

CALDWELL COUNTY
JUNKYARD ORDINANCE
Sawm. 115 Adopted 3-21-95

Adopted November 7, 1983

Revised December 16, 1985

Revised February 2, 1987

Amended January 21, 1991

Amended May 20, 1991

Amended March 23, 1992

ORDINANCE REGULATING THE OPERATING OR MAINTENANCE OF JUNKYARDS, AUTOMOBILE GRAVEYARDS AND AUTOMOBILE REPAIR SHOPS IN CALDWELL COUNTY, NORTH CAROLINA

WHEREAS, North Carolina General Statute Section 153-121 (a) provides that a "county may by ordinance define, regulate, prohibit or abate acts, omissions, or conditions detrimental to the health, safety or welfare of its citizens and the peace and dignity of the county; and may define and abate nuisances" and

WHEREAS, this Board declares that junkyards, automobile graveyards and automobile repair shops in close proximity to public roads and residential areas are patently offensive to the dignity and aesthetic quality of the environment in Caldwell County unless at least partially obstructed from view by appropriate fencing or combination of fencing and vegetation; and

WHEREAS, this Board declares that automobile graveyards, junkyards and automobile repair shops in close proximity to public roads, residential areas and schools may pose a threat to health, safety and welfare of the citizens, residents and school children in close proximity thereto unless sufficiently enclosed and surrounded by a substantial fence or wall, due to the hazard of fire, the possible entrapment of children and others in areas of confinement such as vehicle trunks and compartments and the possibility of injury to persons coming into contact with metal, glass or other rigid materials; and

WHEREAS, this Board desires to enact the following ordinance regulating the operation or maintenance of automobile junkyards, automobile graveyards and automobile repair shops in the unincorporated areas of Caldwell County.

NOW, THEREFORE, BE IT ORDAINED by the Board of Commissioners for the County of Caldwell, as follows:

SECTION ONE. TITLE

This ordinance may be known and may be cited as "Ordinance Regulating the Operation or Maintenance of Junkyards, Automobile Graveyards and Automobile Repair Shops in Caldwell County".

SECTION TWO. PURPOSES AND OBJECTIVES

The purposes and objectives for which this ordinance is passed are as follows:

- A. To protect the citizens and residents of Caldwell County from possible injury at automobile graveyards, junkyards and automobile repair shops.
- B. To preserve the dignity and aesthetic quality of the environment in Caldwell County.
- C. To preserve the physical integrity of land in close proximity to residential areas.
- D. To protect the economic interests of the citizens and residents of Caldwell County which are dependent on tourism.
- E. To achieve responsible economic growth and development in nearby areas.

SECTION THREE. DEFINITIONS

For the purpose of this ordinance, certain terms and words are thereby defined; words used in the present tense shall include the future; words used in the singular number shall include the plural number; and the plural the singular; and the word "shall" is mandatory and not directory.

Automobile Graveyards: Any place which is maintained, used or operated for storing, keeping, buying and selling wrecked, scrapped, ruined, dismantled or inoperable junked motor vehicles, or any parts thereof, regardless of the length of time which individual motor vehicles are stored, or kept at said establishment.

Automobile Repair Shops (Licensed): An establishment which is maintained and operated for the sole purpose of making body repairs to wrecked motor vehicles and which receives 50% of its gross income from charges made for such repairs and shall not be required to comply with the 125' set-back.

Building: Any structure having a roof supported by columns or walls, and designated or intended for the shelter, support, enclosure or protection of persons, animals or chattels.

Establishment: Any place, land building or structure on which or in which there is operated or maintained a business or going concern for profit.

Fence: A continuous, opaque, non-perforated barrier extending from the surface of the ground to be uniform height of not less than six (6) feet from the ground at any given point, constructed of wood, stone, or steel wire or any other material approved by the Planning Board, with no stacking of automobiles, or parts thereof, to be used for or intended as a fence or fencing materials.

Gate: A door or other device attached to a fence which, when opened, provides a means of ingress and egress of persons and things for which it was intended, and which when closed, forms a continuous barrier as a part of the fence to which it is attached.

Housing Unit: A house, an apartment, a group of rooms, or a single room occupied or intended for occupancy as separate living quarters.

Junk: Old or scrapped copper, brass, rope, rags, batteries, paper, trash, rubber, debris, waste, dismantled or wrecked automobiles or parts thereof, iron, steel, and other old or scrap ferrous or nonferrous materials.

Junked Motor Vehicles: A motor vehicle which does not display a current license plate and is not used on a regular basis for business or personal and; 1) is partially dismantled or wrecked; or 2) cannot be self-propelled or moved in a manner in which it originally was intended.

Junkyard: Anyplace which is maintained, operated, or used for storing, keeping, buying or selling junk and junked motor vehicles regardless of the length of time that junk is stored or kept, or for maintenance or operation of an automobile graveyard, but shall not include garbage dumps or county operated sanitary landfills.

Planning Board: Shall mean the Planning Board of Caldwell County, North Carolina.

Public Road: Any road or highway which is now or hereafter designated and maintained by the North Carolina Department of Transportation as part of the State Highway System, whether primary or secondary, hard-surfaced or other dependable highways, and any road which is a neighborhood public road as defined in North Carolina General Statute Section 136-67, which definition is incorporated into this Ordinance by reference.

School: Any public or private institution for the teaching of children under eighteen years of age which is recognized and approved by the North Carolina Board of Education.

Substantial: Ample to satisfy the purpose for which an object is intended.

Vegetation: Evergreen trees, including, but not limited to, white pine and/or hemlock, evergreen shrubs or plants with a minimum height of six (6) inches when planted, which reach a height of at least six (6) feet at maturity.

Visible: Capable of being seen without visual aid by a person of normal visual acuity.

