

## TITLE I: GENERAL PROVISIONS

Chapter

### 10. GENERAL PROVISIONS

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### § 10.01 TITLE OF CODE.

This codification of ordinances by and for the Town of Cape Carteret shall be designated as the *Code of Cape Carteret, North Carolina* and may be so cited.

### § 10.02 INTERPRETATION.

Unless otherwise provided herein, or by law or implication required, the same rules of construction, definition and application shall govern the interpretation of this code as those governing the interpretation of state law.

**§ 10.03 APPLICATION TO FUTURE ORDINANCES.**

All provisions of Title I compatible with future legislation shall apply to ordinances hereafter adopted amending or supplementing this code unless otherwise specifically provided.

**§ 10.04 CAPTIONS.**

Headings and captions used in this code other than the title, chapter and section numbers are employed for reference purposes only and shall not be deemed a part of the text of any section.

**§ 10.05 DEFINITIONS.**

(A) *General rule.* Words and phrases shall be taken in their plain, or ordinary and usual sense. However, technical words and phrases having a peculiar and appropriate meaning in law shall be understood according to their technical import.

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

**BOARD OF COMMISSIONERS.** The Mayor and Commissioners, or governing body, of the Town of Cape Carteret, North Carolina.

**CHARTER.** The Charter of the Town of Cape Carteret, North Carolina.

**CODE, THIS CODE or THIS CODE OF ORDINANCES.** This municipal code as modified by amendment, revision and adoption of new titles, chapters or sections.

**COMPUTATION OF TIME.** The time within which an act is to be done shall be computed by excluding the first and the last day; and if the last day is Saturday, Sunday, or a legal holiday, that day shall be excluded.

**COUNTY.** The County of Carteret, North Carolina.

**G.S. or GENERAL STATUTES.** The latest edition of the **GENERAL STATUTES** of North Carolina, as amended.

**GENDER.** Words importing the masculine gender shall include the feminine and neuter.

**GOVERNOR.** The Governor of North Carolina.

**JOINT AUTHORITY.** All words giving a joint authority to 3 or more persons or officers shall be construed as giving such authority to a majority of such persons or officers.

**MAY.** The act referred to is permissive.

**MONTH.** A calendar month.

**NUMBER.** Words used in the singular include the plural, and the plural includes the singular number.

**OATH.** An affirmation in all cases in which, by law, an affirmation may be substituted for an oath, and in such cases the words **SWEAR** and **SWORN** shall be equivalent to the words **AFFIRM** and **AFFIRMED**.

**OFFICER, OFFICE, EMPLOYEE, COMMISSION or DEPARTMENT.** An officer, office, employee, commission or department of this municipality unless the context clearly requires otherwise.

**OFFICIAL TIME STANDARD.** Whenever certain hours are named in this code, they shall mean standard time or daylight saving time as may be in current use in this town.

**OWNER.** Applied to any property, shall include any part owner, joint owner, tenant in common, joint tenant or tenant by the entirety, of the whole or a part of such property.

**PERSON.** Extends to and includes person, persons, firm, corporation, copartnership, trustee, lessee or receiver. Whenever used in any clause prescribing and imposing a penalty, the terms **PERSON** or **WHOEVER** as applied to any unincorporated entity shall mean the partners or members thereof, and as applied to corporations, the officers or agents thereof.

**PERSONAL PROPERTY.** Every species of property except real property.

**PRECEDING** or **FOLLOWING.** Next before or next after, respectively.

**PROPERTY.** Includes real and personal property.

**REAL PROPERTY.** Includes lands, tenements and hereditaments.

**SHALL.** The act referred to is mandatory.

**SIDEWALK.** Any portion of a street between the curblineline and the adjacent property line intended for the use of pedestrians.

**SIGNATURE** or **SUBSCRIPTION.** Includes a mark when the person cannot write.

**STATE.** The State of North Carolina.

**STREET.** Any public way, road, highway, street, avenue, boulevard, parkway, dedicated alley, lane, viaduct, bridge and the approaches thereto within the town and shall mean the entire width of the right-of-way between abutting property lines.

