

Discussion Paper

Written by: Jon Harrah

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1. SUBJECT: An Ordinance to amend Chapter 7 Health and Sanitation In The Code Of Ordinances Of Town Of Surfside Beach by amending out dated text and enacting Article III Nuisances, Division 1 - General, Division 2 - Weeds, Grass, Brush And Debris Removal, which conforms with State Law Title 5-7-80, Division 3 - Unfit Dwellings, Division 4 - Graffiti.
2. PURPOSE: To streamline and expedite nuisances code enforcement.
3. FACTS:
 - a. Proposed ordinance defines nuisances affecting public health, offending public decency, peace and order, affecting public welfare and safety, public economy and any other act.
 - b. Proposed ordinance designed to streamline process for enforcement of nuisances violations.
 - c. To comply with State Code, the proposed ordinance requires advertisement in a newspaper of general circulation in the town at beginning of each year as a reminder to property owners of their duties to maintain their properties, which can also be published on the website, and the town's newsletter.
 - d. Provides streamlined alternatives for notifying property owners of their code violations, and for more immediate remediation for non-compliance of notices when it comes to weeds, grass, brush, and debris removal.
 - e. Provides discretion to use other applicable code sections pertaining to remediation, abatement and/or offenses.
 - f. Proposed ordinance provides public abatement with Due Process.
 - g. Provides Town Council the authority to hold a Rule to Show Cause hearing to abate or order demolition of dilapidated, blighted property.
 - h. Prevent the spread of graffiti vandalism by providing a program to expeditious remove graffiti from public and private property.
4. RECOMMENDATION: Concur to bring the proposed ordinance to the next meeting for first reading.

Chapter 7 - HEALTH AND SANITATION

ARTICLE I. - IN GENERAL

Sec. 7-1. ~~Littering and dumping prohibited.~~

- (a) ~~*Littering.* It shall be unlawful for any person to put, place or throw any trash, cigarette butts, tobacco products residue of any kind, beer cans, bottles, paper cups, garbage, shavings or other refuse upon any beach, beach access, sidewalks, public streets, public alleys, or other public places in the town, except in receptacles of the type required by the town. No person shall deposit in or sweep into any street, sidewalk, beach, beach access, or in any gutter or catch basin of the town, any paper, trash, rubbish, broken glass, tin cans, bottles, fruit or vegetables, peelings or any other refuse, ashes or waste. Such materials shall be accumulated as herein before specified and placed in receptacles. No householder or storekeeper, by himself or agent, shall cause to be swept from any house, yard, store or elsewhere, any dirt or refuse in or upon the sidewalks or public places of the town.~~
- (b) ~~*Dumping.* It shall be unlawful for any person to dump, throw, drop, leave, or in any way deposit any garbage, ashes, rubbish, paper, trash, refuse, building materials, glass bottles, glass or cans, or any other manner or form of litter on any property belonging to another on or along any street, road, highway, curb, sidewalk, or public right of way, except inside an approved bulk refuse container, Moby cart or other approved solid waste refuse receptacle issued or belonging to that person; nor shall any person throw or deposit any refuse in any stream or other body of water within the boundaries of the town.~~
- (c) ~~*Responsibility of driver.* When garbage, cigarette butts, tobacco products residue of any kind, beer cans, bottles, ashes, rubbish, paper, trash, building materials, glass or cans, or any other form or manner of litter is thrown from a vehicle, the driver shall be held responsible regardless of who throws the litter out of the vehicle.~~

Sec. 7-2. ~~Scavenging through Moby cart or other refuse receptacle.~~ It shall be unlawful for any person to rummage through, remove, or salvage items from or otherwise scavenge from or tamper with any town-owned Moby cart, solid waste refuse receptacle or the area located around such Moby carts and solid waste refuse receptacle.

Sec. 7-3. ~~Debris on lots.~~

- (a) ~~*Definition.* For purpose of this section, the term "debris" means refuse, rubbish, trash, garbage, offal, junk including, but not limited to abandoned vehicles, boats, motorized objects, appliances, furniture, spilled material, waste, litter, and/or building materials that are determined to be deleterious to good health and public sanitation.~~
- (b) ~~*Declaration of nuisance.* Debris allowed to accumulate and remain on any lot or parcel of land within the town may be deemed and declared a nuisance in the judgment of the town administrator or his designee.~~
- (c) ~~*Duty of owner, etc., to remove.* It shall be the duty of any owner, lessee, occupant, agent, or representative of the owner of any lot or parcel of land in a developed residential area within the town to remove such debris as often as may be necessary to prevent the accumulation of such debris.~~
- (d) ~~*Notice to owner, etc., to remove.* Whenever the town administrator or his designee shall find that debris has been allowed to accumulate and remain upon any lot or parcel of land in a developed residential area within the town in such a manner as to constitute a nuisance, s/he may serve written notice upon the owner, or the occupant of the premises, or upon the agent or representative of the owner of such land having control thereof to comply with the provisions of this section. It shall be sufficient notification to deliver the notice to the person to whom it is addressed or to deposit a copy of such in the United States mail, properly stamped, certified, and directed to the person to whom the notice is addressed, or to post a copy of the notice upon such premises.~~
- (e) ~~*Failure to comply with notice.* If the person to whom the notice is directed, under the provisions of the preceding subsection fails, or neglects to cause such debris to be removed from any such premises within ten (10) days after such notice has been served or deposited in the United States mail with first-class postage pre-paid, or posted upon premises, such person shall be deemed guilty of a misdemeanor and subject to the penalty provisions of this chapter.~~

- ~~(f) *Removal by town.* In the event any property is determined to be a nuisance, and twenty (20) days has elapsed after such notice has been served, deposited in the United States mail, or posted upon the premises, then the administrator or his designee or its duly authorized agent or representative may enter upon any such lands and abate such nuisance by removing the debris, and the cost of doing so may become a lien upon the property affected, or may be recovered by the town through judgment proceedings initiated in a court of competent jurisdiction.~~
- ~~(g) *Work may be done by town upon request.* Upon the written request by the owner or the person in control of any lot or parcel of land covered by this section, and the payment to the town for the services, the town may enter upon any such lands and remove the debris therefrom, the charge and cost of such service to be paid into the town treasury before the commencement of work. Failure to pay for the service described in this paragraph shall entitle the town to file a lien against the property and record such lien in the county register of deeds as a mechanics lien.~~

Sec. 7-4. - Penalties.

- (a) Any person who violates the provisions of this article shall appear before the town's municipal judge and be subject to a civil fine of not less than two hundred dollars (\$200.00), nor more than five hundred dollars (\$500.00) plus any applicable local, state or federal assessments.
- (b) Violations shall be issued on a uniform ordinance summons.
- (c) Violators shall only be cited by police officers or authorized code enforcement officials.
- (d) Violators shall appear and be subject to the jurisdiction of the town's municipal court.
- (e) Violators shall have a right to a jury trial upon proper request.
- (f) Violators shall be subject to Set-off debt process and failure to pay or appear may result in a non-resident violator compact (NRVC) notice for South Carolina licensed drivers.
- (g) Violators shall not be subject to incarceration.
- (h) Each days continuing violation shall constitute a separate and distinct offense, unless otherwise specified.
- (i) If any of the matter, litter, debris or material dumped in violation of this chapter can be identified as having last belonged to, been in the possession of, sent to, or received by, or to have been the property of any person, firm, or corporation prior to its being dumped as prohibited herein, such identification shall be presumed to be prima facie evidence that such owner dumped or caused to be dumped such matter or material in violation of this article.
- (j) In addition to the fines established by this section, repeated violations of this article by a person who owns, manages, operates, or otherwise controls a public place or place of employment may result in the suspension or revocation of any occupancy permit or business license issued to the person for the premises on which the violation occurred.
- (k) Violation of this article is hereby declared to be a public nuisance, which may be abated by the town by restraining order, preliminary and permanent injunction, or other means provided for by law, and the town may take action to recover the costs of the nuisance abatement.
- (l) Each day of a continuing violation of this article shall be considered a separate and distinct offense.

Secs. 7-5 and 7-6. - Reserved.

ARTICLE II. - SOLID WASTE

Sec. 7-7. - Definitions. For the purpose of this article, the following terms, phrases, words and their derivatives shall have the meanings given herein. When not inconsistent with the context, words used in the present tense include the future tense, words used in the plural include the singular and words in the singular include the plural. The word "shall" is always mandatory and not merely discretionary. The following definitions shall apply in the interpretation, administration and enforcement of this article:

Building material shall mean any material such as lumber, brick, block, stone, plaster, concrete, asphalt, roofing shingles, gutters and other substances accumulated as the result of repairs or additions to existing buildings or structures, construction of new buildings or structures or the demolition of existing buildings or structures.

Bulk container shall mean a metal container of not less than six (6) cubic yards capacity nor larger than eight (8) cubic yards capacity, constructed so as to be watertight but with drain plugs at the lowest point of the container to facilitate the drainage of any liquids that might accumulate in the container or from cleaning the container. Bulk containers shall be designed so that they can be emptied mechanically by specially designed trucks operated by the division of sanitation, department of public works of the town.

Business trash shall mean any waste accumulation of dust, paper, cardboard, excelsior, rags or other accumulations other than garbage or household trash which are usually attendant to the operation of stores, offices and similar businesses.

Commercial establishment shall mean any retail, wholesale, motel, hotel, institutional, religious, governmental or other nonresidential establishment which may generate garbage, business trash or other refuse.

Compactor shall mean a roll-off container of thirty (30) cubic yards or more capacity having an auxiliary packing mechanism.

Garbage shall mean the waste produced by the handling, processing, preparation, cooking and consumption of animal or vegetable products used for human consumption. This definition shall include any other matter that is also subject to decomposition, decay, putrefaction or the generation of noxious or offensive gases or odors, or which before, during and after decay may serve as feeding or breeding material for animals or flies or other insects.

Hazardous refuse shall mean materials such as poisons, acids, caustics, harmful or dangerous chemicals, infected materials, offal, fecal matter, explosives, highly flammable material, and parts of the human anatomy including pathological specimens.

Household trash shall mean waste accumulation of paper, sweepings, dust, rags, bottles, cans or other waste material of any kind, other than garbage, which is attendant to residential housekeeping.

Industrial waste shall mean all waste, including solids, semisolids, sludges, and liquids created or generated by factories, processing plants or other manufacturing enterprises.

Litter shall mean garbage, refuse, waste materials or any other discarded, used or unconsumed substance which is not handled as specified herein.

Loading and unloading area shall mean any space or area used by any moving vehicle for the purpose of receiving, shipping, and transporting goods, wares, commodities and persons.

Moby cart means a rollout recycling container as defined hereafter.

Multiple residential unit shall mean any duplex, apartment, group of apartments or condominiums used for dwelling places for more than one (1) family.

Parking lot shall mean any area, paved or unpaved, the principal function of which is the parking of six (6) or more motor vehicles. This definition excludes those parking spaces on public streets.

Person shall mean any individual, firm, company, corporation or association.

Refuse shall mean solid waste accumulations consisting of garbage, household trash, yard trash and business trash as defined herein.

Refuse receptacles:

- (1) A mobile rollout refuse container shall be a plastic container of substantial construction approved by the Town of Surfside Beach, of a specification recommended by the town administrator to the town council and adopted by resolution from time to time. The mobile rollout refuse container shall have a hinged lid. Mobile rollout refuse containers shall be designed so that they can be emptied mechanically by specially designed lift devices attached to the town sanitation trucks.
- (2) A mobile rollout recycling container shall be a plastic container of substantial construction approved or issued by the Town of Surfside Beach, of a specification recommended by the town administrator to the town council and adopted by resolution from time to time. The mobile rollout recycling container shall have a hinged lid. Mobile rollout recycling containers shall be designed so that they can be emptied mechanically by specially designed lift devices attached to the town sanitation trucks. The use of mobile rollout recycling containers shall be limited to recyclable items such as newspapers, magazines, mailing

envelopes and paper, and household glass, metal and plastic bottles and containers, and such other items as the town administrator shall designate from time to time.

- (3) In this article, mobile rollout refuse containers and mobile rollout recycling containers are referred to jointly as "mobile rollout containers" whenever the context so requires.
- (4) Cardboard boxes, cartons or crates may be used only to contain other cardboard boxes, cartons or crates, and must be properly secured by tying or taping. Said cardboard boxes shall not exceed a dimension of five (5) feet by six (6) feet by three (3) feet, and shall have a volume of at least eight (8) cubic feet. Such boxes shall have a one-time use and shall be collected along with the refuse contained in them.
- (5) Two-ply Kraft paper bags may be used for yard trash and shall not weigh more than twenty-five (25) pounds when full.

Single residential unit shall mean any dwelling place occupied by one (1) family.

Small dead animals shall mean cats, dogs, small household pets and other animals of similar size.

Town shall mean the Town of Surfside Beach, South Carolina.

Tree and shrubbery trimmings shall mean waste accumulation of tree branches, tree limbs, bushes, shrubbery, cuttings or clippings usually created as refuse in the trimming or cutting of trees, shrubs or bushes. Parts of trees including stumps, providing that such parts of trees or stumps do not weigh more than fifty (50) pounds, shall be included in this definition.

Yard trash shall mean grass clippings, leaves, twigs or the combination of these that are usually associated with yard or lawn maintenance activity. This type of refuse shall be containerized as provided in this article. Exceptions shall be only as provided in this article.

Sec. 7-8. - Administration. The administration of the provisions of this article shall be the duty and responsibility of the town administrator or his designee.

Sec. 7-9. - Responsibility for compliance. The owners or agents, tenants or lessees, jointly or separately, of all residential units and commercial establishments shall be responsible for compliance with this article.

Sec. 7-10. - Notice of violation or nonconformity. Any notice of violation of this article or nonconformity with this article shall be in writing. Written notice of the violation shall be delivered to the violator or, in lieu of hand delivery, shall be sent to the violator via certified mail. Copies of all notices of violation shall be kept and maintained by the town administrator or his designee.

Sec. 7-11. - Violation; penalty. Any person continuing to violate any provision or requirement of any section or subsection of this article after notice of violation has been issued to him, or any person willfully failing, refusing or neglecting to comply with any such provision or requirement, shall, in addition to any other remedy, be issued a citation in which a possible penalty of two hundred dollars (\$200.00) may be assessed for each offense, with each and every day of violation being a distinct and separate offense. Upon failure to pay said penalty, a civil action may be instituted to enforce collection of the same.

DIVISION 2. - RATES AND CHARGES

Sec. 7-12. - Service charges.