Wire Fence: A continuous, translucent, perforated barrier extending from the surface of the ground to a uniform height of not less than six (6) feet from the ground at any given point, constructed of wire, steel, or nylon mesh, or any substance of a similar nature and strength, but not perforations or openings are no larger than sixteen (16) square inches.

SECTION FOUR. PROHIBITIONS AND STANDARDS

Except as hereinafter provided, it shall be unlawful after the effective date of this Ordinance for any person, firm or corporation, or other legal entity to establish in any area of Caldwell County's enforcement jurisdiction a new junkyard, automobile graveyard or automobile repair shop within one hundred, twenty-five (125') of the corner line of any "public road", within one-quarter mile of any "school" or within any residential area. For the purpose of this Ordinance, a junkyard, automobile repair shop shall be within a residential area if there are twenty-five

(25) or more housing units within a geographical area comprised of a one-fourth (1/4) mile wide strip contiguous and parallel to the external boundary lines of the tract of real property on which said automobile graveyard is located. Stacking of junked automobiles or junk may be allowed within the fenced compound area and at no time shall be stacked higher than the fencing which surrounds said compound area. Junkyards, automobile graveyards or automobile repair shops existing at the effective date of this Ordinance shall be set back sixty (60') feet from the center of any "public road".

Licensed automobile repair shops may be operated and/or maintained and not required to be set back 125 feet from street centerline where they have automobiles that are in the process of being repaired for a legally recognized customer of said repair shop. However, junked, abandoned or stored automobiles must comply with the requirements as set forth in this Ordinance.

All junkyards, automobile graveyards and automobile repair shops shall be fenced and at all points be screened from the view of persons from public roads, schools, or residential areas, and where such screening is not already substantially provided by natural vegetation, or other natural barriers, a wire fence shall be used in conjunction with vegetation as described above. If a wire fence with vegetation is used, the plants shall be planted on at least one side of the wire fence and as close as practical to said fence. Vegetation shall be of a type that will reach a minimum height of six (6) feet at maturity, and shall be planted at intervals evenly spaced and in close proximity to each other so that a continuous, unbroken hedgerow will exist to a height of at

least six (6) feet along the links of the wire fence surrounding the junkyard, automobile graveyard, or automobile repair shop when the vegetation reaches maturity. The height of any plants used must be at least six (6) inches at the time of planting. Each owner, operator or maintainer of a junkyard, automobile repair shop to which this Ordinance applies, and who chooses to use vegetation with wire fence, shall utilize good husbandry techniques with respect to said vegetation, including but not limited to, proper pruning, proper fertilizer and proper mulching, so that the vegetation will reach maturity as soon as practical and will have maximum density in foliage. Dead or diseased vegetation shall be placed at the next appropriate planting time, and the fence, or wire fence and vegetation, shall be maintained in good condition. The fence, or wire fence, shall have at least one (1) gate for the purpose of ingress and egress. Stacking of automobiles inside of the compound area shall be no higher than the fencing which surrounds said compound.

SECTION FIVE. INSIDE STORAGE EXEMPTION

This Ordinance shall not apply to the storing, keeping, buying or selling of wrecked, scrapped, dismantled or inoperable motor vehicles, or any parts thereof, inside a building which is constructed in such a manner that such motor vehicles and parts thereof are not visible from any public road or from any adjoining property.

SECTION SIX. CRIMINAL AND CIVIL PENALTIES.

Any person, firm, or corporation violating any of the provisions of this ordinance shall be guilty of a misdemeanor and

shall be fined not more than fifty (\$50.00) dollars or imprisoned not more than thirty (30) days at the discretion of the court in accordance with N.C.G.S.14-4.

Any person, firm or corporation violating any of the provisions of this Ordinance shall further be subject to the imposition by citation of a Civil Penalty for each such violation in the amount of fifty (\$50.00) dollars which shall be paid in full within seventy-two (72) hours of the service of the citation in accordance with N. C. G. S. 153A-123. Failure to make payment and correct the violation within the 72 hour period will result in an additional fine of ten (\$10.00) dollars per day for a total of fifteen (15) days. For a second and subsequent offense of such violation, the amount of two hundred (\$200.00) which shall be paid in full within seventy-two (72) hours of the service of the citation in accordance with N.C. G.S. 153A-123.

SECTION SEVEN. EFFECTIVE DATE

This Ordinance shall become effective upon its adoption.
Adopted this 7th day of November, 1983.

RESOLUTION IN OPPOSITION TO ASSESSMENT OF A TIPPING FEE
ON RESIDENTIAL WASTE ACCEPTED FOR DISPOSAL AT THE
COUNTY LANDFILL

THAT WHEREAS, the Town of Sawmills has been notified that Caldwell County plans to adopt a residential waste tipping fee effective July 1, 1995 and the Proposal as it now stands unfairly discriminates against residential citizens of the County of Caldwell who also live within the boundaries of a municipality.

THAT WHEREAS, the Proposal as submitted by the County Commissioners would result in a residential waste charge for citizens of Caldwell County who live inside Sawmills at least double that charged to citizens of Caldwell County who live outside of municipalities.

NOW THEREFORE, the Town Council of the Town of Sawmills does hereby request that Caldwell County form a study committee to be made up of elected and appointed officials of each municipality and along with County Commissioners and its Manager to come up with a Proposal to fairly address solid waste costs and tipping fees.

BE IT FURTHER RESOLVED, that in the alternative, it is hereby requested that the County Commissioners delay implementation of a residential waste tipping fee until fiscal year 1996 - 1997 to fairly give those municipalities effected time in which to plan for this charge since there currently exists no revenues to pay for such an expense.

This the 18th day of APRIL, 1995.



