revenues, user charges, special assessments, access charges, construction fees, availability fees, and other available funds:

- (1) Water treatment works;
- (2) Water pumping stations;
- (3) Water storage tanks;

- (4) Large water mains;
- (5) Small water mains;
- (6) Outfall sewers;
- (7) Major trunk sewers;
- (8) Sewerage collector lines;
- (9) Sewage pumping stations designed, and intended, to serve more than one property;
- (10) Sanitary sewer force mains serving basic facility pumping stations; and
- (11) Sewage treatment plants.

(B) (1) If an applicant for water or sewer service desires to have unscheduled, and unbudgeted, facilities constructed by the town, and the facilities requested are other than large or small water mains, sewerage collector lines, major trunk sewers, or sewer outfalls, then the applicant shall complete an application therefor on forms provided by the town, and the applicant shall deposit with the Town Clerk the projected cost of the facility sought to be constructed as such cost is estimated by the Town Engineer. The applicant shall agree to pay any actual costs of construction which exceed the funds deposited with the Clerk. If the Town Council approves the requested project, the facility will be constructed. As provided herein, monies deposited by the applicant with the town shall be refunded to the applicant without interest in annual installments with the first installment due the first of August following the placement in service of the subject facility. Payments shall be made in August so that payment obligations may be anticipated during the annual budget process.

(2) In the discretion of the town, the monies deposited shall be reimbursed to the applicant either:

(a) In five equal installments; or

(b) In installments equal to one-third of the revenue derived by the town from water and sewer user charges from such facilities for the year of reimbursement until the amount of the deposit is paid, or for 15 years, whichever comes first.

(3) Reimbursements for work described in this subsection are limited, and each request will be reviewed by the Town Manager for recommendation to the Council.

(C) Water and sewer extensions from the basic water and sewer facilities described in subsection (A) above to individual customer premises may be made by, or through, the town for the following reasons:

(1) The need to protect the health, public safety, and welfare;

(2) Upon request of property owners of an existing development; and/or

(3) Upon application of developers of new development including business activities, industrial development, residential development, and similar ventures.

(D) Except as may otherwise be provided in §21-607, all applicants for connection to the town's water or sewer service lines shall pay the fees described in § 21-602 (definition of "access charges"), standard tap fees, and such other fees as have been adopted by the town, and in effect at the time the application is made.

(E) All water and sewer extensions from the basic facilities described in subsection (A) above to individual customer services for need, or existing developments, will be made by the town's Public Works Department, or approved licensed contractors. These extensions will be financed by the water and sewer special assessment fees, access charges, and from water and sewer user charges, and other available revenues.

(Ord. 5-89, passed 6-19-1989; Ord. 35-2001, passed 10-15-2001)

§ 21-604 EXTENSIONS WITHIN TOWN LIMITS; ASSESSMENT BASIS.

(A) *Petition for service; assessment.* Extensions of water and/or sanitary sewer service within the corporate limits of the town shall be made upon petition, as described in subsection (B) below, except in those cases described in subsection (B) (2) below, in which cases the town may order the service constructed without petition. The costs of such extension shall be specially assessed as hereinafter provided.

(B) *Petition; form; requirements exceptions.*

(1) A petition for extension of water and/or sewer service shall be on a form provided by the town, and shall designate by a general description the improvements proposed, and shall request that the same be made in conformance with the provisions of this article, and that such proportion of the cost of each of such improvements as may be specified in the petition be specially assessed against the property abutting on the street, or streets, or part thereof in which, or on which, such extensions are proposed to be made. The petition shall be signed by at least a majority in number of the owners, which majority must own at least a majority of all lineal feet of frontage of the lands abutting the street, or streets, or part of the street proposed to be served by the extension. For purposes of the petition, all owners of undivided interests shall be deemed and treated as one person, and such land shall be sufficiently signed for when the petition is signed by the owner, or owners, of a majority in amount of such undivided interests; provided, that for purposes of this section, the word **OWNER** shall be considered to mean the owners of any life estate or of estate of inheritance, but shall not include mortgagees, trustees of a naked trust, trustees under deeds of trust to secure payment of money, or lien holders. Upon the filing of such

petition with the town, the Town Clerk, or other person designated by the Town Council shall investigate the sufficiency of the petition, and if found to be sufficient, shall certify the same to the governing body.