- (a) *Mobile container service.* Mobile refuse container service shall be charged at the rate of eighteen dollars and 75 cents (\$18.75) per month per cart for all customers serviced by the town.
- (b) *Roll-out curb service.*
 - (1) *Summer roll-out curb service.* Mandatory rollout curb service shall be in effect for transient rental properties, i.e., rentals less than thirty (30) days, which are deemed commercial operations, located within the R-3 and C-3 zoning districts, from the second Saturday in May through the first Saturday following Labor Day at the rate of seventy-six dollars and twenty-five cents (\$76.25) per month per cart. This charge is broken down as follows: eighteen dollars and seventy-five cents (\$18.75) × three (3) times per week

service = fifty-six dollars and twenty-five cents (\$56.25); plus twenty dollars (\$20.00) summer service charge.

- (2) Winter roll out curb service of twelve dollars (\$12.00) per month shall be optional for the total R-3 district and shall be mandatory for the total C-3 district.

Persons or properties who want to opt out of the winter roll out curb service in the R-3 district shall notify the Town of Surfside Beach Public Works Department. This notification shall be made each and every year that a person or property want to opt out of the winter roll out curb service to the Surfside Beach Public Works Department.

Failure to notify the Surfside Beach Public Works Department shall result in that person or property in the R-3 district being charged a winter roll out service of twelve dollars (\$12.00) per month.

If a cart for a person or property that has opted out of the winter roll out services is rolled out to the street and the person or property fails to remove the cart from the street, or if waste or garbage becomes a health or safety hazard, the Surfside Beach Public Works Department can reinstate the winter roll out service fee of twelve dollars (\$12.00) without notifying the person or property who chose to opt out, this action shall be at the discretion of the public works director or his designee.

Winter rates shall be a price of thirty dollars and seventy-five cents (\$30.75), broken down at eighteen dollars and seventy-five cents (\$18.75) per month plus a twelve dollars (\$12.00) winter roll out curb service fee from the second Wednesday after Labor Day until the second Wednesday in May at the rate of twelve dollars (\$12.00) per month per cart for the roll out curb service for transient rental properties, i.e., rentals less than thirty (30) days, for properties in the C-3 and R-3 districts."

Exception: Year-round resident owners of multi-unit homes are exempt from summer roll-out curb service for rental units that are attached to their primary residence, provided that Moby carts for the rental units located on the property are curbside at the appointed times. Should said resident owner fail to place Moby carts curbside at the appointed time, the town reserves the right to require the owner to participate in summer roll-out service as set forth herein.

- (c) *Exemption from rollout curb service.* Owners of noncommercial properties in the R-3 and C-3 zoning districts must provide written notification to the Town of Surfside Beach of either permanent residency or non-rental status. This notification must be made each year to the town. Acceptable forms of notification shall include a valid South Carolina driver's license with address of property within town limits to establish residency, a copy of a current lease for a rental property within town limits, or a signed notification of noncommercial use.
- (d) *Bulk containers service.* Bulk container service shall be charged at the rate of twenty-six dollars and twenty-five cents (\$26.25) per container per pickup for 6-yard containers and thirty-one dollars and seventy-five cents (\$31.75) per container per pickup for 8-yard containers.

Sec. 7-13. - Payments, late payment penalty. Effective January 1, 2002, sanitation services shall be billed by GSWSA on the monthly water and sewer bill as a separate item. Town sanitation will be billed to the water meter customer unless a hardship is determined in the town's sole discretion, in which case the sanitation service will be billed to another customer or address.

Effective January 1, 2002, and as long as an agreement is effective, all sanitation service charges will be paid to GSWSA. Penalties for nonpayment will be at the current rate charged by GSWSA for late payments. Late fees shall be credited to GSWSA as payment for its additional collection services. If a customer should become delinquent in the payment of sanitation service charges, GSWSA has the authority to discontinue water services until payment is made in full.

Sec. 7-14. - Applicability. Service charges for complete sanitation services shall be applied monthly to every single or multiple residential unit and every commercial establishment located within the town. The service is available

to all units and establishments within the town; therefore, the appropriate service charge will be applied whether or not the required refuse receptacles are utilized by the unit or establishment.

DIVISION 3. - DISPOSAL AND COLLECTION

Sec. 7-15. - Unsightly, offensive or dangerous materials. It shall be unlawful for any person to cause or allow unsightly litter, material causing foul or offensive odors, or potentially dangerous materials to remain on or emanate from any property under his control, or to discard, abandon, or cause the same on any public or private property within the corporate limits of the town.

Sec. 7-16. - Dumping on open lots. No garbage, refuse, abandoned junk or other offensive material shall be dumped, thrown or allowed to remain on any lot or space within the town limits.

Sec. 7-17. - Scattering refuse.

- (a) It shall be a violation of this article for any person to:
 - (1) Scatter refuse or litter on any public or private street, area or place;
 - (2) Cast, throw, place, sweep or deposit anywhere within the town any refuse or trash in such a manner that it may be carried or deposited by the elements upon or in any street, sidewalk, alley, storm drain or other public place or into any occupied or unoccupied premises within the town; or
 - (3) Throw or deposit any refuse, trash or debris in any stream or body of water.
- (b) It shall be a violation of this article for any vehicle transporting loose materials within the town to transport the same without suitable covers.

~~Sec. 7-18. - Property maintenance.~~

- ~~(a) All owners or occupants, jointly or separately, of property shall maintain their property in a clean and litter-free manner, including adjacent sidewalks, grass strips, one-half of alleys, curbs, gutters, and rights-of-way to the edge of the surface of the vehicular travelway of any public street.~~
- ~~(b) Planting grass and/or laying sod on town rights-of-way is allowed. Landscaping of and/or planting of shrubbery, trees, plant beds on the town rights-of-way is prohibited.~~

Sec. 7-19. - Authorized collectors. Only the town or its authorized representative is permitted to collect garbage, household trash, etc., within the town.

Sec. 7-20. - Vehicles used for collection. All collectors or refuse haulers or handlers operating within the town shall use a commercially manufactured truck body provided with a tightly fitting cover so operated as to prevent offensive odors escaping therefrom and refuse from being dropped, blown or spilled. These vehicles shall also be kept in good repair and shall be cleaned as often as necessary to prevent the body of the vehicle from becoming a breeding place for insects or a source of foul or offensive odors.

Sec. 7-21. - Tampering with containers; depositing hazardous refuse. No person or persons shall interfere with or otherwise deter the normal refuse collection process by tampering with refuse containers or their contents unless by permission of the town administrator or his designee, nor shall any person place any hazardous refuse in any collection receptacle.

Sec. 7-22. - Container specifications.

- (a) *Mobile rollout refuse containers.* Mobile rollout refuse containers shall have a volumetric capacity of not less than ninety (90) gallons and not more than one hundred (100) gallons, and shall be required at each single-

family residence. All mobile rollout refuse containers shall be approved or issued by the Town of Surfside Beach.

- (b) *Mobile rollout recycling containers.* Mobile [rollout] recycling containers shall have a weight-bearing capacity of not less than one hundred twenty-two (122) pounds, and shall be required at each single-family residence. All mobile rollout recycling containers shall be approved or issued by the Town of Surfside Beach.

Sec. 7-23. - Issuance, damage, replacement of mobile containers.

- (a) *Containers town property; responsibility for damage.* One (1) mobile rollout refuse container and one (1) mobile rollout recycling container shall be issued to each residential unit in the town. The sanitation foreman may add as many additional mobile containers as is necessary to maintain a clean, neat, and sanitary premises, not to exceed five (5) mobile containers of all types per residential unit. All mobile containers shall become and remain the property of the town for use of the residential units to which they are issued. Residents who damage mobile containers issued to them shall pay for repairing the container or purchase replacement containers from the town at the current replacement value. Containers that are damaged through normal use as a result of being emptied by the town will be repaired at the town's expense. Collection will be suspended at any location at which one (1) or more mobile container is missing or at which one (1) or more mobile container is damaged to such an extent as to interfere with normal collection methods.
- (b) *Collectors to exercise reasonable care.* Collectors for the town shall exercise reasonable care in the handling of mobile containers and shall not willfully break, deface or injure same.

Sec. 7-24. - Removal of existing garbage racks. Any person having garbage racks constructed of wood or metal will be required to remove such rack within sixty (60) days after the effective date of this article. Any person having a freestanding garbage rack made of masonry, such as block, brick or concrete, will not be required to remove such rack. Any person having a masonry garbage rack, such as block, brick or concrete, which is a part of a permanent building or wall will not be required to remove same. It is the intent of this article that all garbage racks be removed where practical. Mobile refuse containers shall not be enclosed in garbage racks.

Sec. 7-25. - Frequency of service; number and type of containers.

- (a) Mobile containers shall be serviced once weekly. Backdoor service is available on a once per week basis, subject to the approval of the town administrator or his designee, who may require a doctor's certificate for those persons who are unable to roll their mobile container to the curb.
- (b) All persons, firms or corporations who generate more refuse than can be serviced by five (5) mobile containers once weekly, and desiring service by the town, shall no longer receive mobile container service, but shall be required to furnish a bulk container of the type approved by the town administrator, provided that such container can be installed and serviced. Such containers shall not be serviced more than once per day but must be serviced at least once per week if refuse results from the preparation or disposal of products used for human consumption. Suggested distribution of containers shall follow, as closely as possible, to the following schedule:
 - (1) *Residential home or complex; one (1) to five (5) units:* One (1) mobile container per unit. The sanitation foreman may add as many additional mobile containers as is necessary to maintain a clean, neat, and sanitary premises, not to exceed five (5) mobile containers per residential unit.
 - (2) *Residential complex:*
 - a. Six (6) to fifteen (15) units—Minimum one (1) six-yard dumpster.
 - b. Sixteen (16) to twenty-five (25) units—Minimum one (1) eight-yard dumpster or two (2) six-yard dumpsters.
 - c. Twenty-six (26) to forty (40) units—Minimum two (2) eight-yard dumpsters or three (3) six-yard dumpsters.
 - d. Forty-one (41) to sixty (60) units—Minimum three (3) eight-yard dumpsters.
 - e. Sixty-one (61) units or more—Minimum one (1) thirty-yard compactor.

- (3) *Trailer parks; mobile home parks.* Six- or eight-yard dumpster to be located at entrance of park; or, at the request of the park owner, mobile totes will be provided for each mobile home, provided speed bumps are removed and adequate turnaround space is available.
- (c) The town administrator or his designee is authorized to determine when a bulk container is unserviceable and may discontinue service for same.
- (d) *Summer mobile cart service.* Mobile refuse containers shall be serviced three (3) times weekly beginning the second Saturday in May and continuing through first Saturday following Labor Day for transient rental property, i.e., rental less than thirty (30) days, which are hereby deemed commercial operations, located within the R-3 and C-3 zoning districts.
- (e) *Winter mobile cart service .* Mobile refuse containers shall be serviced once weekly beginning the first Wednesday after Labor Day until the second Wednesday in May for the transient rental property, i.e., rental less than thirty (30) days, for properties along the side and touching Ocean Boulevard, Seaside Drive, Yaupon Drive, and Dogwood Drive from 3rd Avenue North to 3rd Avenue South, which are hereby deemed commercial operations.
- (f) The town reserves the right to add additional mobile carts and require rollout service to properties located in the R-3 and C-3 commercial districts to insure adequate carts are on-site to properly store refuse, and that collection is managed appropriately throughout the year. Any associated payment for extra carts and/or rollout service assigned by the town shall be the responsibility of the customer.

Sec. 7-26. - Collection procedures—Residential. Garbage and household trash accumulated at residences shall be collected at curbside or at the edge of the vehicular travel-way on a schedule determined by the town administrator or his designee. Such collections shall be limited to town-issued mobile containers as defined herein and placement to be as follows; all garbage and household trash must be placed in the town-issued mobile containers, mobile containers are to be placed as close to the road or vehicular travel-way as possible, bags and/or garbage placed adjacent to or outside the mobile containers will not be picked up, and mobile containers that are loaded so that the top cannot close will not be serviced. Additional mobile containers are available to residents for an additional monthly fee. Recyclable waste, oversized household trash, yard trash and tree or shrubbery trimmings shall be collected on a separate schedule determined by the administrator, at each resident's curbside, as specified in this article. The provisions of this section do not apply to undeveloped property.

Sec. 7-27. - Same—Bulk containers; bulk container maintenance. Any person or establishment that furnishes and maintains a bulk container suitable for handling by town equipment will be serviced by the town as stated herein; provided that said container shall be of sufficient size, as specified and approved by the town administrator or his designee, for collection. Doors shall be kept closed at all times that the bulk container is not being filled or emptied. Bulk containers shall at all times be maintained in a safe, serviceable and sanitary condition as directed by the administrator. Notice shall be given by the administrator of any bulk container not meeting the requirements of this article. If, within thirty (30) days, the unit is not in compliance, town service of this unit may be suspended. Bulk containers shall at all times be kept in a place easily and safely accessible to town equipment even during periods of inclement weather such as snow and ice. Every person who shall engage in the leasing, renting or supplying, other than absolute sale, of bulk containers and portable packing units to persons to whom this chapter applies shall operate and maintain facilities and equipment for servicing, cleaning, repairing and painting such containers and units and for otherwise maintaining such units in a safe, serviceable and sanitary condition as required by this article. Persons or establishments utilizing bulk containers shall be responsible for preparing said containers for servicing. No service shall be given to those persons or establishments permitting objects, obstructions or vehicles to hinder in any way the servicing of the container. The immediate cleaning up of spilled refuse in the area of the container shall be the responsibility of the property owner or occupant utilizing the container. Service shall be discontinued to persons or establishments failing to locate or maintain containers in accordance with the requirements of this article. The town shall not afford both mobile refuse container service and bulk container service to the same persons or establishments. In those cases that the administrator directs

the change from mobile refuse receptacles to bulk containerization, compliance shall be within thirty (30) days or service may be discontinued. Any cause for discontinuation of service shall also constitute a violation of this article.

Sec. 7-28. - Same—Specific wastes.

- (a) *Industrial waste.* The collection and disposal of industrial waste shall be the responsibility of the operator of the factory, plant or enterprise creating or causing the same.
- (b) *Hazardous refuse.* No hazardous refuse, as defined herein, shall be placed in any receptacle, container or unit used for refuse collection by the town.
- (c) *Dead animals.* Small dead animals, as defined herein, will be collect by the town on request; provided that it is during the operating hours of the landfill and the body is in a place easily accessible to the collector and is wrapped or contained in a plastic bag or other suitable container that will be collected with the body. Owners of large dead animals shall be responsible for their removal and disposal.
- (d) *Building materials.* The town shall not be responsible for the collecting, handling or disposal of building materials, as defined herein, that originate from private property preliminary to, during or subsequent to the construction of new buildings or from demolition of existing structures. Such materials or refuse shall be collected and disposed of by the property owner or the person doing the work. If such material or refuse has not been removed and disposed of by the property owner or the person doing the work, the town shall not issue a certificate of occupancy, even though other requirements for such certificate have been met. The certificate of occupancy shall be issued only when this requirement as well as any other requirements have been met.