TOWN OF SAWMILLS

By: Max Anderson (SEAL)
Mayor

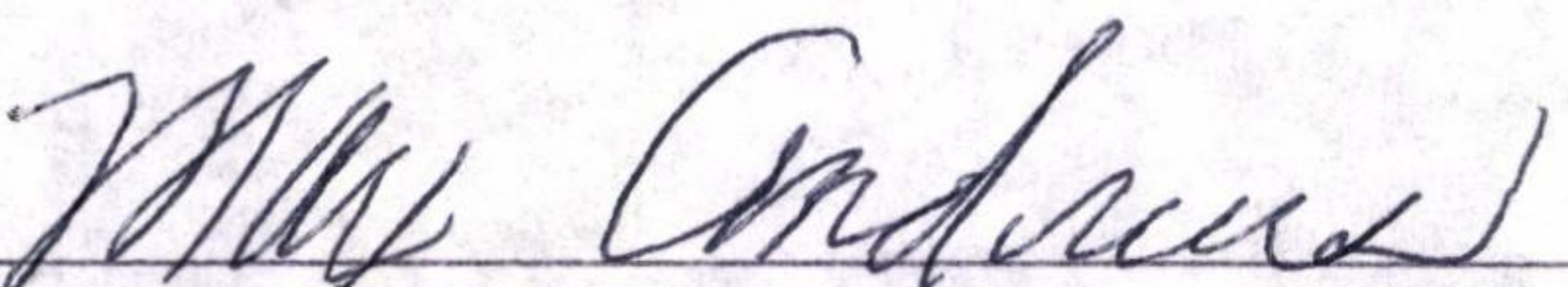
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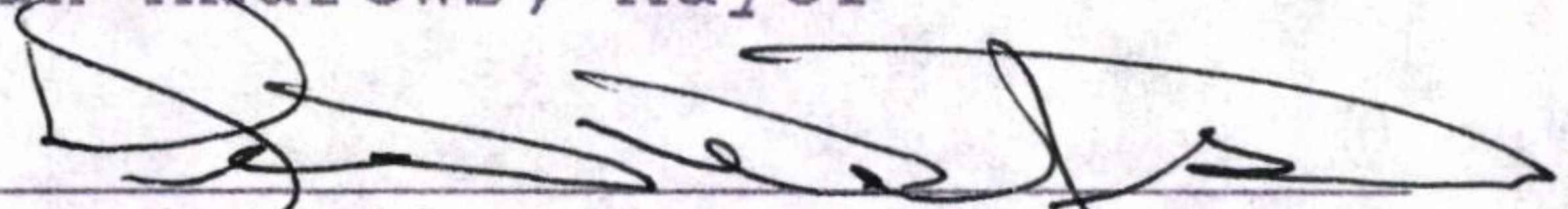
Janet Reid
Town Clerk

NOTICE OF A SPECIAL MEETING

To: All concerned

Please take note that a special meeting has been called for Monday, March 27, 1995 at 6:00 PM at the Town of Sawmills town hall. The purpose of this meeting will be to discuss the contract between the Town of Sawmills and the Sawmills Optimist Club.


Max Andrews, Mayor


Dennis Wilson, Mayor Pro-tem

Section 2. Political Activity

Each employee has a civic responsibility to support good government by every available means and in every appropriate manner. Each employee may join or affiliate with civic organizations of a partisan or political nature, may attend political meetings, may advocate and support the principles or policies of civic or political organizations in accordance with the Constitution and laws of the State of North Carolina and in accordance with the Constitution and laws of the United States. However, no employee shall:

- a) Engage in any political or partisan activity while on duty or in the workplace;
- b) Use official authority or influence for the purpose of interfering with or affecting the result of a nomination or an election for office;
- c) Be required as a duty of employment or as condition for employment, promotion or tenure of office to contribute funds for political or partisan purposes;
- d) Coerce or compel contributions from another employee of the Town for political or partisan purposes;
- e) Use any supplies or equipment of the Town for political or partisan purposes;
- f) Be a candidate for nomination or election to office under the Town Charter;

Any violation of this section shall subject the employee to disciplinary action including dismissal.

Section 3. Outside Employment

The work of the Town shall have precedence over other occupational interests of employees. All outside employment for salaries, wages, or commission and all self-employment must be reported in advance to the employee's supervisor, who in turn will report it to the Department Head. The Department Head will review such employment for possible conflict of interest and then submit a record of the employment and review to the personnel file. Conflicting or unreported outside employment is grounds for disciplinary action up to and including dismissal.

Section 4. Dual Employment

A full or part-time employee of the Town may simultaneously hold another position with the Town if the temporary position is in a

different department and/or clearly different program area from that of the full or part-time position. However, the work of the full or part-time position shall take precedence over the temporary position, and such work will not count toward the calculation of overtime for pay or time off.

Section 5. Employment of Relatives

The Town prohibits the hiring and employment of immediate family in permanent positions within the Town. "Immediate Family" is defined in Article VII, Section 12. The Town also prohibits the employment of any person into a position who is an immediate family member of individuals holding the following positions: Mayor, Mayor Pro Temp, Town Council Member, or Town Attorney.

Section 6. Sexual Harassment

The Town opposes sexual harassment by supervisors and co-workers in any form. Sexual harassment is defined as unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when 1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment; 2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or 3) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

Any employee who believes that he or she may have a complaint of sexual harassment may follow the Grievance Procedure described in this Chapter or may file the complaint directly with the Town Council, department head, or other Town official. The Town Council will insure that an investigation is conducted into any allegation of sexual harassment and advise the employee and appropriate officials of the outcome of the investigation.

Section 7. Acceptance of Gifts and Favors

No official or employee of the Town shall accept any gift, favor, or thing of value that may tend to influence such employee in the discharge of the employee's duties, or grant in the discharge of duty an improper favor, service, or thing of value.