(2) At the time a petition is being made, any property having direct access to the service for which a petition is being made for extension shall not be subject to the assessment, and shall not be included in the total number of property owners and front footage in determining a feasible project. Those properties shall be subject to the access fee at the time, and application, for connection to the new service is made.

(C) *Area without service.* Whenever it is determined by the Town Council, based on evidence presented, that an area is without water or sewer, and that the protection of the public health requires that water and sewer extensions be made into such area, and if in the opinion of the Town Council the abutting property will be benefitted by said improvement to the extent of the portion of the cost to be assessed against such abutting property, the Town Council may, without petition of a majority of the property owners, order the extension of such lines. Access to such line shall be by the payment of access charges as set forth in § 21-602 (definition of "access charges").

(D) *Special assessments.* Upon receipt of a petition certified as sufficient, the Town Council shall follow the procedure set out in G.S. Chapter 160A, Article 10, as amended, concerning special assessments. This procedure includes an initial determination by the Council as to whether it wants to act upon the petition, and proceed with construction of the proposed project.

(E) *Cost.*

(1) If the Town Council shall decide to proceed with a project for which a valid petition has been filed, then the town will participate in the cost of the project by paying one-third of the construction cost thereof under the procedure set forth in § 21-608 herein.

(2) The cost of a project will be reduced on a pro-rata basis to the town and to all parties subject to assessment by any state, or federal, grants received.

(F) *Carrying out requirements.* The Town Council may adopt such rules and regulations as are necessary to carry out the requirements of this article.

(Ord. 5-89, passed 6-19-1989)

§ 21-605 REQUESTS FOR SERVICE; EXTRATERRITORIAL AND NON-ASSESSMENT.

The extension of water and sanitary sewer service outside the corporate limits of the town, and anywhere within the town's corporate limits where a qualifying petition from affected property owners cannot be obtained, shall be made as follows:

(A) (1) Any person desiring to install a water or sewer line to a premises within the town's service area to be connected to, and serviced by, the town's water and sewer system shall make application therefor on forms designated, and provided, by the town, and shall furnish such information, or exhibits, as are required on such application forms.

(2) At a minimum, the application submitted shall designate the specific properties to be served with projected service requirements to the various premises therein. With such application, the applicant shall:

(a) Pay to the town a non-refundable application fee of \$100; and

(b) Submit six copies of engineering plans, profiles, and specifications of such water main or sewer line, including those for any required fire hydrants, valves, manholes, sewer lift stations, force mains, or collector sewer lines necessary, in connection therewith, to the Town Manager. All plans shall bear the seal of a registered, professional engineer.

(3) The Town Manager will cause an estimate of the construction cost to be prepared, and will project the amount of reimbursements to be made under this article. These estimates will be included in the contract between the town and the applicant as the basis of such reimbursements. The projected construction cost estimates shall be based on the per linear foot costs as approved, and set annually, under § 21-602 (definition of "access charges");

(B) In the event that the installation of water mains or sewer lines pursuant to this section is done by town forces, the cost to the town of its employees and material shall be calculated, and charged, to the project cost to be paid by the applicant, as set forth herein;

(C) Before the Town Council will consider any project pursuant to this article, one-third of the entire estimated construction cost, or an acceptable bank letter of credit in that amount, must be deposited with the Town Clerk;

(D) If the application is approved, the Town Attorney shall prepare a written contract between the town and the applicant, in accordance with the provisions of subsection (E)(5) below, and other provisions of this article;