**SUBCHAPTER.** A division of a chapter, designated in this code by a heading in the chapter analysis and a capitalized heading in the body of the chapter, setting apart a group of sections related by the subject matter of the heading. Not all chapters have subchapters.

**TENANT** or **OCCUPANT.** When applied to a building or land, shall include any person who occupies the whole or a part of such building or land, whether alone or with others.

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

**TOWN.** The Town of Cape Carteret, in the County of Carteret, North Carolina.

**WRITTEN.** Any representation of words, letters or figures, whether by printing or otherwise.

**YEAR.** A calendar year, unless otherwise expressed.

**ZONING ENFORCEMENT OFFICER.** One designated by the Board of Commissioners.

**Statutory reference:**

*Computation of time, see G.S. § 1-593*

**§ 10.06 RULES OF INTERPRETATION.**

The construction of all ordinances of this town shall be by the following rules, unless such construction is plainly repugnant to the intent of the legislative body or of the context of the same ordinance:

(A) **AND** or **OR.** Either conjunction shall include the other as if written “and/or,” if the sense requires it.

(B) *Acts by assistants.* When a statute or ordinance requires an act to be done which, by law, an agent or deputy as well may do as the principal, such requisition shall be satisfied by the performance of such act by an authorized agent or deputy.

(C) *Gender; singular and plural; tenses.* Words denoting the masculine gender shall be deemed to include the feminine and neuter genders; words in the singular shall include the plural, and words in the plural shall include the singular; the use of a verb in the present tense shall include the future, if applicable.

(D) *General term.* A general term following specific enumeration of terms is not to be limited to the class enumerated unless expressly so limited.

#### **§ 10.07 SEVERABILITY.**

If any provision of this code as now or later amended or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions that can be given effect without the invalid provision or application.

#### **§ 10.08 REFERENCE TO OTHER SECTIONS.**

Whenever in 1 section reference is made to another section hereof, such reference shall extend and apply to the section referred to as subsequently amended, revised, recodified or renumbered unless the subject matter is changed or materially altered by the amendment or revision.

#### **§ 10.09 REFERENCE TO OFFICES.**

Reference to a public office or officer shall be deemed to apply to any office, officer or employee of this town exercising the powers, duties or functions contemplated in the provision, irrespective of any transfer of functions or change in the official title of the functionary.

#### **§ 10.10 ERRORS AND OMISSIONS.**

If a manifest error is discovered, consisting of the misspelling of any words; the omission of any word or words necessary to express the intention of the provisions affected; the use of a word or words to which no meaning can be attached; or the use of a word or words when another word or words was clearly intended to express such intent, such spelling shall be corrected and such word or words supplied, omitted or substituted as will conform with the manifest intention, and the provisions shall have the same effect as though the correct words were contained in the text as originally published. No alteration shall be made or permitted if any question exists regarding the nature or extent of such error.

#### **§ 10.11 OFFICIAL TIME.**

The official time, as established by applicable state and federal laws, shall be the official time within this town for the transaction of all municipal business.

**§ 10.12 REASONABLE TIME; COMPUTING TIME.**

(A) In all cases where an ordinance requires an act to be done in a reasonable time or requires reasonable notice to be given, reasonable time or notice shall be deemed to mean the time which is necessary for a prompt performance of such act or the giving of such notice.

(B) The time within which an act is to be done, as herein provided, shall be computed by excluding the first day and including the last. If the last day be Sunday, it shall be excluded.

**§ 10.13 ORDINANCES REPEALED.**

This code, from and after its effective date, shall contain all of the provisions of a general nature pertaining to the subjects herein enumerated and embraced. All prior ordinances pertaining to the subjects treated by this code shall be deemed repealed from and after the effective date of this code.

**§ 10.14 ORDINANCES UNAFFECTED.**

(A) All ordinances of a temporary or special nature and all other ordinances pertaining to subjects not embraced in this code shall remain in full force and effect unless herein repealed expressly or by necessary implication.