Section 8. Safety

Safety is the responsibility of both the Town and employees. It is the policy of the Town to establish a safe work environment for employees. The Town shall establish a safety program including policies and procedures regarding safety practices and precautions and training in safety methods. Department Heads are responsible for insuring the safe work procedures of all employees and

providing necessary safety training programs. Employees shall follow the safety policies and procedures and attend safety training programs as a condition of employment. Employees who violate such policies and procedures shall be subject to disciplinary action up to and including dismissal.

ARTICLE VI. EMPLOYEE BENEFITS

Section 1. Eligibility

All full-time employees of the Town are eligible for employee benefits as provided for in this Article which are subject to change at the Town's discretion. Other employees are eligible only for workers' compensation.

Section 2. Group Health and Hospitalization Insurance

The Town provides group health and hospitalization insurance programs for full-time employees. Information concerning cost and benefits shall be available to all employees.

Section 3. Group Life Insurance

The Town will provide group life insurance for each employee subject to the stipulations of the insurance contract. Employees may elect to purchase additional coverage and/or to insure other family members under this plan at their expense.

Section 4. Other Optional Group Insurance Plans

The Town may make other group insurance plans available to employees upon authorization of the Town Council.

Section 5. Retirement

Each employee who is expected to work for the Town more than 1,000 hours annually shall join the North Carolina Local Governmental Employees' Retirement System when eligible as a condition of employment.

Section 6. Social Security

The Town, to the extent of its lawful authority and power, has extended Social Security benefits for its eligible employees and eligible groups and classes of such employees.

Section 7. Workers' Compensation

All employees of the Town (full-time, part-time, and temporary) are covered by the North Carolina Workers' Compensation Act and are required to report all injuries arising out of and in the course of

employment to their immediate supervisors at the time of the injury in order that appropriate action may be taken at once.

Responsibility for claiming compensation under the Workers' Compensation Act is on the injured employee, and such claims must be filed by the employee with the North Carolina Industrial Commission within two years from date of injury. The department head will assist the employee in filing the claim.

Section 8. Unemployment Compensation

In accordance with Public Law 94-566 and subsequent amendments, local governments are covered by unemployment insurance. Town employees who are terminated due to a reduction in force or released from Town service may apply for benefits through the local Employment Security Commission office, where a determination of eligibility will be made.

Section 9. Longevity Pay

A program of longevity pay may be provided to recognize and reward the length of service of town employees. The annual payment will be made the first week in December to those full-time and part-time employees who are on the last payroll in November and who have completed the required number of years of service as of November 1 of the year the payment is made.

2 - 5 years	\$150
5 - 9 years	300
10 - 15 years	450
15 - 20 years	600
20+ years	750

ARTICLE VII. HOLIDAYS AND LEAVES OF ABSENCE

Section 1. Policy

The policy of the Town is to provide annual leave, sick leave, and holiday leave to all full-time employees.

Section 2. Holidays

The following days, and other such days as the Town Councils may designate, are holidays with full pay for employees and officers of the Town:

New Year's Day
Good Friday
Memorial Day
Independence Day

Labor Day
Thanksgiving Day
Day after Thanksgiving
Christmas (see schedule)

When any recognized holiday falls on Saturday or Sunday, the following Monday will be the designated holiday. When Christmas Day falls on the day of the week indicated below, the days set forth will be observed as holidays:

Sunday	-	Monday and Tuesday
Monday	-	Monday and Tuesday
Tuesday	-	Monday, Tuesday, and Wednesday
Wednesday	-	Wednesday, Thursday, and Friday
Thursday	-	Wednesday, Thursday, and Friday
Friday	-	Thursday and Friday
Saturday	-	Friday and Monday

In order to receive a paid holiday, an employee must have worked the day before and the day after the holiday(s), or have been given approved leave.

Section 3. Holidays: Effect on Other Types of Leave

Regular holidays which occur during a vacation, sick or other leave period of any employee shall not be considered as vacation, sick, or other leave.

Section 4. Holidays: Compensations When Work is Required or Regularly Scheduled Off for Shift Personnel

Employees required to perform work on regularly scheduled holidays may be granted compensatory time off or paid at their hourly rate for hours actually worked in addition to any holiday pay to which they are entitled. Compensatory time shall be granted whenever feasible and taken within three months from the time it is earned. If a holiday falls on a regularly scheduled off-duty day for shift personnel, the employee shall receive the hours for paid holiday leave at another time.

Section 5. Vacation Leave

Vacation leave shall be used for rest and relaxation, and may be used for medical appointments.

Section 6. Vacation Leave: Use by Probationary Employees

Employees serving a probationary period following initial employment may accumulate vacation leave but shall not be permitted to take vacation leave during the probationary period. Employees shall be allowed to take accumulated vacation leave after six months of service.

Section 7. Vacation Leave: Accrual Rate

Each full-time employee of the Town shall accrue annual leave at the following schedule, pro-rated by the average hours in the

workweek:

Years of Service	Days Accrued Per Year
0 - 4	10
5 - 9	12
10 - 14	15
15 - 19	18
20+	20

Section 8. Vacation Leave: Maximum Accumulation

Vacation leave may be accumulated without any applicable maximum until December 31 of each year. However, if the employee departs from service, payment for accumulated vacation leave shall not exceed 30 days. On December 31, any employee with more than 30 days of accumulated leave shall have the excess accumulation removed so that only 30 days are carried forward to January 1 of the next fiscal year.

Employees are cautioned not to retain excess accumulated vacation leave until late in the year. Because of the necessity to keep all functions in operation, large numbers of employees cannot be granted vacation leave at any one time. If an employee has excess leave accumulation during the latter part of the year and is unable to take such leave because of staffing demands, the employee shall receive no special consideration either in having vacation leave scheduled or in receiving any exception to the maximum accumulation.