(E) No water main or sewer line may be installed, and connected to, the town water or sewer system except under written contract approved by the Council, and executed by the town and the applicant. Such contract shall incorporate the substance of the following provisions:

(1) Installation of any water main or sewer line, including any required fire hydrants, valves, manholes, sewer lift stations, force mains, or collector sewer lines necessary in connection therewith, shall be done by town forces; by the applicant, if the applicant, under the laws of the state, is permitted to make such installations; or by a contractor of the applicant licensed by the state to make such installations. Such installations shall be done in accordance with engineering

plans, profiles, and specifications approved by the Town Engineer, a copy of the same shall be endorsed as to such approval for the applicant's use;

(2) The applicant shall be responsible, at his or her own expense, for the preparation of any such required plans, profiles, and specifications for obtaining approval for water and/or sewer line extensions from the State Department of Environment and Natural Resources, and any other applicable federal or state agencies, and for any other engineering fees in connection with the installation of such utilities;

(3) The installation of the utilities shall be subject to the inspection, and supervision, of the town during construction, and the connection thereof to the town water or sewer system shall not be made until the same shall have been tested under supervision of, and the written approval and acceptance of, such installation given by the Director of Public Works. After such approval and acceptance, the town shall thereafter repair, and maintain, the same, except the applicant shall be responsible for defects in workmanship or materials, or any non-compliance with the plans and specifications that appear within one year after such acceptance;

(4) Installation of utilities done by the applicant, or a contract with a licensed contractor, shall be done and completed at the sole expense, and responsibility, of the applicant, free and clear of all claims or encumbrances, within 12 months from the date of the contract; otherwise, the terms of the contract shall be null and void after the expiration of said 12-month period. In addition, the applicant shall be solely responsible that such utilities are installed within this period in accordance with the plans, profiles, and specifications approved by the town;

(5) The applicant shall bear the expense (including attorney's fees and recording expenses) of the town obtaining such perpetual rights-of-way, or deeds, as shall be specified by the town for the construction, maintenance, and operation of such utilities, including any encroachment agreements that may be required from the State Department of Transportation, or a railroad or other public utility;

(6) Upon completion of the utilities and the connection thereof to the town's water and sewer system, the water main or sewer line, and any fire hydrants, valves, manholes, sewer lift stations, force mains, or collector sewer lines required in connection therewith, shall thereupon, and thereafter, be the entire, and sole, property of the town, and under the sole and exclusive control of the town;

(7) Neither the applicants nor any other person shall be entitled to any service laterals from any water main or sewer line installed by the applicant, except upon permission of the town and the payment of any water tap, or any other water or sewer service connection charges therefor, as required by the ordinances or regulations of the town;

(8) If a water main in excess of six inches, or a sewer line in excess of 12 inches, shall be required by the town to provide for the expansion of water or sewer service to other properties, then the town will reimburse the applicant the difference in the cost of the pipe, or any such water main or sewer line, and the cost of six-inch water pipe, or 12-inch sewer pipe, such difference in cost to be determined by the Town Engineer, and stated in the contract. However, the town will not agree to refund any such difference if any such oversized water main or sewer line is unnecessary to serve the property of the applicant. The town shall have the right, at its sole discretion, to require the applicant to install, and pay for, without reimbursement, water lines larger than six inches in diameter, or sewer lines larger than 12 inches in diameter, for any reason related to the applicant's property or project, such as to enable the proper extension of service to other adjacent properties owned by the applicant regardless of whether development is being proposed, and/or the need to provide adequate supply of water for fire protection. In addition, if in order to provide for the expansion of sewer service to other properties a sewer pump station larger in size or capacity than necessary to serve the properties intended to be then served by the sewer installations shall be required by the town, then the town will agree to reimburse the applicant the difference in the cost of a sewer pump station that otherwise would be adequate to serve such properties intended to be then serviced, and of the sewer pump stations required by the town to be installed, such difference in cost to be determined by the Town Engineer, and stated in the contract. Any such cost differences which the town agrees to refund shall be due, and payable, without interest to the applicant in August following the first April 1 after the date on which the utilities to be installed under the contract have been completed, and accepted and approved, by the town;