Sec. 7-29. - Placement for collection.

- (a) Garbage collection begins at 6:00 a.m. Mobile containers which are not out when the truck passes may not be collected until the next regularly scheduled pickup date. Lid must be closed when in use.
- (b) All refuse shall be placed in town-issued mobile containers as defined is sections 7-7 and 7-22. All refuse resulting from the preparation or disposal of products used for human consumption shall be placed in plastic bags before being placed in mobile containers. A mobile container is to be placed with the handle toward the house and yellow arrows pointing toward the street. A mobile container must be placed in an accessible location at least three (3) feet away from any obstacle (vehicles, mailboxes, utility poles, trees, etc.) and away from any low-hanging utility lines or tree branches. All leaves must be bagged. Bundled limbs shall not exceed four (4) feet in length. Any receptacles placed at the curb next to the approved mobile containers will not be serviced as per section 7-26. No stumps, logs or other materials or tree limbs placed by landscape or tree service contractors or workmen shall be hauled by the town.

Sec. 7-30. - Storage and placement of material prior to collection.

- (a) *Permitted locations; junk; appliances.* All accumulations of refuse and trash shall be stored or placed for collection in accordance with the following provisions:
 - (1) *Public streets.* No refuse, trash, yard trash, leaves, tree and shrubbery trimmings, refuse receptacle or bulk container shall be placed within the vehicular travel way or gutter of any street.
 - (2) *Public sidewalks.* Refuse, trash, yard trash, leaves, or tree and shrubbery trimmings contained in approved refuse receptacles may be placed on the sidewalk on the day of collection so long as they do not unreasonably interfere with pedestrian traffic.
 - (3) *Public alleys.* Refuse contained in approved refuse receptacles may be placed in a public alley on the day of collection so long as it does not unreasonably interfere with vehicular or pedestrian traffic.
 - (4) *Blocking storm drains; gutters.* No person shall place any refuse, trash refuse receptacle or container on, upon or over any storm drain opening or so close thereto as to be drawn by the elements into the same. No person shall place any refuse, trash, refuse receptacle or container in a gutter, thereby causing blockage of stormwater flows or possible blockage of storm drainage systems if carried by the elements into the same.

- (5) *Unauthorized accumulations prohibited.* Any unauthorized accumulation of refuse or trash on any lot, property, premise, public street, sidewalk, alley or other public or private place is prohibited. Failure or the owner or occupant, after notice of violation, to remove and correct any such unauthorized accumulation of refuse or trash shall be deemed a violation of this article.
- (6) *Junk.* It shall be a violation of this article for any person to place or store outside any building or dwelling, except as provided herein, any dilapidated furniture, appliances, vehicles, machinery, equipment, building materials or any other item which is either in a wholly or partially rusted, wrecked, junked, dismantled or inoperative condition and which is not completely enclosed within a building or dwelling. This shall not apply to authorized junk dealers or authorized establishments engaged in the business of repairing, rebuilding, reconditioning or salvage, who are required to provide a six-foot screened enclosure.
- (7) *Appliances.* It shall be unlawful and a violation of this article for any person to leave outside any building or dwelling, in a place accessible to children, any appliance, refrigerator, or container of any kind which has an airtight door or cover with a snaplock or latch without first removing the lock or latch, door or cover from the appliance, refrigerator or container.
- (b) *Mobile containers at multifamily residential complexes and in commercial districts.* At townhouses, condominiums, apartments, etc., and in commercial districts, where it is deemed impractical to move mobile rollout containers to back yards, a screened area will be required. The location and design must be approved by the town administrator or his designee.
- (c) *Using property, receptacles of other persons.* It shall be unlawful and a violation of this article for any person to store or place refuse, yard trash, leaves, tree and shrubbery trimmings, a refuse receptacle, or bulk container, on or abutting at the front of property of another person, or to store or place refuse, yard trash, leaves, tree and shrubbery trimmings in a refuse receptacle or bulk container of another person.

Sec. 7-31. - Responsibility for placement.

- (a) On the day of collection, unless otherwise provided by this article, it shall be the responsibility of the owner or occupant to place refuse receptacles at the curbside or at the edge of the vehicular travelway as specified in subsections 7-30(a)(1) through (3). No refuse receptacle or container, unless otherwise provided in this article, shall be stored in front of a building or dwelling, except on the day of collection.
- (b) It shall be the responsibility of each householder or storekeeper to place their refuse for collection at the proper time and in the proper manner as provided for in this article.

Sec. 7-32. - Removal of containers following collection. Mobile refuse containers returned to curbside after collection shall be removed by 11:00 p.m. on the day of collection, unless otherwise provided in this article. The property owner or occupant shall be responsible for such removal. Failure to remove said receptacle shall constitute a violation of this article.

Sec. 7-33. - Special service. Hardship cases, such as age, disability or infirmity, when confirmed by the town administrator or his designee, may be afforded the special service of refuse container carryout and carryback upon application as stated in subsection 7-25(a).

Sec. 7-34. - Commercial establishments.

- (a) All commercial establishments shall store their refuse in refuse receptacles or containers as specified herein so as to eliminate the dispersal of such refuse by the elements and the resulting unsightly litter in and about their establishments. Approved methods of containerization include mobile refuse containers and bulk containers. All refuse resulting from the preparation or disposal of products used for human consumption shall be placed in plastic bags before being placed in a container for disposal. The number and type of containers and frequency of pickup necessary for each commercial establishment shall be as required to maintain clean, neat and sanitary premises. Spillage and overflow shall be immediately cleaned up by the establishment when and as it occurs.

- (b) When a commercial establishment generates so much refuse that it requires five (5) or more mobile refuse containers per collection, said establishment shall be required to provide a bulk container or detachable container as described herein.
- (c) It shall be the responsibility of the sanitation division, during the plan review process and prior to the issuance of a building permit for new commercial buildings, extensive renovations to existing commercial buildings, or changes of ownership to coordinate with the building and zoning department to review the method and location of refuse storage for collection for the building. Such reviews shall include the input and comments of both the sanitation division, public works department and the building and zoning department. If any problems are foreseen during this review, they shall be called to the attention of the owner or designer for correction.

Sec. 7-35. - Loading and unloading areas. All loading and unloading areas shall, at the direction of the town administrator or his designee, be provided with refuse receptacles or containers for loose papers, debris, packaging materials and other business trash. The number and type of such containers necessary for each area shall be as required to maintain clean, neat and litter-free premises and as directed by director of public works or his designee.

Sec. 7-36. - Construction, demolition sites. All construction and demolition contractors shall provide on-site refuse receptacles or bulk containers for loose debris, paper, waste building materials, scrap building materials and other trash produced by those working on the site. All such materials shall be containerized by the end of each workday and the site shall be kept in a reasonably clean and litter-free condition. The number and type of refuse receptacles or bulk containers shall be determined by the town administrator or his designee, based on the size of the project. Dirt, mud, construction materials or other debris deposited upon any public or private property as a result of construction or demolition activities shall be immediately removed by the contractor and in all cases by the end of the workday.

Sec. 7-37. - Special disposal problems.

- (a) *Contagious disease refuse.* The removal of clothing and bedding from places where highly infectious diseases have prevailed shall be performed under the supervision and direction of the Horry County Health Department. Such refuse shall not be placed in containers for town collection and disposal.
- (b) *Hypodermic instruments.* No person shall dispose of or discard any hypodermic needle or any instrument or device for making hypodermic injections before first breaking, disassembling, destroying or otherwise rendering inoperable and incapable of reuse such hypodermic syringe, needle, instrument or device, and without safeguarding the disposal thereof by wrapping or securing the same in a suitable manner so as to avoid the possibility of causing injury to collection personnel.
- (c) *Ashes.* Ashes that are to be collected by the town shall have been wetted and shall be cool to the touch prior to collection. Ashes shall be placed in a watertight container, such as a plastic bag, can, etc. Refuse receptacles containing ashes shall not weigh more than fifty (50) pounds.
- (d) *Cardboard boxes and cartons.* Prior to being deposited as refuse for collection in approved receptacles or containers as defined herein, all cardboard boxes, cartons or crates shall be completely collapsed, or in lieu of being placed in receptacles or containers, such cardboard boxes, cartons or crates shall be completely collapsed and securely bundled. Each bundle shall not weigh more than fifty (50) pounds.
- (e) *Rubber tires.* The town shall not collect any un-split rubber tire or any rubber tire that has not otherwise been reduced from its original shape or conformation by a generally accepted and approved manner or method. It shall be a violation of this article for any person to place any un-split rubber tire or any rubber tire that has not otherwise been reduced from its original shape or conformation by a generally accepted and approved manner or method in any refuse receptacle or container from which refuse is collected by the town.
- (f) *Food processing waste.* All fish (seafood) processing waste, surplus entrails, heads, tails, scales, shells, bones, etc., must be packaged in a watertight container, such as a plastic bag, can, etc.

- (g) *Electronic waste (E-scrap)*. Effective July 1, 2011 - residents may not knowingly place or discard a computer, computer monitor, printer or television, or component of same, in any waste stream that is to be disposed of in a solid waste landfill. The town will not collect these items with regular refuse after this date.

Secs. 7-38—7-40. - Reserved.

ARTICLE III. - NUISANCES

DIVISION 1. - GENERALLY

Sec. 7-41. - Definitions. As used in this article, the following terms shall have the following meanings, unless the context clearly indicates that a different meaning is intended:

Abate means repair, replace, remove, destroy or otherwise remedy the condition in question by such means, in such time, in such a manner and to such an extent as the enforcement officer or hearing committee shall determine to be in the best interest of the public, taking into account all facts and circumstances.

Business days means Monday through Friday.

Enforcement officer means a law enforcement officer, code enforcement official or Town employee or official as may be designated in writing by the Town Administrator or chief of police to enforce the provisions of this division.

Graffiti means any unauthorized inscription, word, figure, painting or other defacement that is written, marked, etched, scratched, sprayed, drawn, painted, or engraved on or otherwise affixed to any surface of public or private property by any graffiti implement, to the extent that the graffiti was not authorized in advance by the owner or occupant of the property, or, despite advance authorization.

Hearing officer means a citizen appointed by the Administrator, deemed to have the requisite training, education, experience or civic activity to justly and fairly hear and decide on matters of public nuisance.

Industrial wastes means all liquid and water-borne solid, liquid or gaseous wastes resulting from industrial manufacturing, food processing operation, processing any natural resource or mixture of such wastes with water or domestic sewage.

Person means any landlord, property owner, manager, lessee, tenant, or individual, group, association, corporation, partnership, trust, estate or receiver having the capacity to sue or be sued.

Premises means any building, lot parcel, real estate, or land or portion of land whether improved or unimproved, occupied or unoccupied, including adjacent parking.

Public nuisance means as determined by an enforcement officer based upon the facts and circumstances found after reasonable inquiry, investigation or upon citizen report, those conditions or events which constitute an unreasonable interference with rights of the public in general, and where, in a public place, or where the public congregates, or where the public is likely to come within the range of influence through the senses, a person unlawfully does an act or omits to perform a duty, which act or omission does any one or more of the following:

- (1) Annoys, injures, subverts or endangers the public's order, economy, resources, safety, health, welfare, comfort, repose or offends public decency;
- (2) Unlawfully interferes with, obstructs or tends to obstruct, or renders dangerous for passage any waters or public places or way;

Structure means anything constructed, built or planted upon, any edifice or building of any kind, or any piece of work artificially built up or composed of parts joined together in some definite manner, which structure requires location on the ground or is attached to something having a location on the ground.

Sec. 7-42. - Nuisances.

(a) *Nuisances affecting public health.* The following are hereby declared to be nuisances affecting public health:

- (1) All decayed or unwholesome food products or food waste not properly contained either inside or outside for more than 24 hours before pickup;

- (2) All pools of stagnant water or vessels holding stagnant water in which mosquitoes can breed, excluding required retention ponds;
 - (3) Swimming pools which either (i) are empty, excluding such pools that are completely and effectively covered, or (ii) contain liquids and/or debris which are not bacteriologically, chemically or physically safe for swimming or other intended uses;
 - (4) Animal carcasses not buried or disposed of in a lawful and sanitary manner within 24 hours after its death;
 - (5) Leaking septic tanks or sewer lines or other sewage existing in an unsanitary manner;
 - (6) Deliberate placement or discharge of into any part of a stormwater drainage system of: untreated sewage, sewage solids, process wastewater, refuse, explosive or combustible liquid, solid or gas, oils, greases, industrial water or other polluted water except where a federal, state or local permit for connections, discharge or disposal has been obtained prior to the event; or waters or wastes containing toxic or poisonous wastes to constitute a hazard to humans, plants or animals or to cause corrosion, discoloration or deposition on real or personal property; or any solid or viscous substances in such quantities or of such size capable of causing obstruction to the flow in the stormwater drainage system or other interference with the proper operation of the drainage system of the Town.
 - (7) Motorcycle rallies, regardless of the intervals, the passage of time, or the length of time between the events, that result in the pervasive and continual clamor and noise, litter, and congestion of large number of persons and vehicles resulting from a promotion, for individuals to attend rallies by event promoter identifying or claiming Surfside Beach as the gathering or focal location and the event requires a heightened law enforcement response or a heightened intensity of law enforcement response, or a public resource response of such disproportionate expenditure when compared to normal tourism. Those event promoters that sponsor such public nuisances shall be responsible for the public costs arising therefrom, as set forth in this article.
- (b) Nuisances offending public decency, peace and order. The following are hereby declared to be public nuisances affecting public decency, peace and order, whether such violations are of an intermittent, cyclical, continual, reoccurring or constant nature; and when the responsible party generates, enables, or contributes to the occurrence of the unlawful behavior by an absence or failure of property management policy or practice, absence or failure of control over the property, absence or failure of supervision of guests or invitees, absence or failure of security measures.
- (1) Any structure, whether commercial or residential, where gambling devices, slot machines, punch boards and other such contrivances of similar character involving any elements of chance as a consideration or any type of gambling, bookmaking, wagering or betting is carried on, and all gambling equipment, except where such specific form of gambling is permitted by applicable law;
 - (2) Any structure, whether commercial or residential, operated as a bawdy house, house of assignation, place of prostitution or used and maintained for the commercial or criminal purposes of unlawful sexual activity in violation of federal, state or local law;
 - (4) Any structure, whether commercial or residential, where acts of sale, possession or distribution of controlled substances occur in violation of federal, state and local law;
 - (5) Any structure, whether a commercial operation or a residential use, where violations against the Town code or state laws occur with disproportionate frequency or intensity that they require an excessive public safety response cost. Excessive public safety response means either the reasonable deployment of four or more law enforcement officers to the scene at any one time, or the reoccurring need for public safety or code personnel or emergency at the location when compared to the frequency or intensity of law or regulation enforcement required at other similarly situated structures.
 - (6) Any overgrown, uninhabited, undeveloped or vacant land, lot or property not licensed or zoned for camping that has been identified by law enforcement as an area used by persons other than the owner as a area to inhabit or camp, or any overgrown, uninhabited, undeveloped or vacant land, lot or property used by persons as an area to flee or evade police upon approach, or used to avoid detection or investigation by law enforcement without regard to the time of day or night regarding such conduct, as identified by a citizen or police reported incident level of more than two times in a 60-day period.