Section 9. Vacation Leave: Manner of Taking

Employees shall be granted the use of earned vacation leave upon request at least one week in advance, in writing, at those times designated by the Department Head which will least obstruct normal operations of the Town.

Section 10. Vacation Leave: Payment upon Separation

An employee who has successfully completed six months of the probationary period will normally be paid for accumulated vacation leave upon separation not to exceed the maximum as stated in Section 8 of this Article, provided notice is given to the supervisor at least two weeks in advance of the effective date of resignation. Any employee failing to give the notice required by this section shall forfeit payment for accumulated leave. The notice requirement may be waived by the Town Council when deemed to be in the best interest of the Town. Employees who are involuntarily separated shall receive payment for accumulated annual leave subject to the 30 day maximum established above.

Section 11. Vacation Leave: Payment upon Death

The estate of an employee who dies while employed by the Town shall be entitled to payment of all the accumulated vacation leave credited to the employee's account not to exceed the maximums established in Section 8 of this Article.

Section 12. Sick Leave

Sick leave with pay is not a right which an employee may demand, but a privilege granted for the benefit of an employee when sick. Sick leave may be granted to an employee absent from work for any of the following reasons: sickness, bodily injury, required physical or dental examinations or treatment, or exposure to a contagious disease, when continuing work might jeopardize the health of others.

Sick leave may be used when an employee must care for a member of his or her immediate family who is ill. However, sick leave may not be used to care for a healthy child when a spouse or other family member is ill.

Sick leave may also be used for death in the employee's immediate family, but may not exceed three days for any one occurrence. Additional leave time required for such occurrence may be charged to vacation.

Sick leave may also be used to supplement Workers' Compensation Disability Leave both during the waiting period before Workers' compensation benefits begin, and afterward to supplement the remaining one third of salary, except that employee may not exceed the regular salary amount using this provision.

"Immediate family" shall be defined as spouse, mother, father, guardian, children, sister, brother, grandparents, grandchildren plus the various combinations of half, step, in-law, and adopted relationships that can be derived from those named.

Notification of the desire to take sick leave should be submitted to the employee's supervisor prior to the leave or not later than two hours after the beginning of the scheduled workday.

Section 13. Sick Leave: Accrual Rate and Accumulation

Sick leave shall accrue at a rate of one day per month of service or twelve days per year. Sick leave will be cumulative for an indefinite period of time and may be converted upon retirement for service credit consistent with the provisions of the North Carolina Local Government Employees' Retirement System.

All sick leave accumulated by an employee shall end and terminate without compensation when the employee resigns or is separated from

the Town, except as stated for employees retiring or terminated due to reduction in force.

Section 14. Sick Leave: Medical Certification

The employee's supervisor or Department Head may require a physician's certificate stating the nature of the employee or immediate family member's illness and the employee's capacity to resume duties, for each occasion on which an employee uses sick leave or whenever the supervisor observes a "pattern of absenteeism." The employee may be required to submit to such medical examination or inquiry as the Department Head deems desirable. The Department Head shall be responsible for the application of this provision to the end that:

- 1) Employees shall not be on duty when they might endanger their health or the health of other employees; and
- 2) There will be no abuse of leave privileges.

Claiming sick leave under false pretense to obtain a day off with pay shall subject the employee to disciplinary action.

Section 15. Workers' Compensation Leave

An employee absent from duty because of sickness or disability covered by the North Carolina Workers' Compensation Act may elect to use accrued sick leave or vacation during the first waiting period. The employee may also elect to supplement workers' compensation payments after they begin provided that the combination of leave supplement and workers' compensation payments does not exceed normal compensation. An employee on workers' compensation leave may be permitted to continue to be eligible for benefits under the Town's group insurance plans.

Section 16. Parental Leave

Parental leave may be granted to an employee for a period of up to three months for pregnancy, miscarriage, abortion, childbirth, recovery, or adoption. Employees may be granted an extension by the Town Council when medically necessary. This leave would be without pay unless the employee elected to use sick or annual leave as provided in this Article. A parental leave request, including the tentative duration of the leave requested, must be submitted to the Town Council in advance of the leave.

Vacation leave may be used during the period before and after childbirth when no actual disability is present, or during an adoption. Sick leave may be taken during the period of actual disability as certified by the attending physician of the mother, and when care of the disabled mother is required by an immediate family member. If an employee wishes to retain all accumulated

sick and annual leave, leave without pay may be taken for the entire period. For the balance of the parental leave, the employee shall be on leave without pay.

Section 17. Military Leave

Permanent employees who are members of an Armed Forces Reserve organization or National Guard shall be granted ten workdays per year for military leave without pay. On rare occasions due to annual training being scheduled on a federal fiscal year basis, an employee may be required to attend two periods of training in one calendar year. For this purpose only, an employee shall be granted an additional ten days of military leave during the same calendar year. If such duty is required beyond this ten workdays, the employee shall be eligible to take accumulated vacation leave or be placed in a leave without pay status, and the provisions of that leave shall apply. While taking military leave, the employee's leave credits and other benefits shall continue to accrue as if the employee physically remained with the Town during this period. Employees who are eligible for military leave have all job rights specified by the Vietnam Veterans Readjustment Act.

Section 18. Reinstatement Following Military Service.

An employee called to extended active duty with the United States military forces, who does not volunteer for service beyond the period for which called, shall be reinstated with full benefits provided the employee:

- 1) Applies for reinstatement within ninety days after the release from military service; and
- 2) Is able to perform the duties of the former position or similar position; or
- 3) Is unable to perform the duties of the former position or a similar position due to disability sustained as a result of military service, but is able to perform the duties of another position in the service of the Town. In this case the employee shall be employed in such other position as will provide the nearest approximation of the seniority, status, and pay which the employee otherwise would have been provided, if available.