(9) The applicant shall agree to indemnify, and save harmless, the town from any, and all, loss, cost, damages, expense, and liability (including attorney's fees) caused by accident or occurrence causing bodily injury or property damage arising from the installation of such utilities by the applicant, or the contractor of the applicant. The applicant, or the contractor of the applicant, shall maintain workers' compensation coverage, as well as general liability insurance, with policy limits of not less than \$500,000 per occurrence for bodily injury, and \$100,000 for property damage. The applicant will furnish certificates of such insurance to the town with the provisions that the town will be given 30 days' written notice of any intent to terminate such insurance by either the applicant, or the insuring company; and

(10) In the event the applicant violates any of the terms of the contract, the town shall have the right to declare all, or any, of the rights of the applicant under the contract forfeited, and to remove, and disconnect, any connections that might have been made to the town's water or sewer system.

(F) Applicants for water or sewer line extensions who do the actual construction work themselves, or who contract directly with a licensed contractor, shall be entitled to reimbursement by the town for up to one-third of the cost of construction under the conditions set forth in this article, and pursuant to contract with the town;

(G) Where water and sewer line extensions are done by town forces, or are contracted for by the town, the applicant(s) shall, prior to the town's committing to proceed with the project, and at the discretion of the Town Council, deposit with the Town Clerk 125% of the projected project cost, or post an acceptable bank letter of credit in that amount payable to the

town. Upon completion of the project and the placement in service thereof, and the satisfactory completion of all the applicant's contractual obligations to the town, the town will reimburse to the party(ies) paying the same, or their designee or successor, in interest up to one-third of the actual cost of the project; provided, that said reimbursement shall be made pursuant to the provisions, and conditions, of this article, and pursuant to the contract between the applicant(s) and the town; and

(H) (1) Without limiting the right of the Council to disapprove, for any reason whatsoever the execution of any written contract between an applicant and the town, prepared in accordance with this article, the Council will not approve any contract for the installation of any water main or sewer line to be connected to, and served by, its water or sewer system if, in its judgment:

(a) The projected volume of water that would be used by any properties to be serviced thereby would unduly tax the available water supply and/or sewage treatment capacity of the town; or

(b) It would not be financially feasible for the town to commit itself to share in the cost of the proposed project.

(2) Before submitting a formal application under subsection (H)(1) above, an applicant may request from the Council an informal advisory opinion on its willingness to allow such service line extension. Such request shall be filed with the Town Manager, together with such documentation as the Town Manager deems necessary, and the Town Manager shall thereafter bring such request before the Council, pursuant to normal agenda procedures.

(3) An advisory opinion given by the Council shall not bind the Council to approve an application submitted thereafter, or execute any contract prepared under subsection (E) above.

(Ord. 5-89, passed 6-19-1989)

§ 21-606 MISCELLANEOUS POLICIES.

Water and sewer extensions contracted for, and constructed, pursuant to the provisions of §21-605, shall be subject to the following policies and practices:

(A) Requests for extraterritorial water or sewer service shall be accompanied by a petition for voluntary annexation of the property to be served. An agreement by the town to provide water or sewer service to a premises does not constitute an agreement to annex the property pursuant to the voluntary annexation petition;

(B) So as to protect the health, safety, and welfare of the public, unless technically infeasible, municipal water or sewer service will not be extended outside the town's corporate limits unless service of both utilities to the subject property is requested, and can reasonably be provided;

(C) Applicants for the extension of water or sewer service shall accompany their petition with an offer to convey to the town such rights-of-way across property of the applicant as may reasonably be required for the project for which application is being made, and for any future extensions thereof which may reasonably be anticipated;

(D) If the town receives any state or federal grants for the extension of the proposed utilities, the cost of the project will be prorated for all parties to the original contract;