- (c) *Nuisances affecting public welfare and safety.* The following are hereby declared to be public nuisances affecting public welfare and safety:
- (1) All trees, hedges, signs or other obstructions, or any portion of the same, so located on private property which prevent persons driving vehicles approaching an intersection of streets from having a clear safe view of traffic approaching such intersection, pursuant to Code of Ordinances,
 - (2) All trees, hedges, signs or other obstructions, or any portion of the same so located on private property which prevents the clear and unobstructed view of a fire hydrant, fire department connection or other fire protection device, or directional or identification signage pertaining to the above, from a public way;
 - (3) Any obstruction, erosion or depression which poses a potential hazard to vehicles or pedestrians using a right-of-way on private property where the public is invited or permitted to traverse for commercial purposes;
 - (4) All wires, strings, ropes or lighting contrivances over streets, alley or public grounds which are not authorized or permitted by the Town or which are strung so that the lowest portion is less than 13½ feet above the surface of the ground;
 - (5) All explosives, flammable liquids and other dangerous substances stored in any manner, in any amount other than that manner or amount permitted by law;
 - (6) All hanging signs, awnings, canopies and other similar structures over the streets or sidewalks so situated or constructed as to endanger public safety or to be contrary to ordinance;
 - (7) Any motor vehicle that is unregistered, inoperable, derelict or abandoned on any highway or right-of-way, or other public or private property, unless such vehicle is stored inside of a building or protected from the elements by way of a complete covering;
 - (8) Any abandoned or discarded icebox, refrigerator, ice chest or other type of air-tight container whose door, lid or other closing device has not been removed.
 - (9) Any tents, trailers, structures, cooking devices, appliance, chairs, tables, coolers or other objects used in impromptu, unpermitted or unmanaged outdoor events or gatherings in a required parking area or landscaped area of a business license holder, or the site of any short-term residential rental, unless that such outdoor events that are specifically permitted through legislative or administrative action, or sponsored by the business license holder in compliance with regulations governing such outdoor events.
- (d) *Nuisances affecting public economy.* The following are hereby declared to be public nuisances affecting the public economy:
- (1) All structures bearing graffiti, to be abated by applicable law;
 - (2) All structures in violation of the International Property Maintenance Code, as adopted and all structures, for a period of one month, which remain unoccupied and boarded up, and whose exterior finish is destroyed, decayed, dilapidated or deteriorated in violation of the International Property Maintenance Code, as adopted, provided however, unoccupied structures shall not be considered a public nuisance affecting public economy if the building exterior is weather tight and maintained for purposes of appearance and security according to the International Property Maintenance Code, and the material which secures the building is compatible with the exterior in appearance, color, texture and design, and the premises are kept in compliance with all applicable building, property maintenance, zoning, and land use laws;
 - (3) All businesses or commercial enterprises operating without a valid, current and displayed business license;
 - (4) All premises providing habitation that are found not in compliance with applicable licensing, zoning, land use laws and adopted codes;
 - (5) All business with an outstanding arrearage of applicable Town liens, taxes, fees, charges or assessments;
 - (6) All premises which originate false fire or burglar alarms, as defined by applicable law.
 - (7) Regardless of the intervals, the passage of time, or the length of time between events, unpermitted special events or rallies of any nature or sort, promoting, inviting or claiming the Town of Surfside Beach as the gathering or focal location, and promoting, inviting and encouraging participants and vehicles to congregate in such numbers and such length of time, that it results to the detriment of the public health, safety and welfare of the citizens in terms of clamor and noise, traffic congestion and unsafety, and litter,

or requires a law enforcement response and a heightened intensity of law enforcement response, or a public resource response of such disproportionate expenditure when compared to normal tourism; those persons or legal entities of any status that enable, sponsor or advertise such unpermitted special events and rallies to be held within the Town limits shall be responsible for the costs, as set forth in this article, arising therefrom for holding an unpermitted special event in the Town limits.

Sec. 7-43. - Other nuisances. The enumeration of specific nuisances in this division shall not be deemed to make lawful any other act or condition declared to be a nuisance by any other Town ordinance, state law, federal law, or court decision.

Sec. 7-44. - Reporting emergencies and emergency action. Any person who directly observes a nuisance posing an emergency threat to the public health or safety or to the environment shall immediately report the incident to the Surfside Beach Police Communications Center and shall provide any information requested by the law enforcement officer needed to investigate or abate the potential emergency. If any nuisance exists in such a condition so menacing to the public health, peace or safety that it is necessary that it be summarily abated, the Town enforcement officer, after consultation with and concurrence from the Town administrator may proceed to abate the nuisance without a hearing.

Sec. 7-45. - Nuisances prohibited and unlawful. No person shall create any public nuisance in the Town, and no person shall by inaction permit a public nuisance to occur or continue on any real property under such person's control, whether by recorded or unrecorded instrument or permission. Nor shall any person permit a public nuisance to occur involving any personal property under such person's control.

Sec. 7-46. - Institution of criminal process and penalty. The public nature of a public nuisance must be made by an enforcement officer or other appropriate governmental official. Enforcement of this chapter's provisions may be accomplished upon the institution of criminal process by way of uniform traffic ticket, municipal ordinance summons or warrant made only by a law enforcement officer or appropriate government official. Each day of violation constitutes a separate misdemeanor offense, subject to a fine up to \$500.00 fine and/or up to 30 days' imprisonment for each offense. In its discretion, the Town may elect to use other applicable Code sections pertaining to remediation, abatement or offenses.

Sec. 7-47. - Public abatement; notice, service.

- (a) If a person fails or refuses to discharge the duty imposed by section 7-25, the Town may concurrently serve an administrative notice to abate a public nuisance upon the owner or occupant and demand that compliance must be achieved within the time specified in the notice.
- (b) The Town shall determine the individual, firm or corporation or lien holder who, from the records in the county tax assessor's office, appears to be the titled owner or lien holder of the property and cause a written notice of public nuisance to be served on such individual, firm or corporation or lien holder by:
 - (1) Personal service as attested to by affidavit of service; or by
 - (2) Copy mailed to such owner or lien holder at such place or address by United States certified mail return receipt requested; or
 - (3) The Town shall cause a copy of the aforesaid notice to be posted at such structure, location or premises, which shall serve as notice to the public.
- (c) The notice to abate the nuisance shall inform the person of the specific nuisance with citation to this section, provide names, numbers and addresses for contact with the Town; inform them of their rights to appeal and that, upon the day after the time specified in the notice, the Town may abate the condition and assess an administrative fee and all public costs, including attorneys fees and costs as a lien against the property.

Sec. 7-48. - Appeal procedures; hearing.

- (a) *Appeal of finding of nuisance:* The responsible person, owner or occupant, or the lien holder of the property, may make a written demand to the administrator for a hearing on the question of whether a public nuisance in fact exists. The administrator shall appoint a hearing officer to hear the appeal. This appeal stays the public abatement until such time as the matter is heard and decided by the hearing officer unless an emergency abatement as authorized by the administrator is necessary to preserve public health, safety or welfare. The appeal must be received by the administrator before the time specified in the notice. The appeal may be faxed or emailed to the administrator. The written demand shall include a contact number, either phone or facsimile in order for the person to be informed of the hearing location, date and time. It shall not be a defense to the determination that a public nuisance exists that the property is boarded up or otherwise enclosed. The hearing officer may amend or modify the notice to abate the public nuisance, or when appropriate under the facts presented, extend the time for compliance by the owner to such date as the hearing officer may determine. The decision of the hearing officer is final, and shall be delivered orally to the appellant on the date of the hearing, and then, if requested, written and mailed to the address provided.
- (b) *Failure to appeal:* Failure to timely appeal constitutes a waiver of the right to appeal the existence of a public nuisance.
- (c) *Appeal of assessment:* Further, in those instances where the nuisance has been abated by the Town after the required notice of subsection 7-47(b), the owner or occupant of the property who has been served with a notice of assessment pursuant to section 7-49 of this article may make a written demand to the administrator for a hearing to review the cost of the abatement. This appeal stays the attachment of the lien until such time as the matter is heard and decided by the hearing officer. The appeal of the assessment must be received by the administrator within five business days of the appellant's receipt of the notice of assessment. The written demand shall include a contact number, either phone or facsimile in order for the person to be informed of the hearing location, date and time. In an appeal of the assessment of costs, no testimony shall be permitted on the issue of the existence of the public nuisance. The decision of the hearing officer is final, and shall be delivered orally to the appellant on the date of the hearing, and then, if requested, written and mailed to the address provided.
- (d) *Failure to appeal assessment:* Failure to timely appeal constitutes a waiver of the right to appeal the assessment of costs.
- (e) *Notice of the hearing:* By way of the contact numbers provided in the written demand, the administrator shall orally advise the owner of the location, date and time of the hearing. Notice of the hearing must be provided at least two business days prior to the hearing, excluding Town recognized holidays and weekends.
- (f) *Time and manner of hearings:* The hearings as allowed under this section shall be held as soon as practical but in any event no later than five business days after receipt of the appeal, excluding Town recognized holidays and weekends. The hearing shall not be conducted under the strict rules of evidence. The hearing shall be informally conducted by the hearing officer. The enforcement officer shall present the facts and circumstances that resulted in a conclusion that a public nuisance existed. The owner, occupant or lien holder, or their agents, representatives or attorneys shall be given the opportunity to present evidence to the hearing officer in the course of the hearing, and shall have the right of cross examination of the enforcement officer. When the nuisance has been abated by the Town and the person has appealed the assessment of the administrative fee and actual costs, the hearing officer shall have discretion to waive the administrative fee or the public cost of abating a nuisance, in whole or in part, if, in the course of the hearing reviewing the decision, the hearing officer finds that justice and equity require such waiver or that any of the following did not conform to the provisions of this article:
 - (1) The notice to remove the nuisance;
 - (2) The work performed in abating the nuisance;
 - (3) The computation of charges.

Sec. 7-49. - Liability for costs. In the event of refusal or neglect of a person to cause such nuisance to be abated in the manner and within the time provided herein, it shall be reported to the administrator. The administrator may, in a reasonable and prudent manner, direct the expenditure of public resources to abate the nuisance condition.

Fee and costs shall be established by ordinance. The cost of abatement shall include an administrative assessment, title search costs, lien filing costs and any attorney's fees and costs made necessary when the public is compelled to collect through legal process, in addition to the actual cost of labor and materials expended in public abatement. The person shall be served with a notice of assessment within seven days of the completion of the abatement. The notice of assessment shall include the administrative fee and a statement of public cost, attested to by affidavit, and shall be issued and served, as provided for in section 7-47(b), upon the person responsible for payment who shall make payment within 30 days of the date of service. Upon the expiration of the 30-day period, if the amount has not been paid in full or contested before the administrator, the administrator may cause a lien in that amount to be filed with the county clerk of court and with the finance director of the Town. The lien shall be of record in the county courthouse and the office of the finance director in the book of liens, until paid or recovered, or otherwise released. Collection of the lien by way of foreclosure may be instituted by the Town attorney on behalf of the Town.

Sec. 7-50. - Reserved.

DIVISION 2. - RANK GROWTH, YARD WASTE, DEBRIS AS PUBLIC NUISANCE; ABATEMENT

Sec. 7-51. - Definitions. The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Any and all other objectionable, unsightly or unsanitary matter of whatever nature shall apply to objects and matters not included within the meanings of the other terms used in this article, which are liable to produce or tend to produce an unhealthy, unwholesome or unsanitary condition to the premises within the general locality where the same are situated.

Blight means the physical deterioration of property that results in the reduction in value of that property, thus affecting the value of nearby property.

Debris includes material and objects that are placed outside of the house, barn or shed that is composed of litter, rubbish, trash, and any putrid, unhealthy or unwholesome part of any dead animal, or waste parts of plants, vegetables or animal matter in any quantity, and the accumulations of plant cuttings or trimmings, the remains of fallen trees, any construction materials that are unstacked and exposed to the elements, parts of vehicles or other machinery, broken furniture, furniture that is not designed to be weather proof and is exposed to the elements, large house hold appliances such as refrigerators, freezers, trash compactors, washing machines, dryers, commodes, and the like even if intended as art of some other use, accumulations of bottles, cans, glass, ashes, paper or paper products, small pieces of scrap iron, wire, metal articles, small household appliances, bric-a-brac or cement, broken concrete, broken glass, broken plaster and all such trash or abandoned material unless it is kept in approved covered bins or appropriate containers as a means of temporary retention until appropriate disposal.

Lot or parcel of real estate means, in addition to those grounds within their respective boundaries, all lots or parcels of ground lying and being adjacent thereto and extending beyond the property line of any such lot or parcel of real estate to the curb line of adjacent streets where a curb line has been, and 14 feet beyond the property line where no curb line has been established.

Rank growth/weeds means grass which has grown to more than 12 inches in height, and all other vegetation at any stage of height or maturity which is uncultivated, and has the potential to harbor, conceal or invites rodent, pests or vermin, debris, or to emit noxious odors; or constitute a fire or traffic safety hazard; or produce an unhealthy, unsightly, unwholesome, or unsanitary condition contributing to neighborhood blight.

Responsible person means record fee title owners, beneficiaries of any trust holding title to any real estate, trustees, conservators, guardians, executors, administrators, individual(s), partnership(s), firm(s) or corporation(s) having a legal or equitable interest in, owning, leasing, occupying, controlling, or possessing in any manner any lot or parcel of real property as reflected in the public records of Horry County, specifically including rights acquired by note, mortgage, lien or other publicly recorded document that provides for the right of entry to preserve an asset.

Yard waste means all trees, all shrubbery, hedge trimmings, tree limbs, branches and trimmings, plant and shrub trimmings, leaves and limbs, yard cleanings, and other similar items which are not cultivated nor cared for by persons owning or controlling the premises.

Sec. 7-52. - Imposition of civic duties.

- (a) To comply with the provisions of this article to preserve property values, prevent blight and enhance the quality of life for all citizens, all responsible persons are under an affirmative civic duty to cut or remove as often as may be necessary all rank growth, yard waste, debris and any and all other objectionable, unsightly or unsanitary matter of whatever nature from his lot or parcel of real estate and the abutting public way so no public nuisance shall exist or continue, and so that the public health, safety and welfare will not be harmed.
- (b) As to plant growth, the prohibitions set forth shall not apply to living trees, cultivated bushes, shrubs or flowers; any intentionally cultivated agricultural vegetation; any vegetation intentionally cultivated or maintained in a clearly defined and physically discrete area for landscaping, ornamental or other aesthetic purposes as a representative within a diverse planting plan, or land subject to or zoned as farming, forestry practices, timbering or wildlife management.
- (c) All responsible persons and commercial maintenance firms and landscapers are under an affirmative civic duty to place bag yard waste into containers, and to cut tree trunks and limbs to four feet or less, when yard waste removal is done by the Town. Commercial [establishments] are required to remove and/or haul from such premises promptly and dispose of in an appropriate manner.