Section 19. Civil Leave

A Town employee called for jury duty or as a court witness for the federal or state governments, or a subdivision thereof, shall receive leave with pay for such duty during the required absence without charge to accumulated leave. The employee may keep fees and travel allowances received for jury or witness duty in addition to regular compensation; except, that employees must turn over to

the Town any witness fees or travel allowance awarded by that court for court appearances in connection with official duties. While on civil leave, benefits and leave shall accrue as though on regular duty.

ARTICLE VIII. SEPARATION AND REINSTATEMENT

Section 1. Types of Separations

All separations of employees from positions in the service of the Town shall be designated as one of the following types and shall be accomplished in the manner indicated: Resignation, reduction in force, disability, voluntary retirement, dismissal, or death.

Section 2. Resignation

An employee may resign by submitting the reasons for resignation and the effective date in writing to the immediate supervisor as far in advance as possible. In all instances, the minimum notice requirement is two weeks. Failure to provide minimum notice shall result in forfeit of payment for accumulated annual leave unless the notice is waived upon recommendation of the Department Head and approval by the Town Council.

Three consecutive days of absence without contacting the immediate supervisor or Department Head may be considered to be a voluntary resignation. Sick leave will only be approved during the final two weeks of a notice with a physician's certification or comparable documentation.

Section 3. Reduction in Force.

In the event that a reduction in force becomes necessary, consideration shall be given to the quality of each employee's performance, organizational needs, and seniority in determining those employees to be retained. Employees who are separated because of a reduction in force shall be given at least two weeks notice of the anticipated action. No permanent employee shall be separated while there are temporary or probationary employees serving in the same class in the department, unless the permanent employee is not willing to transfer to the position held by the temporary or probationary employee.

Section 4. Disability

An employee who cannot perform the required duties because of a physical or mental impairment may be separated for disability. Action may be initiated by the employee or the Town. In all cases, such action must be accompanied by medical evidence acceptable to the Town Council. The Town may require an examination, at the Town's expense, performed by a physician of the Town's choice.

Section 5. Voluntary Retirement

An employee who meets the conditions set forth under the provision of the North Carolina Local Government Employee's Retirement System may elect to retire and receive all benefits earned under the retirement plan.

Section 6. Death

Separation shall be effective as of the date of death. All compensation due shall be paid to the estate of the employee.

Section 7. Dismissal

An employee may be dismissed in accordance with the provisions and procedures of Article IX.

Section 8. Reinstatement

An employee who is separated because of reduction in force may be reinstated within one year of the date of separation, upon recommendation of the Department Head, and upon approval of the Town Council. An employee who is reinstated in this manner shall be re-credited with his or her previously accrued sick leave.

Section 9. Rehiring

An employee who resigns while in good standing may be rehired with the approval of the Town Council, and may be regarded as a new employee, subject to all of the provisions of rules and regulations of this Chapter. However, the employee shall be credited with his or her previously accrued sick leave if he or she is rehired within five years. An employee in good standing who is separated due to a reduction in force shall be given the first opportunity to be rehired in the same or a similar position.

ARTICLE IX. UNSATISFACTORY JOB PERFORMANCE AND DETRIMENTAL PERSONAL CONDUCT

Section 1. Disciplinary Action for Unsatisfactory Job Performance

A permanent employee may be placed on disciplinary suspension, demoted, or dismissed for unsatisfactory job performance, if after following the procedure outlined below, the employee's job performance is still deemed to be unsatisfactory. All cases of disciplinary suspension, demotion, or dismissal must be approved by the Town Council prior to giving final notice to the employee.

Section 2. Unsatisfactory Job Performance Defined

Unsatisfactory job performance includes any aspects of the employee's job which are not performed as required to meet the standards set by the Department Head or Town Council. Examples of unsatisfactory job performance include, but are not limited to, the following:

- 1) Demonstrated inefficiency, negligence, or incompetence in the performance of duties;
- 2) Careless, negligent or improper use of Town property or equipment;
- 3) Physical or mental incapacity to perform duties;
- 4) Discourteous treatment of the public or other employees;
- 5) Absence without approved leave;
- 6) Repeated improper use of leave privileges;
- 7) Habitual pattern of failure to report for duty at the assigned time and place;
- 9) Failure to complete work within time frames established in work plan or work standards; or
- 10) Failure to meet work standards over a period of time.

Section 3. Communication and Warning Procedures Preceding Disciplinary Action for Unsatisfactory Job Performance

When an employee's job performance is unsatisfactory, or when incidents or inappropriate actions warrant, the supervisor should meet with the employee as soon as possible in one or more counseling sessions to discuss specific performance problems. A brief summary of these counseling sessions should be noted in the employee's file by the supervisor. An employee whose job performance is unsatisfactory over a period of time should normally receive at least two warnings from the supervisor before disciplinary action resulting in dismissal is taken by the Town Council. In each case, the supervisor should record the dates of discussions with the employee, the performance deficiencies discussed, the corrective actions recommended, and the time limits set. If the employee's performance continues to be unsatisfactory, then the supervisor should use the following disciplinary steps:

- 1) A final written warning from the supervisor serving notice upon the employee that corrected performance must take place immediately in order to avoid suspension, demotion, or

dismissal.

- 2) If performance does not improve, a written recommendation should be sent to the Town Council for disciplinary action such as suspension, demotion, or dismissal.

Section 4. Disciplinary Action for Detrimental Personal Conduct

With the approval of the Town Council, an employee may be placed on disciplinary suspension, demoted, or dismissed without prior warning for causes relating to personal conduct detrimental to Town service in order to 1) avoid undue disruption of work; 2) to protect the safety of persons or property; or 3) for other serious reasons.