(E) After a contract, as provided in §21-605, is executed between the town and the applicant(s), bids for actual construction will be sought. If the bids exceed the contract estimate, the applicant shall have the option of withdrawing from the contract, not proceeding with the project, and receiving a refund of his or her deposit less any expenses due to the town for services and activities rendered in connection with the proposed project; or agreeing to pay the full amount of any difference between the contract estimate and the actual bid price; or agreeing to such other modification of the project, and the contract between the applicant and the town as may be negotiated;

(F) Premises within the property owned by the applicant, or on behalf of which the applicant(s) has paid the cost of construction of a water or sewer line shall, for a period of 15 years after the water or sewer line goes into service, be exempt from the payment of access fees as provided herein. These properties shall be designated in the contract between the town and the applicant(s) by reference to tax map numbers, or other appropriate description or reference;

(G) Whenever water or sewer line extensions are made which serve properties owned by persons other than the applicant(s), the town will reimburse to the applicant(s), or the applicant(s) successor in interest, such access fees as the town may subsequently receive as a condition of providing water or sewer service to such property. However, this reimbursement shall be subject to the limitations of subsection (J)(2) below;

(H) (1) Construction cost estimates used by the Town Manager, as provided in this article, shall be per linear foot amounts, which shall be developed, and maintained, by the town as a part of the town's fees and charges schedules. The per linear foot charges shall be developed by the Town Manager using construction cost estimates provided by the town's civil engineering consulting firm as to actual construction costs which the town can expect to incur for the construction of the various types, and sizes, of water and sewer lines which the town is, from time to time, requested to add to its water distribution and sewerage collection systems;

(2) The per linear foot charge amounts shall include not only actual construction costs but also necessary related expenses, such as engineering charges, legal charges, right-of-way acquisition expenses, and the like. The Town Manager shall present these cost estimate figures to the Town Council annually during the budget consideration process, and the Council shall make such adjustments in the town's per linear foot charge schedule, as may be necessary to keep those

figures current with actual construction cost experienced in the area. Revised per linear foot cost figures will typically be adopted as of July 1 of each year. Once adopted, however, cost figures shall remain in effect until modified by the Council;

(I) It is the policy of the town to pay one-third of the cost of construction of water or sewer line extension projects, not to exceed one-third of the per linear foot cost amounts adopted by the Town Council, except in the case of petitions for assessment, in which case the town will pay one-third of the actual cost of the project. In situations where the estimated costs exceed the actual costs, an appropriate refund will be made, as provided in subsection (J) below; and

(J) For reimbursements:

(1) (a) Whenever a person is entitled to reimbursement under this article, the reimbursement shall be made without interest in annual installments, with the first installment due the first of August following the placement in service of the subject facility, and the satisfactory completion of any other contractual or statutory obligations of the applicant to the town;

(b) In the discretion of the town, the monies to be reimbursed shall be paid either:

1. In five equal installments; or

2. In installments equal to one-third of the revenue derived by the town from water and sewer user charges from such facilities for the year of reimbursement until the amount to be reimbursed is paid, or for 15 years, whichever comes first.

(c) The town will also reimburse to the applicant an appropriate pro-rata portion of the construction costs actually paid by the applicant when those costs are recovered by the town by means of the charging of access fees to applicants for service from the subject line. These reimbursements shall be calculated as set forth in § 21-602 (see definition of "access charges"), and in no event shall exceed the actual pro rata share of the construction costs borne by the applicant for the property to which service is subsequently provided;

(2) Reimbursements under this article shall be limited as follows:

(a) Notwithstanding any other provision of this article, except for subsection (B) above, no reimbursements shall be made unless the property in question is served with both town water and town sewer;

(b) Notwithstanding any other provision of this article, no person shall be entitled to any reimbursement for more than 15 years after a water or sewer line constructed, pursuant to this article, goes into service;

(c) An applicant shall submit a request for reimbursement to the Town manager by April 1 preceding the fiscal year in which he or she wishes to be paid those reimbursements he or she is eligible for under the terms of the contract. No reimbursements shall be paid unless the applicant has complied with the above procedure; and

(d) No reimbursements shall be made until the Director of Public Works receives, and approves, as-built drawings and dedications, or conveyances of necessary easements and rights-of-way.