Sec. 7-53. - Prohibited conditions and/or acts.

- (a) It shall be unlawful for any responsible person to permit or maintain rank growth, the accumulation of yard waste, debris or any and all other objectionable, unsightly or unsanitary matter of whatever nature on the lot or parcel of real estate property and the abutting public way for which they are responsible within the Town.
- (b) It shall be unlawful for any responsible person to allow or permit the existence of any tree on such lot or parcel of real estate premises when such tree is dead or damaged to such a degree that the condition poses a serious threat to that lot, or to any abutting lot or adjacent public right-of-way, and such condition is hereby declared to be a nuisance in the Town.
- (c) It is unlawful for any responsible person, owner, agent, or person in possession of any premises to refuse to allow the Town employees or contracting agents to enter upon the premises for the purpose of abating the nuisance prohibited in this article.
- (d) Each day of violations shall be a separate violation.

Sec. 7-54. - General published notice. A general notice in January of each year shall be accomplished by publication in a newspaper of general circulation within the Town, stating substantially the following: A civic duty to remove yard waste, rank growth and debris, and maintaining one's yard is property maintenance, which is required under law, and shall be done year round as needed, and that upon the first complaint, the maintenance shall be done within seven days of the complaint. Any failure to perform the duty, or upon any second violation shall result in the matter recurrent violations being declared recurrent by the Town administrator, who shall order that:

- (1) The general public notice and the initial complaint are sufficient notice to any person to keep their grounds free from rank growth, the accumulation of yard waste, debris or any and all other objectionable, unsightly or unsanitary matter of whatever nature;
- (2) The current and subsequent violations be addressed expeditiously without need of further notice except for the posting of the property by hang tag on the premises or posting the complaint on the premises; and
- (3) The work will be done at public expense, and the enhanced costs of same shall be set forth, and if incurred by the public, the costs shall be assessed against the property in the manner provided by law, and shall be as lien upon the property to be collected in the same manner as taxes.

Sec. 7-55. - Initial individual complaint; method of service; contents of complaint.

- (a) Upon finding an initial violation, the enforcement officer shall determine the responsible persons, and shall serve notice of the violation in the form of an administrative complaint on the responsible persons. The initial individual complaint shall be served by any one of the three following described methods:
 - (1) By a written notice sent by United States regular mail, postage prepaid, to the last known person owning, leasing, occupying or controlling the real estate as determined by the name on the water bill or business license, and as to the owner, the notice may be addressed to the address shown on the most recent tax bill for the real estate; or
 - (2) By a written notice personally delivered by the code officer or such other authorized Town representative to the person owning, leasing, occupying, or controlling the real estate, to be attested to by affidavit of service; or
 - (3) By posting or door tagging a written notice on the property of the person owning, leasing, occupying, or controlling the real estate upon which the violation exists.
- (b) The complaint shall state the property address, property tax map number from the county's public records, date of the inspection and shall require the responsible person to perform the abatement of the nuisance condition of rank growth, the accumulation of yard waste, debris or any and all other objectionable, unsightly or unsanitary matter of whatever nature within seven days after the notice has been mailed, served or posted on the property. The initial complaint shall provide that, upon failure to perform the duty imposed herein, the Town, or its agent, may enter the property to abate the nuisance at public expense as set forth in the ordinance. A copy of any complaint or order shall also be filed with the Clerk of Horry County and such filing of the complaint or order shall have the same force and effect as other lis pendens notices provided by law. The initial complaint shall inform that the failure to act upon the initial complaint or any subsequent violations after acting on the initial complaint shall result in the enforcement officer's completion of a title search, and petition to the manager to declare that the passage of the ordinance, the published notice and service of the first complaint are sufficient notice of the imposed civic duties and prohibited conduct, and the penalties, fees and assessments pertaining thereto, and that public abatement henceforth shall occur expeditiously, and be subject to the assessment requirements as set forth herein.

Sec. 7-56. - Unaddressed or recurrent violations; administrator's declaration. If the initial complaint is unanswered or when a second violation should occur after the initial complaint, the public officer shall petition the administrator to act as authorized by the Town council, and declare that the general public notice and the first complaint notice were sufficient, that persistent or recurring violations are likely to continue, that the current unanswered violation and any subsequent violations are subject to public abatement without need of further individual notice to the responsible person to abate other than hanging a door tag or posting the property, and that assessment of enhanced costs are appropriate. The declaration shall inform that the amount of the cost of such abatement, if borne by the public, shall be a lien against the real property upon which such cost was incurred and shall be collectible in the same manner as municipal taxes. The administrator's declaration shall be served upon the responsible person as provided in section 7-53(b). The administrator shall make a report to Town council of every declaration of persistent or recurring violations.

Sec. 7-57. - Public abatement; appeal of assessment.

- (a) When the responsible person fails or neglects to abate the public nuisance as ordered, the Town may abate the nuisance condition, and any subsequent violations as the recurring violations occur.
- (b) The Town will bid the work in conformity with the procurement code applicable to the municipality. The cost of abatement of recurring violations shall include an administrative assessment and any attorney's fees and costs incurred, in addition to the actual cost of labor and materials expended in public abatement.
- (c) In the event of the refusal or failure by a responsible person to abate as ordered, the Town employees, contracting agents, or other representatives, shall enter upon the private property during daylight hours on any day except Sunday for the sole purpose of abating the nuisance. The abatement shall be done by spraying, disking and mowing, clearing and removal unless it is determined by the building official or law enforcement that that such a procedure is impractical or will cause a breach of the peace.

- (d) After the first and any subsequent abatement, the person shall be served with a notice of assessment within seven days of the completion of the abatement. The notice of assessment shall include the administrative fee and a statement of public cost, attested to by affidavit, and shall be issued and served in the same manner as the original complaint, on the person responsible who shall make payment within 30 days of the date of service. Upon the expiration of the 30-day period, if the amount has not been paid in full or contested before the administrator as provided herein, the administrator may cause a lien in that amount to be filed with the county clerk of court and with the finance director of the Town. The lien shall be of record in the county courthouse and the office of the finance director in the book of liens, until paid or recovered, or otherwise released. The administrator may refer the matter to the Town attorney for disposition, by way of foreclosure.
- (e) In those instances where the nuisance has been abated by the Town, the responsible party who has been served with a notice of assessment may make a written demand to the administrator for a hearing to review the cost of the abatement. The appeal of the assessment must be received by the administrator within 15 days of the mailing of the notice of assessment. The written demand shall include a contact number, either phone or facsimile in order for the person to be informed of the hearing location, date and time. In an appeal of the assessment of costs, no testimony shall be permitted on the issue of the existence of the public nuisance. The decision of the administrator is final, and shall be delivered orally and in writing to the appellant on the date of the hearing. Failure to timely appeal the assessment constitutes a waiver of the right to appeal the assessment of costs.
- (f) The administrator shall have discretion to waive the administrative fee or the public cost of abating a nuisance, in whole or in part, if, in the course of the hearing reviewing the decision, the administrator finds that justice and equity require such waiver or that any of the following did not conform to the provisions of this article:
 - (1) The notice to remove the nuisance;
 - (2) The work performed in abating the nuisance;
 - (3) The computation of charges.

Sec. 7-58. - Costs.

- (a) All costs, charges and fees shall be established by ordinance. All costs, charges, and expenses resulting from such action shall be a lien, debt and obligation payable to the Town by the person responsible for the premises, and may be collected by the Town attorney by way of foreclosure.
- (b) Mowing/cutting/clearing charge:
 Non-tractor cutting: Deployment
 Tractor equipment cutting: Deployment
- (c) Any use of heavy equipment: Re: Brush/debris/tree pickup: Deployment.
- (d) Administrative fee for public abatement, personnel, oversight, records:
 - (1) Initial public abatement;
 - (2) Second abatement;
 - (3) Third abatement;
 - (4) Fourth and thereafter abatement.
- (e) Title search cost.
- (f) Lien filing cost.
- (g) All attorney fees and cost in collection, made necessary when the public is compelled to collect through legal process.

Secs. 7-59, 7-60. - Reserved.

DIVISION 3. - UNFIT DWELLINGS^[4]

Sec. 7-61. - Definitions. The following terms, whenever used or referred to in this article, shall have the following respective meanings for the purposes of this article, unless a different meaning clearly appears from the context:

Close and secure or closing and securing means compliance with the provisions of this chapter regarding minimum standards for uninhabited or vacant buildings.

Dwelling means any residential or commercial building or structure, or part thereof, having been used or currently being used and occupied, or intended to be used or occupied for human habitation, however slight or transitory, and includes any other structures, outbuilding appurtenances belonging thereto or usually attached to or enjoyed as part of human habitation of the primary premises.

Habitation means the act of inhabiting by a human for any length of time, unrelated to the owners or parties in interest acting to preserve, maintain, repair or inspect the property.

Owner means record fee title owners having a legal or equitable interest in, owning, leasing, occupying, controlling, or possessing in any manner any lot or parcel of real property as reflected in the public records of Horry County.

Parties in interest means record fee title owners, beneficiaries of any trust holding title to any real estate, trustees, conservators, guardians, executors, administrators, individual(s), partnership(s), firm(s) or corporation(s) having a legal or equitable interest in, owning, leasing, occupying, controlling, or possessing in any manner any lot or parcel of real property as reflected in the public records of Horry County, specifically including rights acquired by note, mortgage, lien or other publicly recorded document that provides for the right of entry to preserve an asset.

Public officer means the building official, fire marshal, code officials or other officers who are authorized by ordinances adopted hereunder to exercise the powers prescribed by such ordinances and by this article, or any housing authority or any officer who is in charge of any department or branch of the government of the municipality or state relating to health, fire or building regulations or to other activities concerning dwellings in the municipality.

Sec. 7-62. - Responsibilities relating to occupied or unoccupied property. The owner, occupants or parties in interest shall maintain the dwelling's interior and exterior in compliance with the requirements of the International Property Maintenance Code and other applicable codes, as adopted in their most current editions, and shall be responsible for maintaining all vacant dwellings in a clean, safe, secure and sanitary condition as provided herein so as not to cause a blighting problem or adversely affect the public health or safety.

Sec. 7-63. - Council's determination of existence of unfit dwellings. The Town council has determined that there exist in the Town dwellings which are unfit for human habitation due to (a) dilapidation, (b) defects increasing the hazards of fire, accidents or other calamities, (c) lack of ventilation, light or sanitary facilities, or (d) other conditions rendering such dwellings unsafe or insanitary, dangerous or detrimental to the health, safety or morals or otherwise inimical to the welfare of the residents of such municipality, and that the Town should exercise its police powers to cause the owner or parties in interest of record to repair, close or demolish any such dwelling that should not be inhabited in the manner herein provided, and upon failure of the owner to act, to either close and secure, or demolish the dwelling.

Sec. 7-64. - Public officer authority. A public officer is authorized to determine that a dwelling is unfit for human habitation if he finds that conditions exist in such dwelling that are dangerous or injurious to the health, safety or morals of the occupants of such dwelling or the occupants of neighboring dwellings or other residents of such municipality. Such conditions may include, but are not limited to defects therein increasing the hazards of fire, accident or other calamities; lack of adequate ventilation, light or sanitary facilities; dilapidation; disrepair; structural defects; uncleanliness; failure to comply with the maintenance and upkeep requirements of the most current adopted version of the International Property Maintenance Code, or other such state required locally adopted code that shall provide additional standards to guide the public officer, public authority or his agents in determining the fitness of a dwelling for human habitation.

Sec. 7-65. - Public officer powers.

In order to carry out the duties contained within this chapter, the public officer shall have the power:

- (1) To investigate the dwelling conditions in the municipality in order to determine which dwellings therein are unfit for human habitation;

- (2) To administer oaths and affirmations, examine witnesses and receive evidence;
- (3) To enter upon premises for the purpose of making examinations, provided such entries be made in such manner as to cause the least possible inconvenience to the persons in possession; further to enter any dwelling, store or other building and premises to inspect them, without molestation from anyone; provided however, that a private residential dwelling or premise may not be entered without permission or without an administrative warrant, unless there exists immediately ascertainable probable cause to believe that a violation of provisions respecting fire laws exists creating an imminent danger to persons or property, or there exists imminent danger to the occupant thereof;
- (4) To appoint and fix the duties of such officers, agents and employees as he deems necessary to carry out the purposes of the ordinances;
- (5) To delegate any of his functions and powers under the ordinances to such officers and agents as he may designate under authority of the Administrator; and
- (6) To cause such dwelling to be vacated and closed in its order; and the public safety and housing officer may cause to be posted on the main entrance of any dwelling so closed, a placard with the following words: "This building is unfit for human habitation; the use or occupation of this building for human habitation is prohibited and unlawful," should the safety of the public be in immediate jeopardy.

Sec. 7-66. - Public officer's investigation, complaint, public hearing and order.

- (a) *Investigation.* Acting on his inspection and own motion, or whenever a petition is filed with the public officer by at least five residents of the municipality charging that any dwelling is unfit for human habitation, the public officer shall investigate the existence an unfit dwelling.
- (b) *Complaint and hearing.* If his preliminary investigation discloses a basis for such charges, he shall issue and cause to be served upon the owner of and all parties in interest in such dwelling a complaint stating the charges in that respect, and containing a notice that a public hearing will be held before the public officer or his designated agent at a time and place therein fixed, to be held not less than ten days nor more than thirty days after the date of the complaint, excluding Saturday, Sunday and legal holidays. The public hearing will be conducted at the time and place therein fixed, unless the owner or parties in interest request a continuance, provided however, only one continuance may be extended upon good cause shown, and the extension may not exceed five days, excluding Saturday, Sunday and legal holidays. A copy of the public officer's complaint shall be filed in the Horry County Register of Deeds by the Town attorney. Such filing of the complaint or order shall have the same force and effect as other lis pendens or lien notices provided by law.
- (c) *Answer and public hearing before public officer.* The owner and parties in interest have the right to file an answer to the complaint with the public officer and in like manner in Horry County as the complaint, and to appear in person at the public hearing and give testimony at the place and time fixed. The rules of evidence prevailing in courts of law or equity shall not be controlling in hearings before the public officer.
- (d) *Official's order.* After the hearing, if the public officer determines that no just cause has been shown as to why dwelling should remain unfit and in disrepair, and further that the dwelling under consideration is unfit for human habitation due to its unfitness and disrepair, within two days after the hearing, he shall state in writing his findings of fact in support of such determination, including the time allowed for compliance.
 - (1) If the repair, alteration or improvement of the dwelling can be made at a reasonable cost in relation to the value of the dwelling, requiring the owner, within the time specified in the order, to repair, alter, or improve such dwelling to render it fit for human habitation or to vacate and close the dwelling as a human habitation; or
 - (2) If the repair, alteration or improvement of such dwelling cannot be made at a reasonable cost in relation to the value of the dwelling, requiring the owner, within the time specified in the order, to remove or demolish such dwelling.