(B) Nothing in this code or the ordinance adopting this code shall be construed to repeal or otherwise affect the validity of any of the following:

(1) Any offense or act committed or done or any penalty or forfeiture incurred or any contract or right established or accruing before the effective date of this code;

(2) Any ordinance or resolution promising or guaranteeing the payment of money for the town or authorizing the issuance of any bonds of the town or any evidence of the town's indebtedness;

(3) Any contract or obligation assumed by the town;

(4) Any ordinance fixing the salary of any town officer or employee;

(5) Any right or franchise granted by the town;

(6) Any ordinance dedicating, naming, establishing, locating, relocating, opening, widening, paving, and the like, any street or public way in the town;

(7) Any appropriation ordinance;

(8) Any ordinance which, by its own terms, is effective for a stated or limited term;

(9) Any ordinance providing for local improvements and assessing taxes therefor,

(10) Any zoning ordinance or zoning map amendment;

(11) Any ordinance dedicating or accepting any subdivision plat;

(12) Any ordinance describing or altering the boundaries of the town;

- (13) The administrative ordinances or resolutions of the town not in conflict or inconsistent with the provisions of this code;
- (14) Any ordinance levying or imposing taxes not included herein;
- (15) Any ordinance establishing or prescribing street grades in the town; and/or
- (16) Any personnel ordinance.

(C) Nor shall any ordinance be construed to revive any ordinance or part thereof that has been repealed by a subsequent ordinance which is repealed by this chapter; and all such ordinances are hereby recognized as continuing in full force and effect to the same extent as if set out at length herein.

(Prior Code, § 1-9)

***Statutory reference:***

*Statutes not repealed by General Statutes, see G.S. § 164-7*

**§ 10.15 EFFECTIVE DATE OF ORDINANCES.**

All ordinances passed by the legislative body requiring publication shall take effect from and after the due publication thereof, unless otherwise expressly provided. Ordinances not requiring publication shall take effect from their passage, unless otherwise expressly provided.

**§ 10.16 REPEAL OR MODIFICATION OF ORDINANCES.**

(A) Whenever any ordinance or part of an ordinance shall be repealed or modified by a subsequent ordinance, the ordinance or part of an ordinance thus repealed or modified shall continue in force until the due publication of the ordinance repealing or modifying it when publication is required to give effect thereto, unless otherwise expressly provided.

(B) No suit, proceedings, right, fine, forfeiture or penalty instituted, created, given, secured or accrued under any ordinance previous to its repeal shall in any way be affected, released or discharged, but may be prosecuted, enjoyed and recovered as fully as if the ordinance had continued in force unless it is otherwise expressly provided.

(C) When any ordinance repealing a former ordinance, clause or provision shall be itself repealed, the repeal shall not be construed to revive the former ordinance, clause or provision, unless it is expressly provided.

**§ 10.17 ORDINANCES WHICH AMEND CODE; EFFECT OF NEW ORDINANCES.**

(A) All ordinances passed subsequent to this code which amend, repeal or in any way affect this code may be numbered in accordance with the numbering system hereof and printed for inclusion herein. When subsequent ordinances repeal any chapter, section or subsection, or any portion thereof, such repealed portions may be excluded from this code by omission from reprinted pages. The subsequent ordinances as numbered and printed, or omitted in the case of repeal, shall be prima facie evidence that the subsequent ordinances numbered or omitted are readopted as a new code by the town.

(B) Amendments to any of the provisions of the code shall be made by amending such provisions by specific reference to the section number of this code in language substantially similar to the following: “Section \_\_\_\_\_ of the Code of Ordinances, Town of Cape Carteret, North Carolina, is hereby amended as follows....” The new provisions shall then be set out in full as desired.

(C) If a new section not heretofore existing in the code is to be added, language substantially similar to the following shall be used: “The Code of Ordinances, Town of Cape Carteret, North Carolina, is hereby amended by adding a section, to be numbered \_\_\_\_\_, which section shall read as follows:....” The new section shall then be set out in full as desired.

(D) All sections, articles, chapters or provisions desired to be repealed must be specifically repealed by section, article or chapter number, as the case may be.