Section 5. Detrimental Personal Conduct Defined

Detrimental personal conduct includes behavior of such a serious detrimental nature that the functioning of the Town may be or has been impaired; the safety of persons or property may be or have been threatened; or the laws of the government may be or have been violated. Examples of detrimental personal conduct include, but are not limited to, the following:

- 1) Fraud;
- 2) Conviction of a felony or the entry of a plea of nolo contendere thereto;
- 3) Falsification of records for personal profit, to grant special privileges, or to obtain employment;
- 4) Willful misuse or gross negligence in the handling of Town funds;
- 5) Willful or wanton damage or destruction to property;
- 6) Willful or wanton acts that endanger the lives and property of others;
- 7) Possession of unauthorized firearms or other lethal weapons on the job;
- 8) Brutality in the performance of duties;
- 9) Reporting to work under the influence of alcohol or drugs or partaking of such while on duty. Prescribed medication may be taken within the limits set by a physician as long as medically necessary;
- 10) Engaging in incompatible employment or servicing a conflicting interest;

- 11) Request or acceptance of gifts in exchange for favors or influence;
- 12) Engaging in political activity prohibited by this chapter; or
- 13) Harassment of and employee(s) and/or the public on the basis of sex or any other protected class status.

Section 6. Pre-disciplinary Conference.

Before any disciplinary action is taken, whether for failure in personal conduct or failure in performance of duties, the Town Council shall provide the employee with a written notice of proposed disciplinary action, which will include the nature of the proposed action, its recommended effective date, the reasons for the action, and a date and time for a pre-disciplinary conference. At this conference, the employee may present any response to the proposed disciplinary action to the Town Council. The Town Council will consider the employee's response, if any to the proposed disciplinary action, and will, within three working days following the pre-disciplinary conference, notify the employee in writing of the final decision to take disciplinary action. The notice of the final disciplinary action shall contain a statement of the reasons for the action and the employee's appeal rights.

Section 7. Non-Disciplinary Suspension

During the investigation, hearing, or trial of an employee on any criminal charge, or during an investigation related to alleged detrimental personal conduct, or during the course of any civil action involving an employee, when suspension would, in the opinion of the Department Head, be in the best interest of the Town, the Department Head may suspend the employee for part or all of the proceedings as a non-disciplinary action. In such cases, the Town Council may:

- 1) Temporarily relieve the employee of all duties and responsibilities and place the employee on paid or unpaid leave for the duration of the suspension, or
- 2) Assign the employee new duties and responsibilities and allow the employee to receive such compensation as is in keeping with the new duties and responsibilities.

If the employee is reinstated following an unpaid suspension such employee shall not lose any benefits to which otherwise employee would have been entitled had the suspension not occurred. If the employee is to terminate following suspension, the employee shall not be eligible for any pay from the date of suspension; provided, however, all other benefits with the exception of accrued annual leave and sick leave shall be maintained during the period of suspension.

Section 8. Substance Abuse Policy

The Town may establish policies and procedures related to employee substance abuse in order to insure the safety and well-being of citizens and employees, and to comply with any state, federal, or other laws and regulations.

Section 9. Employee Appeal

An employee who has completed the initial probation may appeal the disciplinary action in accordance with the grievance procedure, except that the employee shall be required to do so within fifteen days from written notice of said disciplinary action.

ARTICLE X. GRIEVANCE PROCEDURE AND ADVERSE ACTION APPEAL

Section 1. Policy

It is the policy of the Town to provide a just procedure for the presentation, consideration, and disposition of employee grievances. The purpose of this article is to outline the procedure and to assure all employees that a response to their complaints and grievances will be prompt and fair.

Section 2. Grievance Defined

A grievance is a claim or complaint by an employee based upon an event or condition, which affects the circumstances under which an employee works, allegedly caused by misinterpretation, unfair application, or lack of established policy pertaining to employment conditions.

Section 3. Purposes of the Grievance Procedure

The purposes of the grievance procedure include, but are not limited to:

- 1) Providing employees with a procedure by which their complaints can be considered promptly, fairly, and without reprisal;
- 2) Encouraging employees to express themselves about the conditions of work which affect them as employees;
- 3) Promoting better understanding of policies, practices, and procedures which affect employees;
- 4) Increasing employees' confidence that personnel actions taken are in accordance with established, fair, and uniform policies and procedures; and
- 5) Increasing the sense of responsibility exercised by supervisors in dealing with their employees.

Section 4. Procedure

When an employee or group of employees has a grievance, the following successive steps are to be taken unless otherwise provided. The number of calendar days indicated for each step should be considered the maximum, unless otherwise provided, and every effort should be made to expedite the process. However, the time limits set forth may be extended by mutual consent. The last step initiated by an employee shall be considered to be the step at which the grievance is resolved. A decision to rescind a disciplinary suspension, demotion or dismissal must be approved by the Town Council before the decision becomes effective.

Informal Resolution. Prior to the submission of a formal grievance, the employee and supervisor should meet to discuss the problem and seek to resolve it informally. Either the employee or the supervisor may involve any employee or official as a resource to help resolve the grievance.

Step 1. If no resolution to the grievance is reached informally, the employee who wishes to pursue a grievance shall present the grievance to the appropriate supervisor in writing. The grievance must be presented within fifteen calendar days of the event or within fifteen calendar days of learning of the event or condition. The supervisor shall respond to the grievance within ten calendar days after receipt of the grievance. The supervisor should, and is encouraged to, consult with any employee of the Town in order to reach a correct, impartial, fair and equitable determination or decision concerning the grievance. Any employee consulted by the supervisor is required to cooperate to the fullest extent possible.