He shall issue and cause to be served upon the owner thereof an order regarding the property. A copy of the public officer's order shall be filed in the Horry County Register of Deeds by the Town attorney.
- (e) *Owner's response to the order.* If the owner complies with the order to repair, alter or improve, or to vacate and close and secure the dwelling with the time established, the complaint and order are satisfied, and the

complaint and order filed in the Horry County land records shall be nullified by the Town attorney. If the owner fails to comply with an order to repair, alter or improve or to vacate and close the dwelling within the time set forth in the order, the public officer may act close and secure the property if unsecured, and may post the structure as unfit for human habitation, if the violations rise to the level that human habitation is would be injurious, or the public officer may provide notice to the manager of the failure of the owner or parties in interest to comply with the order.

Sec. 7-67. - Council sets show cause hearing; council order.

- (a) *To set show cause hearing date.* If the public officer's order is not obeyed within the time in the order, the public officer shall provide notice of failure to the parties and the administrator that the matter will be the subject of a rule to show cause hearing before Town council at the second Town council meeting date that occurs after the notice of failure. Upon notice by the public officer to the administrator of the failure of the person to either repair or demolish as ordered, the administrator shall place the matter on the agenda for Town council for a show cause hearing. Notice of failure shall be provided in the same manner as the complaint.
- (b) *Show cause hearing.* At the show cause hearing, the public officer shall present his case to Town council to issue its order to cause such unrepaired dwelling to be removed or demolished; and the owner or parties in interest shall be given the right to present evidence and testimony to show cause why the property should not be demolished or repaired, or other such facts for council's consideration. Parties have the right to be provided written notice of this hearing, the right to be represented by counsel, the right to present testimony and evidence and the right to cross-examine witnesses. The proceedings will be recorded. These proceedings will not be conducted under the strict application of the rules of evidence. Council may allow a brief introductory statement by both parties. The person seeking the closing and securing, repair or demolition may then present testimony, exhibits or witnesses, who shall then be subject to cross-examination. The person opposing the closing and securing, repair or demolition may then present testimony, exhibits or witnesses, who shall then be subject to cross-examination. All witnesses are to be sworn by the Town clerk. Any exhibits for this body to consider must be marked by the clerk. Objections to testimony and evidence may be made to preserve the record. Testimony and exhibits may be accepted either with no objection or over objection. The council may direct questions to any sworn witness. Council may permit the parties to make brief closing remarks.

Sec. 7-68. - Council's standard of review in show cause hearing; order.

- (a) *Decision, no interior work, administrator to act.* Acting in discretion, the council shall make such decision as it deems fair and just for public health safety and welfare, and of the owner of the property. In a rule to show cause hearing, the Town council will act in a quasi-judicial capacity to determine if the owner should vacate, close and secure, repair to current code standards or demolish the structure. In light of the legal complications, risks and liabilities arising acting as a contractor, the Town shall not refurbish, repair, remodel any interior of a structure. The council will express its decision after public deliberation and through majority vote at the show cause hearing. The council may authorize the administrator to execute a written order within ten days of the public hearing. The order shall be served as prescribed in this division.
- (b) *Council's finding of unfit, but structurally sound, reasonable repair cost in relation to structure value.*
 - (1) If the dwelling is occupied, and the council should find the dwelling unfit for human habitation, but structurally sound, the council may order the owner or parties in interest to cause the dwelling to be vacated, and then closed and secured, if the potential repairs can be made at a reasonable cost in relation to the structures assessed value as shown by Horry County public records.
 - (2) If the dwelling is unoccupied, and the council should find the dwelling unfit for human habitation, but structurally sound, the council may order the owner or parties in interest to cause the dwelling to be closed and secured if the potential repairs can be made at a reasonable cost in relation to the structure's assessed value as shown by Horry County public records.
- (c) *Council's finding of unfit, unreasonable repair cost in relation to structure value.* Whether occupied or unoccupied, and the council find the dwelling is unfit for human habitation, and the cost of potential repairs cannot be made at a reasonable cost in relationship to the structure's assessed value as shown by Horry County

public records, the council may order the owners or parties in interest to cause the dwelling to be vacated if occupied, and the owner or parties in interest to demolish the dwelling within the time set forth in the order.

Sec. 7-69. - Owner or parties in interest failure to comply with council's order.

- (a) Should the owner or parties in interest fail to comply with council order for vacating, closing and securing or repair, or demolition, the order shall provide that the administrator may proceed to abate the nuisance. The cost of closing and securing in abatement shall include an administrative assessment, in addition to any attorney's fees and costs incurred, in addition to the actual cost of labor and materials expended in public abatement. The Town will bid the work in conformity with the procurement code applicable to the Town.
- (b) The amount of the cost of securing property, vacating and closing, or removal or demolition by the Town shall be a lien against the real property upon which such cost was incurred and shall be collectible in the same manner as municipal taxes, by way of foreclosure.
- (c) Fees, costs and assessments shall be established by ordinance.

Sec. 7-70. - Assessment; appeal of assessment.

- (a) *Assessment, lien, foreclosure.* Within 15 days of public expenditure to abate the unfit dwelling, the person shall be served with a notice of assessment, in the manner that is prescribed in this division. The notice of assessment shall include the administrative fee and a statement of public cost, attested to by affidavit, and shall be issued and served in the same manner as the original complaint, on the person responsible who shall make payment within 30 days of the date of service. Upon the expiration of the 30-day period, if the amount has not been paid in full or contested before the administrator as provided herein, the administrator may refer the matter to the Town attorney. A lien resulting from public expenditures to abate an unfit dwelling, may be collected in like manner as tax lien, by way of foreclosure instituted by the Town attorney on behalf of the Town.
- (b) *Appeal of assessment.* When served with the notice of assessment, the owner or parties in interest may make a written demand to the administrator for a hearing to review the cost of the abatement. This appeal stays the action for foreclosure of the lien until such time as the matter is heard and decided by the administrator, or his designee. The appeal of the assessment must be received by the administrator within 15 business days of the date of the notice. The written demand shall include a contact number, either phone or facsimile in order for the person to be informed of the hearing location, date and time. The decision of the administrator is final, and shall be delivered orally and in writing to the appellant on the date of the hearing. Failure to timely appeal the assessment constitutes a waiver of the right to appeal the assessment of costs. The administrator shall have discretion to waive the administrative fee or the public cost of abating a nuisance, in whole or in part, if, in the course of the hearing reviewing the decision, the manager finds that justice and equity require such waiver or that any of the following did not conform to the provisions of this article:
 - (1) The complaint to repair or demolish;
 - (2) The order to repair or demolish;
 - (3) The cost or computation of the work done in abatement.

Sec. 7-71. - Power of Town to declare nuisances or unkempt properties not impaired. Nothing in this division shall be construed to impair or limit in any way the power of the Town council to require property to be kept clean and free of rubbish, debris and other unhealthy and unsightly material or conditions which constitute a public nuisance define, or to declare nuisances and to cause their removal or abatement by summary proceedings or otherwise.

Sec. 7-72. - Service of complaints, orders and assessments; posting and filing copies. Complaints or orders issued by the Town pursuant to this division shall be served upon persons either personally or by registered mail to the address in the Horry County public records, but if the return is not made and the whereabouts of such persons is unknown and cannot be ascertained by the public officer in the exercise of reasonable diligence, the public officer shall make an affidavit to that effect and then serve the complaint or order by publishing it once each week for

two consecutive weeks in a newspaper printed and published in the municipality or, in the absence of such newspaper, in one printed and published in the county and circulating in the municipality in which the dwellings are located, and by posting a copy of such complaint or order in a conspicuous place on the premises affected by the complaint or order. A copy of such complaint, order or assessment shall also be filed with the Clerk of Horry County and such filing of the complaint or order shall have the same force and effect as other lis pendens or lien notices provided by law.

Sec. 7-73. - Rights of persons affected by orders. As set forth in state law, any person affected by an order issued by a public officer may within 60 days after the posting and service of the order, petition the circuit court for an injunction restraining the public officer from carrying out the provisions of the order and the court may, upon such petition, issue a temporary injunction restraining the public officer pending the final disposition of the cause. Hearings shall be had by the court on such petitions within 20 days or as soon thereafter as possible and shall be given preference over other matters on the court's calendar. The court shall hear and determine the issues raised and shall enter such final order or decree as law and justice may require. In all such proceedings, the findings of the public officer as to facts, if supported by evidence, shall be conclusive. Costs shall be in the discretion of the court. The remedies herein provided shall be exclusive remedies and no person affected by an order of the public officer shall be entitled to recover any damages for action taken pursuant to any order of the public officer or because of compliance by such person with any order of the public officer.

Sec. 7-74. - Sale of materials of removed or demolished dwelling. If a dwelling is removed or demolished by a public officer, he shall sell the materials of such dwelling and shall credit the proceeds of such sale against the cost of the removal or demolition and any balance remaining shall be deposited in the circuit court by the public officer, shall be secured in such manner as may be directed by such court, and shall be disbursed by such court to the persons found to be entitled thereto by final order or decree of such court.

Sec. 7-75. - Immunity of enforcement personnel from liability. Except as may otherwise be provided by statute or local law or ordinance, no officer, agent or employee of the municipality charged with the enforcement of this article shall render himself personally liable for any damage that may accrue to persons or property as a result of any act required or permitted in the discharge of his duties under this article. No person who institutes, or assists in the prosecution of, a criminal proceeding under this article shall be liable to damages hereunder unless he acted with actual malice and without reasonable grounds for believing that the person accused or prosecuted was guilty of an unlawful act or omission. Any suit brought against any officer, agent, or employee of the municipality, as a result of any act required or permitted in the discharge of his duties under this article, shall be defended by the legal representative of the municipality until the final determination of proceedings therein.

Sec. 7-76. - Renting, etc., unfit dwellings to others. It shall be unlawful for any owner, agent, servant or person having possession or control of property to rent or lease to any other person or allow any other person to use any property unfit for human habitation.

Sec. 7-77. - Living in unfit dwellings prohibited. It shall be unlawful for any person to enter into and live in any dwelling within the Town after the building has been declared to be unfit for human habitation and a notice to that effect has been posted thereon.

Sec. 7-78. - Article provisions are cumulative. Nothing in this article shall be construed to abrogate or impair the powers of the courts or of any department of any municipality to enforce any provisions of its charter or its ordinances or regulations, or to prevent or punish violations thereof and the powers conferred by this article shall be in addition and supplemental to the powers conferred by any other law.

Sec. 7-79. - Reserved.

DIVISION 4. - GRAFFITI

Sec. 7-80. - Purpose and intent. The Town council of the Town of Surfside Beach, South Carolina, is enacting this article to help prevent the spread of graffiti vandalism and to establish a program for the expeditious removal of graffiti from public and private property. The council finds that mere existence of graffiti is a public nuisance, and its appearance is immediately destructive of the rights and values of property owners, creates a sense of disorder and unease among visitors and citizens, and in some cases, marks the beginning of an effort to establish territorial boundaries for those who would harm the entire community. While innocuous graffiti poses an aesthetic public nuisance, gang-related graffiti presents a public safety concern that merits expeditious response to preserve the public health, safety and welfare. Unless the property owner or the Town acts to remove graffiti from public and private property, the graffiti tends to remain, and then proliferate. Other properties then become the target of graffiti, and entire neighborhoods are affected and become less desirable places in which to be, all to the detriment of the citizens and tourists. The Town council intends, through the adoption of this article, to provide an immediate and effective procedure for the expeditious removal of all graffiti, in order to preserve public safety, health and welfare.

Sec. 7-81. - Definitions. For the purposes of this article, the following words shall have the meanings respectively ascribed to them in this section, except where the context clearly indicates a different meaning:

Grffiti means any unauthorized inscription, word, figure, painting or other defacement that is written, marked, etched, scratched, sprayed, drawn, painted, glued or engraved on or otherwise affixed to any surface of public or private property by any means whatsoever to the extent that the graffiti was not authorized in advance by the owner or occupant of the property, or, despite advance authorization, is otherwise deemed a public nuisance by the Town council.

Responsible party means an owner, legal occupant or an entity or person acting as an agent for an owner by agreement, which has authority over the real property or is responsible for the property's maintenance or management. Irrespective of any arrangement to the contrary with any other party, each property owner shall always be a responsible party for the purposes of this section. There may be more than one responsible party for a particular property.

Sec. 7-82. - Graffiti as public nuisance.

- (a) The existence of graffiti on public or private property in violation of this article is expressly declared to be a public nuisance and, therefore, is subject to the removal and abatement provisions specified in this chapter.
- (b) It is the civic duty of the responsible party of the property to which the graffiti has been applied to keep the property clear of graffiti at all times, and to remove graffiti expeditiously, upon discovery or notice.

Sec. 7-83. - Graffiti prohibited to be applied, or to be allowed to remain.

- (a) *Grffiti prohibited.* It shall be unlawful for any person to write, paint, inscribe, scratch, scrawl, spray, place or draw graffiti of any type on any public or private building, structure or any other real or personal property, or allow graffiti to remain after courtesy notice or notice of declaration of public nuisance.
- (b) *Exemption.* Subsection (a) of this section shall not be construed to prohibit temporary, easily removable chalk or other water-soluble markings on public or private sidewalks, streets or other paved surfaces which are used in connection with permitted buskers or traditional children's activities, such as drawings or bases for stickball, kickball, handball, hopscotch or similar activities, nor shall it be construed to prohibit temporary, easily removable chalk or other water soluble markings used in connection with any lawful business or public purpose or activity.
- (c) *Removal of graffiti.*
 - (1) Every responsible person shall have a civic duty to remove or effectively obscure any graffiti upon such property within 48 hours, upon discovery or courtesy notice. It shall be unlawful for any responsible person to fail to remove or effectively obscure any graffiti upon such property within 48 hours after receipt of a courtesy notice.

- (2) It shall be unlawful for any responsible person to fail to remove or effectively obscure any graffiti upon such property after notice of a declaration of a public nuisance.
- (d) *Restitution.* In addition to any other punishment imposed, the court shall order the person convicted of a violation of this section to make restitution to the victim for the damage or loss suffered by the victim as a result of the offense. The court may determine the amount, terms, and conditions of the restitution.

Sec. 7-84. - Removal of graffiti by Town.