### **§ 10.18 SUPPLEMENTATION OF CODE.**

(A) By contract or by town personnel, supplements to this code shall be prepared on an annual basis. A supplement to the code shall include all substantive, permanent and general parts of ordinances passed by the Board of Commissioners during the period covered by the supplement and all changes made thereby in the code. The pages of a supplement shall be so numbered that they will fit properly into the code and will, where necessary, replace pages which have become obsolete or partially obsolete, and the new pages shall be so prepared that, when they have been inserted, the code will be current through the date of the adoption of the latest ordinance included in the supplement.

(B) In preparing a supplement to this code, all portions of the code which have been repealed shall be excluded from the code by the omission thereof from reprinted pages.

(C) When preparing a supplement to this code, the codifier (meaning the person, agency or organization authorized to prepare the supplement) may make formal, nonsubstantive changes in ordinances and parts of ordinances included in the supplement, insofar as it is necessary to do so to embody them into a unified code. For example, the codifier may:

- (1) Organize the ordinance material into appropriate subdivisions;
- (2) Provide appropriate headings and titles for sections and other subdivisions of the Code printed in the supplement, and make changes in such headings and titles;
- (3) Assign appropriate numbers to sections and other subdivisions to be inserted in the code and, where necessary to accommodate new material, change existing section or other subdivision numbers;
- (4) Change the words “this ordinance” or words of the same meaning to “this chapter,” “this article,” “this division,” and the like, as the case may be, or to “sections \_\_\_\_\_ to \_\_\_\_\_” (inserting section numbers to indicate the sections of the code which embody the substantive sections of the ordinance incorporated into the code); and
- (5) Make other non-substantive changes necessary to preserve the original meanings of ordinance sections inserted into the code; but in no case shall the codifier make any change in the meaning or effect of ordinance material included in the supplement or already embodied in the code.

(1997 Code § 1-8)

**§ 10.19 SECTION HISTORIES; SECTION HEADINGS; STATUTORY REFERENCES.**

(A) As histories for the code sections, the specific number and passage date of the original ordinance and the most recent three amending ordinances, if any, are listed following the text of the code section. *Example:* (Ord. 10, passed 5-13-1960; Am. Ord. 15, passed 1-1-1970; Am. Ord. 20, passed 1-1-1980; Am. Ord. 25, passed 1-1-1985)

(B) (1) A statutory cite included in the history indicates that the text of the section reads substantially the same as the statute. *Example:* (G.S. § 160A-11) (Ord. 10, passed 1-17-1980; Am. Ord. 20, passed 1-1-1985)

(2) A statutory cite set forth as a “statutory reference” following the text of the section indicates that the reader should refer to that statute for further information.

*Example:*

**§ 39.01 PUBLIC RECORDS AVAILABLE.**

This municipality shall make available to any person for inspection or copying all public records, unless otherwise exempted by state law.

*Statutory reference:*

*Inspection of public records, see G.S. §§ 132-1 et seq.*

(C) If a section of this code is derived from the 1997 code of ordinances of the town, the prior code section number shall be indicated in the history by “(1997 Code, § \_\_\_\_).” The history notes following sections and the references scattered throughout the code are not part of the code, but are merely for the benefit for the user of the code.

**§ 10.99 GENERAL PENALTY.**

(A) Unless otherwise specifically provided, violation of any provision of this code or any other town ordinance shall subject the offender to the remedies hereinafter provided; except that where the General Statutes of North Carolina provide specific civil remedies for violations of provisions of this code adopted pursuant to such statutes, such remedies available to the town for enforcement of this code shall be in addition to the remedies hereinafter stated; provided, that no criminal penalties shall be applicable unless hereinafter stated in this section as being applicable to specific chapters or provisions of this code.

(B) Violations of any of the provisions of this code shall subject the offender to a civil penalty upon the issuance of a citation for such violation as hereinafter provided. The civil penalty, if not paid to the Town Treasurer within 15 days of the issuance of a citation, may be recovered by the town in a civil action in the nature of debt. Unless otherwise provided by a specific provision of this code, such civil penalties shall be in the amount of \$50 for each violation, and each day any single violation continues shall be a separate violation; except, that for violations of parking ordinances of this code, the civil penalty provisions and procedures therein shall apply.