The response from the supervisor for each step in the formal grievance process shall be in writing and signed by the supervisor. In addition, the employee shall sign a copy to acknowledge receipt thereof. The responder at each step shall send copies of the grievance and response to the Town Clerk.

Step 2. If the grievance is not resolved to the satisfaction of the employee by the supervisor, the employee may appeal, in writing, to the appropriate Department Head within ten calendar days after receipt of the response from Step 1. The Department Head shall respond to the appeal, stating the determination of decision within ten calendar days after receipt of the appeal.

Step 3. If the grievance is not resolved to the satisfaction of the employee at the end of Step 2, the employee may appeal, in writing, to the Town Council within ten calendar days after receipt of the response from Step 2. The Town Council shall respond to the appeal, stating the determination of decision within ten calendar days after receipt of the appeal. The Town Council decision shall be the final decision. The Town Council would notify the Town Attorney of any impending legal action.

Section 5. Grievance and Adverse Action Appeal Procedure for Discrimination

Any applicant for Town employment, Town employee, or former Town employee, who has reason to believe that any employment action, including promotion, training, classification, disability, pay, disciplinary action, transfer, layoff, failure to hire, or termination of employment was based on age, sex, race, color, national origin, religion, creed, political affiliation, or non-job related handicap, has the right to appeal such action using the grievance procedure outlined in this Article if he or she desires. While such persons are encouraged to use the grievance procedure, they shall have the right to appeal directly to the Town Council. An employee or applicant should appeal an alleged act of discrimination within thirty calendar days of the alleged discriminatory action.

Section 6. Back Pay Awards

Back pay and benefits may be awarded to reinstated employees in suspension, demotion, dismissal and discrimination cases upon approval of the Town Council.

ARTICLE XI. RECORDS AND REPORTS

Section 1. Public Information

In compliance with GS 160A-168, the following information with respect to each Town employee is a matter of public record: name; age; date of original employment or appointment to the service; current position title; current salary; date and amount of the most recent increase or decrease in salary; date of the most recent promotion, demotion, transfer, suspension, separation, or other change in position classification; and the office to which the employee is currently assigned. Any person may have access to this information for the purpose of inspection, examination, and copying, during regular business hours, subject only to such rules and regulations for the safekeeping of public records as the Town may adopt.

Section 2. Access to Confidential Records

All information contained in a Town employee's personnel file, other than the information mentioned above is confidential and shall be open to inspection only in the following instances:

- 1) The employee or his/her duly authorized agent may examine all portions of his/her personnel file except letters of reference solicited prior to employment, and information concerning a medical disability, mental or physical, that a prudent physician would not divulge to the patient.

- 2) A licensed physician designated in writing by the employee may examine the employee's medical record.
- 3) A Town employee having supervisory authority over the employee may examine all material in the employee's personnel file.
- 4) By order of a court of competent jurisdiction, any person may examine all material in the employee's personnel file.
- 5) An official of an agency of the State or Federal Government, or any political subdivision of the State, may inspect any portion of a personnel file when such inspection is deemed by the Town Council to be necessary and essential to the pursuit of a proper function of the inspecting agency, but no information shall be divulged for the purpose of assisting in a criminal prosecution of the employee, or for the purpose of assisting in an investigation of the employee's tax liability. However, the official having custody of the personnel records may release the name, address, and telephone number from a personnel file for the purpose of assisting in a criminal investigation.
- 6) An employee may sign a written release to be placed in his/her personnel file that permits the record custodian to provide, either in person, by telephone, or by mail, information specified in the release to prospective employers, educational institutions, or other persons specified in the release.
- 7) The Town Council may inform any person of the employment, nonemployment, promotion, demotion, suspension or other disciplinary action, reinstatement, transfer, or termination of a Town employee, and the reasons for that action. Before releasing that information, the Town Council shall determine in writing that the release is essential to maintaining the level and quality of Town services. The written determination shall be retained in the Town Clerk's office, is a record for public inspection, and shall become a part of the employee's personnel file.

The Town Council shall establish procedures for all personnel files containing information other than the public information mentioned above whereby an employee who objects to material may seek to have the material removed from the file or may place in the file a statement relating to the material.

Section 3. Personnel Actions

The Town Council, will prescribe necessary forms and reports for all personnel actions and will retain records necessary for the proper administration of the personnel system.

Section 4. Records of Former Employees

The provisions for access to records apply to former employees as they apply to present employees.

Section 5. Remedies of Employees Objecting to Material in File

An employee who objects to material in his/her file may place a statement in the file relating to the material considered to be inaccurate or misleading. The employee may seek removal of such material in accordance with established grievance procedures.

Section 6. Penalties for Permitting Access to Confidential Records

Section 160A-168 of the General Statutes provides that any public official or employee who knowingly and willfully permits any person to have access to any confidential information contained in an employee personnel file, except as expressly authorized by the designated custodian, is guilty of a misdemeanor and upon conviction shall be fined in an amount consistent with the General Statutes.

Section 7. Examining and/or Copying Confidential Material without Authorization

Section 160A-168 of the General Statutes of North Carolina provides that any person, not specifically authorized to have access to a personnel file designated as confidential, who shall knowingly and willfully examine in its official filing place, remove or copy any portion of a confidential personnel file shall be guilty of a misdemeanor and upon conviction shall be fined consistent with the General Statutes.

Section 8. Destruction of Records Regulated

No public official may destroy, sell, loan, or otherwise dispose of any public record, except in accordance with GS 121.5, without the consent of the State Department of Cultural Resources. Whoever unlawfully removes a public record from the office where it is usually kept, or whoever, alters, defaces, mutilates or destroys it will be guilty of a misdemeanor and upon conviction will be fined in an amount provided in Chapter 132.3 of the General Statutes.