- (a) *Courtesy notice.* Whenever the Town becomes aware of the existence of graffiti on any property, the Town officers and employees are authorized to provide courtesy notice for the immediate removal of the graffiti. The courtesy notice shall be accomplished in the most efficient and expeditious manner possible to include personal contact, electronic contact, telephonic contact or the posting of the property. In addition to the name of the person making contact and to whom the contact is made, the courtesy notice time and date shall be contemporaneously documented to the case file. After 48 hours, the Town or its agents are authorized enter the property to remove or effectively obscure such graffiti. The public cost of such action shall be billed to the property owner, and may be collected by legal actions in accordance with law. The Town may sue in a court of competent jurisdiction to recover all such expenses, which shall include, but not be limited to, all administrative personnel costs, attorney's fees and costs related to enforcing this section; and/or to the extent permitted by law, the Town may record a lien in the public records of the county, which lien shall be for all such expenses, and the amount of the lien shall bear interest from the date of recording.
- (b) *Declaration of public nuisance.* If the Town elects not to abate the graffiti under section 7-214(a), the notice of a declaration of public nuisance, appeal proceedings and liability for costs shall be provided for in sections 7-27 through 7-29 of this chapter.
- (c) *Emergency removal.* If the Town determines that any graffiti is a danger to the health, safety, or welfare of the public and is unable to provide courtesy notice by after an attempt to do so, then at any time after the posting of the property, the Town may enter and remove or cause the graffiti to be removed at its expense.
- (d) *Repair/restoration.* In no case shall the Town paint or repair any area obscured by graffiti more extensively than where the graffiti itself is located. The Town shall not be required to restore the obscured area to its original condition (i.e., color, texture, etc.).

Secs. 7-85—7-90. - Reserved.

DIVISION 5. - NOISE

Sec. 7-91. - Loud, disturbing, unnecessary noise prohibited.

- (a) *General prohibition.* It shall be unlawful for any person to make, continue or cause to be continued any excessive, unnecessary or unusually loud noise or any noise which either annoys, disturbs, injures or endangers the comfort, repose, health, peace or safety of others, within the limits of the town.
- (b) *Specific prohibition.* It shall be unlawful for any person in the town to maintain and operate in any building, motor vehicle or on any premises in the town, any radio or television device or, mechanical musical instrument, phonograph, jukebox, loudspeaker, or sound-creating or transmitting device of any kind, whereby the sound therefrom, is cast directly upon the public streets, strand, beach or alleyway in such a manner as to create unreasonably loud, excessive or disturbing noise, or where such noise annoys or disturbs the quiet, comfort or repose of persons in any dwelling, hotel or other type of occupancy, or where any such device is maintained or operated for advertising purposes or for the purpose of attracting the attention of the passing public, or which is so placed and operated that the sound coming therefrom, can be heard to the annoyance or inconvenience of travelers upon any street or public place, or of persons in neighboring premises.
 - (1) Except as required by law, no person shall activate or cause to be activated within the town, any horns or other sound producing device, except as alarm signals in case of fire, collision or other emergency.
 - (2) No person shall use or display a band or any noise-making device in such a manner as to be heard or seen from any public street, strand, beach or alleyway in the town. It shall be unlawful for any person, group,

organization or association to use any noise-making devices in any public street, beach or alleyway in the town unless permitted.

- (3) It shall be unlawful for any person in the operation of a motor vehicle to cause or allow any loud, excessive, or unusual noise in the operation or use of such motor vehicle upon any of the streets of the town, or for any person to race the engine of any motor vehicle, while such vehicle is not in motion, except when necessary to do so in the course of repairing, adjusting or testing the same.
 - (4) It shall be unlawful for any person to own, possess or harbor any animal that frequently, or for continued duration howls, barks, or makes other sounds that create excessive or unnecessary noise across a residential area. For the purpose of this section, "barking dog" shall mean a dog that barks, bays, cries, howls, or makes any other noise continuously or incessantly for a period of five (5) minutes, or barks intermittently for ten (10) minutes or more to the disturbance of any person, particularly between 11:00 p.m. and 7:00 a.m., and regardless of whether the dog is physically situated in or upon private property, provided however, that a dog shall not be deemed a "barking dog" if, at the time the dog is barking or making any other noise, a person is trespassing or threatening to trespass upon property in or upon which the dog is situated.
 - (5) It shall be unlawful to operate or permit the operation of tools or equipment used in construction, drilling or any demolition work before 6:00 a.m. or after 10:00 p.m. Monday through Saturday, except for emergency work of public service utilities.
 - (6) It shall be unlawful for any person to play any radio, phonograph or musical instrument in such a manner or with such volume, particularly between 11:00 p.m. and 7:00 a.m., as to annoy or disturb the quiet, comfort or repose of persons in any dwelling, hotel, condo or other type of residence.
 - (7) It shall be unlawful for any person to operate, cause or permit to be operated any instrument of sound producing or sound amplifying device so loudly as to unreasonably disturb persons in any dwelling, hotel, condo, or other type of residence, particularly between 11:00 p.m. and 7:00 a.m.
 - (8) The operation of pile driving equipment is prohibited at any time on Sundays, and before the hour of 8:00 a.m. or after the hour of 6:00 p.m., Monday through Saturday.
- (c) *Exemptions.* The following uses and activities shall be exempt from noise control regulation:
- (1) Lawnmowers and agricultural equipment, when operated between the hours of 7:00 a.m. and 10:00 p.m.
 - (2) Noises of safety signals, warning devices and emergency pressure relief valves.
 - (3) Noises resulting from any authorized emergency vehicles, when responding to an emergency call, or acting in time of emergency.
 - (4) Noises resulting from emergency work.
 - (5) Noise from school bells, church bells or chimes.
 - (6) Sounds generated by natural phenomena.
 - (7) Town sanitation collection vehicles that empty solid waste from dumpsters or compactors.
 - (8) Any other noise resulting from activities of a temporary duration permitted by law, and for which a license or permit has been granted by the Town of Surfside Beach, or activities sponsored or co-sponsored by the town.
- (d) *Undue hardship.* Application for permission to hold a public event that may violate the provisions of this article, shall be made to the town administrator. Such permission, if granted, shall be valid only at the specific location, times, dates, and upon the conditions as specified by the town administrator.
- (e) *Enforcement standards.*
- (1) An excessive, unnecessary or unusually loud noise is defined as any sound which is plainly audible at a distance of fifty (50) feet from its source or from a public road, alleyway, beach, motel or other public place, particularly between 11:00 p.m. and 7:00 a.m.
 - (2) The complaints of one (1) or more persons and/or the complaints of one (1) or more police officers are prima facie evidence that a sound annoys, disturbs, injures or endangers the comfort, repose, health, peace or safety of others in violation of this section.
- (f) *Enforcement factors.* In the enforcement of standards established in this section, an enforcement officer may be required to exercise judgement in determining if a particular noise is sufficiently loud or otherwise, so

offensive that it would unreasonably disturb other persons in the vicinity. When making such determinations, the enforcement officer shall consider the following factors:

- (1) The volume of the noise.
- (2) The intensity of the noise.
- (3) Whether the nature of the noise is usual or unusual.
- (4) Whether the origin of the noise is natural or unnatural.
- (5) The volume and intensity of the background noise, if any.
- (6) The proximity of the noise to residential sleeping facilities.
- (7) The nature and zoning of the area within which the noise emanates.
- (8) The time of the day or night the noise occurs.
- (9) The duration of the noise.
- (10) Whether the noise is recurrent, intermittent or constant.

In addition to the standards established above, it shall be presumed that the above has been violated whenever any noise or sound is projected from one property in the town onto another, or onto any public right-of-way if such sound, measured at the closest boundary of the property from which the complaint originates, exceeds the following decibel (db) standards:

(1)	In any R-1, R-2 or R-3 Zoning District: 7:00 a.m. to 10:00 p.m.	55 db
	10:00 p.m. to 7:00 a.m.	50 db
(2)	In any C-1 and C-2 Districts: 7:00 a.m. to Midnight	65 db
	Midnight to 7:00 a.m.	60 db
(3)	In any C-3 District: 7:00 a.m. to Midnight	70 db
	Midnight to 7:00 a.m.	65 db

(g) *Penalties.* Violation of this section is a misdemeanor, and is punishable by up to thirty (30) days in jail, and/or a five hundred dollar (\$500.00) fine.

Sec. 7-92. - Horns. Blowing horns, the sounding or blowing of any horn or signal device on any automobile, motorcycle, motor bus or other vehicle, except as a danger signal if another vehicle is approaching apparently out of control, or if in motion only as a danger signal is declared to be a nuisance. The creation by any signal device of such loud or harsh noise and the sounding of such device for any unnecessary period of time is prohibited.

Sec. 7-93. - Radios, phonographs, television, etc. The playing of any radio, phonograph, television or any musical instrument in such a manner or with such volume as to annoy or disturb any person or the playing of such instrument in such manner as to annoy or disturb the quiet, comfort or repose of any person in any dwelling, hotel or other residences is prohibited.

Sec. 7-94. - Pets. It is unlawful to permit any animal to make long, frequent or continued noise which disturbs the comfort or repose of any person in the vicinity.

Sec. 7-95. - Improper use of vehicle.

- (1) The use of any automobile, motorcycle or vehicle so out of repair, loaded or used or repaired in such manner, as to create loud or unnecessary noises, particularly grading, grinding, rattling, riveting or other disturbing noises is prohibited.

- (2) The use of any automobile, motorcycle, or vehicle that creates any loud or unnecessary noise that results from any one or more of the following actions by the operator is prohibited:
- (a) Misuse of acceleration or braking power that exceeds tire traction limits, sometimes known as "burn-outs," "burning rubber," "laying down rubber," or "peeling rubber."
 - (b) Excessive acceleration or deceleration while in motion where there is no emergency need.
 - (c) Rapid acceleration by means of quick up-shifting of transmission gears with either a clutch or manual transmission or an automatic transmission.
 - (d) Rapid deceleration by means of quick down-shifting of transmission gears with either a clutch or manual transmission or an automatic transmission.
 - (e) Racing or revving of engines by manipulation of the accelerator, gas pedal, or carburetor in applying fuel to the engine in a greater amount than is necessary whether the vehicle is either in motion or standing still.
 - (f) Operation of the vehicle by applying unnecessary, deliberate or intentional acceleration from a stationary position, or unnecessary, deliberate or intentional bursts of acceleration while moving in a nonemergency situation.

Sec. 7-96. - Blowing whistles. The blowing of any steam whistle attached to any stationary boiler except to give notice of the time to begin or stop work or as a warning of danger is prohibited.

Sec. 7-97. - Exhaust discharge. It is unlawful to discharge into the open air the exhaust from any steam engine, stationary internal-combustion engine, motor boat engine or motor vehicle except through a muffler or other device which will effectively prevent loud or explosive noises therefrom.

Sec. 7-98. - Devices using compressed air. The use of any mechanical device operated by compressed air, unless the noise created thereby is effectively muffled and reduced is prohibited.

Sec. 7-99. - Building operations. The erection, excavation, demolition, alteration or repair of any building in a residential or commercial district other than between the hours of 7:00 a.m. and 9:00 p.m., Monday through Saturday, except in cases of urgent necessity in the interest of public safety, and then only with a permit from the police chief is prohibited. Activities include, but are not limited to, operation of jackhammers, manual hammers, excavation machinery, concrete machinery, landscaping equipment, pool maintenance equipment, roofing, framing, any building related activity causing workmen to be outdoors, construction related supply deliveries, including appliances and furnishings.

Exceptions: Sheet rock installation, wall paper installation, counter top installation, spackling, taping, interior painting, carpet or tile installation, activities done indoors that do not resonate sound outside the physical building shall be permitted from 6:00 a.m. to 10:00 p.m., Monday through Saturday.

Sec. 7-100. - Noises near schools, churches, etc. The creation of any excessive noise on any street adjacent to any school, institution of learning, library or court while the same is in session or adjacent to any church during church services which interfere with the work or worship in any such place or institution is prohibited provided, that signs must be displayed in such streets indicating that there is a school, church, library, or court.

Sec. 7-101. - Loading and unloading operations. The creation of loud and excessive noises in connection with loading or unloading any vehicle or opening and destroying bales, boxes, crates and containers is prohibited.

Sec. 7-102. - Bells or gongs. The sounding of any bell or gong attached to any building or premises which disturbs the quiet or repose of any person in the vicinity is prohibited. Churches and religious institutions operating chimes or bells for the purpose of attracting attention to a worship service or special religious activity are exempt from this provision.

Sec. 7-103. - Hawking, peddling, or soliciting. Shouting, loud talking, crying or soliciting by peddlers, hawkers, solicitors and vendors which disturbs the quiet and peace of the neighborhood or any person therein is prohibited.

Sec. 7-104. - Noises to attract attention. The use of any drum, loudspeaker or other instrument or device for the purpose of attracting attention to any performance or event, show, sale or the display or advertisement of merchandise, by the creation of noise is prohibited. Churches and religious institutions operating chimes or bells for the purpose of attracting attention to a worship service or special religious activity are exempt from this provision.

Sec. 7-105. - Loudspeakers or amplifiers on vehicles. The use of any mechanical loudspeakers or amplifiers on trucks, airplanes or other vehicles for advertising or other purposes is prohibited except by special permission of mayor.

Sec. 7-106. - Business noises at night near residence. The operation of any garage, filling station, auto repair, business, taxicab business, plant, store, factory or other place of business, between the hours of 6:00 p.m. and 10:00 a.m., in such manner as to create loud and disturbing noises, of such frequency or such volume as to annoy or disturb the quiet and comfort of any citizen and particularly the creating of disturbing noises of such frequency and volume as to annoy or disturb the quiet, comfort, peace or repose of any person in any dwelling, hotel, boardinghouse or other type of residence is prohibited.

Secs. 7-107—7-130. - Reserved.