(Ord. 5-89, passed 6-19-1989)

§ 21-607 ACCESS CHARGES.

(A) Except for those persons exempted by this article, persons who seek access to the town's water distribution or sewerage collection systems shall, in addition to the appropriate tap fee, pay an access charge calculated as set forth herein.

(B) Persons who have petitioned for water or sewer service, and who have paid, or are paying in a timely fashion, any assessments charged to them pursuant to that petition process, shall not pay an access charge as a condition for service from the water or sewer line for which assessments were made.

(C) Persons who petitioned for water or sewer service, and who participated in the payment of construction charges pursuant to § 21-605 of this article, shall not pay an access charge as a condition for service from the water or sewer line for which construction charges were made.

(D) The waiver of obligation to pay access charges, as set forth in subsections (B) and (C) above, shall apply for a period of 15 years from the end of the fiscal year in which the water or sewer line in question was placed in service.

(E) In addition to the waiver of obligation to pay access charges, no person shall be required to pay access charges for service from a portion of a line which was placed in service before July 1, 1979. Nor shall any person be required to pay access charges for service paid for entirely by the current, or a previous, owner of the property for which connection is requested.

(F) (1) Access charges shall be calculated the same as per linear front foot construction charges, as described in § 21-606(H). The gross per linear foot charges shall be deemed to constitute 100% of the cost of construction of a line: one-third of that total cost shall be deemed borne by the town; one-third shall be applied to, or borne by, the property on one side of the line, and one-third applied to, or borne by, the property on the other side of the line.

(2) The Town Manager, with the approval of the Town Council, shall, from time to time, publish detailed cost charts reflecting the various access charges used by the town, together with other applicable charges, and the detailed application thereof.

(Ord. 5-89, passed 6-19-1989)

§ 21-608 STATUTORY PROCEDURES.

(A) Whenever the Town Council decides to finance extensions by special assessments, it must adopt a preliminary resolution that shall contain the following:

- (1) A statement of intent to undertake the project;
- (2) A general description of the nature and location of the project;
- (3) A statement as to the proposed basis for making the assessments (which shall include a general description of the boundaries of the area benefitted if the basis of assessment is either "area served" or "value added");
- (4) A statement as to the percentage of the cost of the work that is to be assessed;
- (5) A statement as to which, if any, assessments shall be held in abeyance, and for how long;
- (6) A statement as to the proposed terms of payment of the assessment; and
- (7) An order setting a time and place for a public hearing on the preliminary resolution at some date between three and ten weeks from the date of the adoption of the preliminary resolution.

(B) At least ten days before the date set for the public hearing, there must be published in a local newspaper, having general circulation in the affected area, a notice of adoption of the preliminary assessment resolution, and of the public hearing; the notice must also generally describe the nature and location of the project.

(C) At least ten days prior to the hearing, copies of the preliminary resolution must be mailed to all owners of property subject to the assessment. The person mailing the copies must certify to the governing body that the copies were mailed by first class mail, and specify the date of mailing.

(D) At the public hearing, the governing body must hear all interested persons who appear with respect to any matter covered by the preliminary resolution.

(E) After the public hearing, the governing body may adopt an assessment resolution directing that the project be undertaken, and describing the project in general terms (which may be by reference to the description in the preliminary assessment resolution), and must set forth the following:

- (1) The basis on which the special assessments shall be levied (together with a general description of the boundaries of the area benefitted, if the basis of assessment is either "area served" or "value added");
- (2) The percentage of the cost to be assessed (the percentage must be the same as proposed in the preliminary resolution); and
- (3) The terms of payment, including any conditions under which the terms of the assessments are to be held in abeyance, if any.