(C) In addition to any civil penalties set out in this section, any provision of this code or any other town ordinance may be enforced by an appropriate equitable remedy issuing from a court of competent jurisdiction. In such case, the general court of justice shall have jurisdiction to issue such orders as may be appropriate, and it shall not be a defense to the application of the town for equitable relief that there is an adequate remedy at law.

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(D) In addition to any civil penalties set out in this section, any provision of this code or any other town ordinance that makes unlawful a condition existing upon or use made of real property may be enforced by injunction and order of abatement, and the general court of justice shall have jurisdiction to issue such orders. When a violation of such a provision occurs, the town may apply to the appropriate division of the general court of justice for a mandatory or prohibitory injunction and order of abatement commanding the defendant to correct the unlawful condition upon or cease the unlawful use of the property. The action shall be governed in all respects by the laws and rules governing civil proceedings, including the Rules of Civil Procedure in general and Rule 65 in particular.

(E) (1) In addition to an injunction, the court may enter an order of abatement as a part of the judgment in the cause. An order of abatement may direct that:

- (a) Buildings or other structures on the property be closed, demolished or removed;
- (b) Fixtures, furniture or other movable property be removed from buildings on the property;
- (c) Grass and weeds be cut;
- (d) Improvements or repairs be made; or
- (e) Any other action be taken that is necessary to bring the property into compliance with this code or such ordinance.

(2) If the defendant fails or refuses to comply with an injunction or with an order of abatement within the time allowed by the court, he or she may be cited for contempt, and the town may execute the order of abatement. The town shall have a lien on the property for the cost of executing an order of abatement in the nature of a mechanic's and materialman's lien. The defendant may secure cancellation of an order of abatement by paying all costs of the proceedings and posting a bond for compliance with the order. The bond shall be given with sureties approved by the Clerk of Superior Court in an amount approved by the judge before whom the matter is heard and shall be conditioned on the defendant's full compliance with the terms of the order of abatement within a time fixed by the judge. Cancellation of an order of abatement shall not suspend or cancel an injunction issued in conjunction therewith.

(F) The provisions of this code and any other town ordinances may be enforced by 1, all or a combination of the remedies authorized and prescribed by this section; except, that any provision the violation of which incurs a civil penalty shall not be enforced by criminal penalties.

(G) Except as otherwise specifically provided, each day's continuing violation of any provision of this code or any other town ordinance shall be a separate and distinct offense.

(H) Any ordinances hereafter adopted by the Board of Commissioners of the town, the violation of which shall incur a penalty, shall specify whether the enforcement shall be pursuant to the civil penalty provisions of this section.

(I) Upon determination of a violation of any section of this code, the penalty for which is a civil penalty, the town shall cause a warning citation to be issued to the violator, setting out the nature of the violation, the section violated, the date of the violation and an order to immediately cease the violation or, if the violation is in the nature of an infraction for which an order of abatement would be appropriate in a civil proceeding, stating a reasonable period of time in which the violation must be abated. The warning citation shall specify that a second citation shall incur a civil penalty.

(J) Upon failure of the violator to obey the warning citation, a civil citation shall be issued by the appropriate official of the town and either served directly on the violator or his or

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her duly designated agent, or registered agent if a corporation, in person or posted in the United States mail service by first class mail addressed to the last known address of the violator as contained in the records of the town, or obtained from the violator at the time of issuance of the warning citation. The violator shall be deemed to have been served upon the mailing of such citation. The citation shall direct the violator to appear before the Town Treasurer, located in the town hall, within 15 days of the date of the citation or alternatively to pay the citation by mail. The violation for which the citation is issued must have been corrected by the time the citation is paid; otherwise, further citations shall be issued. Citations may be issued for each day the offense continues until the prohibited activity is ceased or abated.

(K) If the violator fails to respond to a citation within 15 days of its issuance and pay the penalty prescribed therein, the town may institute a civil action in the nature of debt in the appropriate division of the North Carolina General Court of Justice for the collection of the penalty.

(1997 Code, § 1-6) (Ord. 2012-03-01, passed 3-19-2012)

***Statutory reference:***

*Penalty for violation of town ordinances, see G.S. § 14-4*

*Similar provisions, see G.S. § 160A-175*