(F) Upon completion of the project, the total cost must be computed. In addition to construction costs, the cost of all necessary legal services, the amount of interest paid during construction, cost of rights-of-way, and the cost of publication of notices and resolutions may be included in the total cost. The governing body should then adopt a resolution declaring the cost, and ordering preparation of the preliminary assessment roll, and calling a public hearing thereon.

(G) A preliminary assessment roll must then be prepared, and filed, in the Town Clerk's office where it must be available for public inspection. Any assessments to be held in abeyance should be indicated on the assessment roll. The governing body may establish a schedule of discounts, not to exceed 30%, to be applied to assessments paid within 30 days from publication of confirmation of the assessment roll (see subsection (L) below). If such a schedule is adopted, it must be included in the preliminary assessment roll.

(H) There must be published in a local newspaper having general circulation in the affected area, at least ten days before the date set for the public hearing, a notice of the completion of the preliminary assessment roll, setting forth a general description of the project, noting the availability of the assessment roll in the Clerk's office for inspection, and stating the item and place of the public hearing.

(I) A notice must also be mailed to each affected property owner at least ten days before the public hearing. In addition to the information contained in the published notice required in subsection (H) above, the mailed notice shall state the amount of the assessment against the property of the owner as shown on the preliminary assessment roll. The person mailing the notices must certify to the governing body that he or she were mailed by first-class mail, and specify the date mailed.

(J) At the public hearing, the governing body must hear objections to the preliminary assessment roll from all interested persons who appear. After the hearing, the governing body may make any proper corrections in the assessment roll, including adding any property that was omitted from the preliminary assessment roll. The Council must then adopt a resolution confirming the assessment roll and levying the assessments (the list of assessments inserted in the resolution should indicate any which are to be held in abeyance). The resolution shall also direct the Clerk to deliver the assessment roll to the tax collector, and shall direct publication of the required notice of confirmation and levy. The resolution must also state the day, hour, and minute of confirmation, and shall specify the due date of installments (either the due dates of property taxes, or the sixtieth day following confirmation, and subsequent annual anniversaries of the sixtieth day).

(K) The Clerk must immediately deliver to the tax collector the assessment roll.

(L) After the expiration of 20 days from the confirmation of the assessment roll, the tax collector must publish a notice that the assessment roll has been confirmed, that the assessments may be paid within 30 days of publication without interest, and that those then remaining unpaid will bear interest, as provided in the assessment resolution. The notice should also state the schedule of discounts, if one has been established, to be applied to assessments paid before the expiration date for payment of assessments without interest.

(M) The assessments will then be due and payable and may be paid within 30 days from the date the notice is published without interest. Each property owner has the option to pay the assessment in the number of annual installments specified in the assessment resolution, at the rate of interest set forth therein. A property owner may elect the installment method simply by not paying in full during the 30-day period.

(N) If any property owner shall default in the payment of any installment, all unpaid installments shall immediately become due and payable, unless the governing body waives acceleration. The assessment lien may be foreclosed in the same manner as property tax liens, except that lien sales and lien sale certificates shall not be required, and foreclosure may be begun at any time following 30 days after default. The assessment lien takes effect at the moment of confirmation of the assessment roll, and is inferior to all prior and subsequent liens upon the property for state, local, and federal taxes, and is superior to all other liens.

(Ord. 5-89, passed 6-19-1989)

Statutory reference:

Preliminary resolution, G.S. § 160A-223; publishing of hearings; copies of preliminary resolution G.S. § 160A-224; public hearing, procedures, G.S. § 160A-225; total construction costs, public hearing, adopted schedules, notice of public hearings §§ 160A-226, 160A-227; assessment roll G.S. § 160A-228; expiration of assessment roll, G.S. § 160A-229; payment of assessments, default on payment of installments, G.S. §§ 160A-232, 160A-233.