DIVISION 6. - SMOKING IN PUBLIC PLACES AND PLACES OF EMPLOYMENT

Sec. 7-131. - Findings and determinations. The Town Council (the "council") of the Town of Surfside Beach, South Carolina, hereby finds and determines:

- (1) The Town of Surfside Beach, South Carolina (the "town"), is an incorporated municipality located in Horry County, South Carolina, and as such possesses all powers granted to municipalities by the Constitution and the laws of the State of South Carolina, including the powers enumerated in S.C. Code § 5-7-30 (2005 Supp) relating to regulating streets, markets, and public health.
- (2) Numerous studies have found that tobacco smoke is a major contributor to indoor air pollution, and that breathing secondhand smoke (also known as environmental tobacco smoke) is a cause of disease in healthy nonsmokers, including heart disease, stroke, respiratory disease, and lung cancer. The National Cancer Institute has determined that secondhand smoke is responsible for the early deaths of up to 65,000 Americans annually. (National Cancer Institute (NCI), "Health effects of exposure to environmental tobacco smoke: the report of the California Environmental Protection Agency. Smoking and Tobacco Control Monograph 10, "Bethesda, MD: National Institutes of Health, National Cancer Institute (NCI), August 1999.) The Surgeon General has declared that:
 - a. Secondhand smoke causes disease and premature death in nonsmokers exposed to smoke;
 - b. Children exposed to secondhand smoke have an increased risk for sudden death syndrome, acute respiratory infections, ear problems, and more severe asthma;
 - c. Adults exposed to secondary smoke have a higher risk of coronary heart disease and lung cancer;
 - d. There is no safe level of exposure to secondhand smoke; and
 - e. Separating smoking and nonsmoking sections of indoor areas does not sufficiently remove the threats of secondhand smoke in enclosed areas.
- (3) A significant amount of secondhand smoke exposure occurs in the workplace. Employees who work in smoke-filled businesses suffer a twenty-five to fifty (25—50) percent higher risk of heart attack and higher rates of death from cardiovascular disease and cancer, as well as increased acute respiratory disease and

measurable decrease in lung function. (Pitsavos, C.; Panagiotakos, D.B.; Chrysohoou, C.; Skoumas, J.; Tzioumis, K.; Stefanadis, C.; Toutouzas, P., "Association between exposure to environmental tobacco smoke and the development of acute coronary syndromes: the CARDIO2000 case-control study," *Tobacco Control* 11(3): 220-225, September 2002.)

- (4) Smoke-filled workplaces result in higher worker absenteeism due to respiratory disease, lower productivity, higher cleaning and maintenance costs, increased health insurance rates, and increased liability claims for diseases related to exposure to secondhand smoke. ("The high price of cigarette smoking," *Business & Health* 15(8), Supplement A: 6-9, August 1997.)
- (5) Certain outdoor events, such as parades, festivals, and other public gatherings, result in nonsmokers finding themselves in close proximity to persons who are smoking which can be reasonably seen to have the same effects of exposure as when nonsmokers are exposed to smoke in the same enclosed space. Lighted cigarettes, cigars, and pipes of people standing or sitting in close proximity have the potential of burning those with whom they inadvertently come into direct contact and making the air quality and peaceful enjoyment of outdoor events unreasonably restricted for nonsmokers.
- (6) When there is a presence of secondhand smoke in enclosed spaces or in outside areas where there is a public gathering resulting in people being in close proximity in places that are otherwise open to the public at large inevitably results in persons who do not smoke being forced to bear unwarranted health risks and inappropriate deprivation of peaceful enjoyment of the premises to which they have been invited or permitted to enter, even when steps have been taken to separate "smoking" and "nonsmoking" areas within the confined space.
- (7) The town recognizes that smoke creates a danger to the health and safety of the public at large and that, in order to protect the health and welfare of the public, it is necessary to restrict smoking in the manner provided for in this article (the "article").

Sec. 7-132. - Definitions. Unless the context shall clearly indicate some other meaning, the terms defined in this section shall, for all purposes of this article and other documents herein referenced, have the meanings herein specified. Definitions shall be equally applicable to both the singular and plural forms of any of the terms herein defined.

Bar shall mean an establishment that is devoted to the serving of alcoholic beverages for consumption by guests on the premises and in which the serving of food is only incidental to the consumption of those beverages including, but not limited to, taverns, nightclubs, cocktail lounges, and cabarets.

Beach shall mean, any area of public land between the Atlantic Ocean waters edge at the then current ocean tide line, including the mean high water mark on the Atlantic Ocean, and the established private property line.

Business shall mean a sole proprietorship, partnership, joint venture, corporation, or other business entity, either for-profit or not-for-profit, including retail establishments where goods or services are offered for sale; professional corporations and other entities where legal, medical, dental, engineering, architectural, or other professional services are delivered; and private clubs.

Employee shall mean a person who is employed by an employer in consideration for direct or indirect monetary wages, commission, goods or services in kind or like compensation, and it shall also mean a person who volunteers his or her services for a nonprofit entity.

Employer means a person, business, partnership, association, corporation, including a municipal corporation, trust, or nonprofit entity that employs the services of one or more individual persons.

Enclosed area means all space between a floor and ceiling that is enclosed on all sides by walls or windows (exclusive of doorways), which extend from the floor to the ceiling, including stationary structures and mobile public conveyances; parking structures and other facilities having only partial exterior walls but otherwise enclosed by ceilings and floors shall also be included in this definition.

Health care facility means an office or institution providing care or treatment of persons having diseases, whether physical, mental, or emotional, or other medical, physiological, or psychological conditions including, but not limited to, hospitals, rehabilitation hospitals or other clinics, including weight control clinics, nursing homes (except as otherwise permitted herein), homes for the aging or chronically ill, laboratories, and offices of surgeons,

chiropractors, physical therapists, physicians, dentists, and all specialists within these professions. This definition shall include all waiting rooms, hallways, private rooms, semiprivate rooms, and wards within health care facilities.

Place of employment means an area under the control of a public or private employer that employees normally frequent during the course of employment, including, but not limited to, work areas, employee lounges, restrooms, conference rooms, meeting rooms, classrooms, employee cafeterias, hallways, and vehicles. A private residence is not a "place of employment" for purposes of this article unless it is used as a childcare, adult day care, or health care facility. Nor is a private passenger motor vehicle a "place of employment" when used in the performance of employment responsibilities, provided it is not being used as public conveyance.

Private club means an organization, whether incorporated or not, which is the owner, lessee, or occupant of a building or portion thereof used exclusively for club purposes, or for purposes of benefiting particular club members and their guests, which is operated solely for a recreational, fraternal, social, patriotic, political, benevolent, or athletic purpose, but not for pecuniary gain, and which only sells alcoholic beverages incidental to its operation. The affairs and management of the organization are conducted by a board of directors, executive committee, or similar body chosen by the members at an annual meeting. The organization has established written bylaws and/or a written constitution to govern its activities. The organization has been granted an exemption from the payment of federal income tax as a club under 26 U.S.C. section 501. Establishments which are in fact operating as bars, restaurants, or entertainment venues primarily for the pecuniary benefit of the owner, or chief operating officer, or other person having substantial control shall not be treated as private clubs under this article.

Public place means an area to which the public is invited or to which the public is permitted to have access, including, but not limited to, banks, bars, educational facilities, health care facilities, hotel and motel lobbies, laundromats, public transportation facilities, reception areas, restaurants, retail food production and marketing establishments, retail service establishments, retail stores, shopping malls, theaters, waiting rooms, sports arena, stadiums, parks including ball parks, athletic fields and soccer fields. A private club is a "public place" when being used for a function to which the general public is allowed entry. A private residence is not a "public place" unless it is used as a childcare, adult day care, or health care facility.

Restaurant means an eating establishment including, but not limited to, coffee shops, cafeterias, sandwich stands, ice cream parlors, and private and public school cafeterias, which gives or offers for sale food to the public, guests, or employees, as well as kitchens and catering facilities in which food is prepared on the premises for serving elsewhere. The term "restaurant" shall include a bar area within the restaurant.

Retail tobacco store means a retail store utilized primarily for the sale of tobacco products and accessories and in which the sale of other products is merely incidental. The term specifically includes cigar bars, which are establishments licensed for the on-premises sale of beer, wine, and alcoholic beverages as well as some food service, but the term does not include any establishment which is primarily a bar or restaurant and which undertakes to make retail offerings of tobacco products as a means of circumventing the purposes of this article.

Service line means an indoor line in which one or more persons are waiting for or receiving service of any kind, whether or not the service involves the exchange of money.

Shopping mall means an enclosed public plaza, promenade, walkway, or hall area that serves to connect retail or professional establishments.

Smoking means inhaling, exhaling, burning, or carrying any lighted cigar, cigarette, pipe, or other lighted tobacco product in any manner or in any form.

Sports arena means indoor or outdoor sports pavilions, stadiums, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, bowling alleys, and other similar places where members of the general public assemble to engage in physical exercise, participate in athletic competition, or witness sports or other events.

Sec. 7-133. - Application to town-owned facilities and vehicles. All enclosed facilities, buildings, and vehicles owned, leased, or operated by the town shall be subject to the provisions of this article.

Sec. 7-134. - Prohibition of smoking in enclosed public places. Smoking shall be prohibited in all enclosed public places within the town including, but not limited to, the following places:

- (1) Galleries, libraries, and museums.

- (2) Areas available to and customarily used by the general public in businesses and nonprofit entities patronized by the public including, but not limited to, professional offices, banks, laundromats, hotels, and motels.
- (3) Bars.
- (4) Bingo facilities.
- (5) Convention facilities, conference centers, and exhibition halls.
- (6) Educational facilities, both public and private.
- (7) Elevators.
- (8) Health care facilities.
- (9) Hotel and motel lobbies.
- (10) Licensed childcare and adult day care facilities.
- (11) Lobbies, hallways, and other common areas in apartment buildings, condominiums, trailer parks, retirement facilities, nursing homes, and other multiple-unit residential facilities.
- (12) Polling places.
- (13) Private clubs when being used for a function to which the general public is invited.
- (14) Public transportation facilities, including buses and taxicabs, and ticket, boarding, and waiting areas of public transit depots.
- (15) Restaurants.
- (16) Restrooms, lobbies, reception areas, hallways, and other common-use areas.
- (17) Retail stores.
- (18) Rooms, chambers, places of meeting or public assembly, including school buildings.
- (19) Service lines.
- (20) Shopping malls.
- (21) Sports arenas.
- (22) Theaters, performance halls, lecture halls, and similar facilities, inclusive of lobbies, audience seating areas, dressing rooms, projections booths, back stage areas, and the stage, but excluding smoking on stage when it is an integral part of a theatrical performance.

Sec. 7-135. - Prohibition of smoking in places of employment.

- (a) Smoking shall be prohibited in all enclosed areas within places of employment without exception including, but not limited to common work areas, auditoriums, classrooms, conference and meeting rooms, private offices, elevators, hallways, medical facilities, cafeterias, employee lounges, stairs, restrooms, vehicles used for the conveyance of the public, but not including vehicles used in performing employment responsibilities when the sole occupants and users are persons who smoke.
- (b) This prohibition on smoking shall be communicated by employers to all existing employees by the effective date of this article and to all prospective employees upon their application for employment.

Sec. 7-136. - Prohibition of smoking in certain outdoor areas. Smoking shall also be prohibited in certain outdoor areas when the use involves a gathering of the public, regardless of the number actually assembled. This prohibition shall apply to:

- (1) Amphitheaters.
- (2) Parks.
- (3) Ball parks, athletic fields and soccer fields, when in use for athletic competitions or public performances.
- (4) Parades and special events on public streets and town property, although the town administrator has the discretion, but not the obligation, to establish designated smoking areas in or in proximity to the parade or event area.
- (5) Dining areas in encroachment areas on public sidewalks, plazas, and parks.
- (6) Zoos and animal sanctuaries.
- (7) Beaches and public beach accesses.

Sec. 7-137. - Reasonable distance of entry and outdoor area. Smoking is prohibited within a distance of ten (10) feet from any entry into an enclosed area where smoking is prohibited, so as to insure that tobacco smoke does not enter the area through entrances, windows, ventilation systems, or other means. Smoking is also prohibited within ten (10) feet of the boundary of the outdoor areas where smoking is prohibited. Persons who have begun smoking after leaving an enclosed area where smoking is prohibited prior to approaching a ten-foot distance away from such enclosed area may continue doing so, provided they do not stop, stand, sit, or linger within the ten-foot distance, but continue to distance themselves from the enclosed area.

Sec. 7-138. - Where smoking not regulated. Notwithstanding any other provision of this article to the contrary, the following areas shall be exempt from the provisions of sections 7-134, 7-135, and 7-136 of this article:

- (1) Private residences, except when used as a licensed childcare, adult day care, or health care facility.
- (2) Hotel and motel rooms that are rented to guests and are designated as smoking rooms; provided, however, that not more than twenty (20) percent of rooms rented to guests in a hotel or motel may be so designated. All smoking rooms on the same floor must be contiguous and smoke from these rooms must not infiltrate into areas where smoking is prohibited under the provisions of this article. The status of rooms as smoking or nonsmoking may not be changed, except to add additional nonsmoking rooms.
- (3) Retail tobacco stores, provided that smoke from these places does not infiltrate into areas where smoking is prohibited under the provisions of this article.
- (4) Private and semiprivate rooms in nursing homes and long-term care facilities that are occupied by one or more persons, all of whom are smokers and have requested in writing to be placed in a room where smoking is permitted; provided that smoke from these places does not infiltrate into areas where smoking is prohibited under the provisions of this article.
- (5) Private clubs that have no employees, except when being used for a function to which the general public is admitted.
- (6) Outdoor areas of places of employment except those covered by the provisions of sections 7-136 and 7-137 of this article.
- (7) Sidewalks, unless the sidewalk area has been specifically designated with signage as a nonsmoking area by the town or is being generally used for any purpose under section 7-136 with or without signage, including, but not limited to parades.

Sec. 7-139. - Declaration of establishment as nonsmoking. Notwithstanding any other provision of this article, an owner, operator, manager, or other person in control of an establishment, facility, or outdoor area may declare that entire establishment, facility, or outdoor area as a nonsmoking place. Smoking shall be prohibited in any place in which a sign conforming to the requirements of subsection 7-140(a) is posted.

Sec. 7-140. - Posting of signs.

- (a) "No Smoking" signs or the international "No Smoking" symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it) shall be clearly and conspicuously posted in every public place and place of employment where smoking is prohibited by this article, by the owner, operator, manager, or other person in control of that place.
- (b) Every public place and place of employment where smoking is prohibited by this article shall have posted at every entrance a conspicuous sign clearly stating that smoking is prohibited.
- (c) All ashtrays shall be removed from any area where smoking is prohibited by this article by the owner, operator, manager, or other person having control of the area.

Sec. 7-141. – Non-retaliation; non-waiver of rights.

- (a) No person or employer shall discharge, refuse to hire, or in any manner retaliate against an employee, applicant for employment, or customer because that employee, applicant, or customer exercises any rights afforded by this article or reports or attempts to prosecute a violation of this article.

- (b) An employee who works in a setting where an employer allows smoking does not waive or otherwise surrender any legal rights the employee may have against the employer or any other party.

Sec. 7-142. - Enforcement.

- (a) This article shall be enforced by the town police or office of the town administrator through an appointed code enforcement official.
- (b) Notice of the provisions of this article shall be given to all applicants for a business license in the town.
- (c) Any citizen who desires to register a complaint under this article may initiate enforcement with the office of the town administrator or town police.
- (d) The building codes division, fire department, or their designees shall, while an establishment is undergoing otherwise mandated inspections, inspect for compliance with this article.
- (e) An owner, manager, operator, or employee of an establishment regulated by this article shall inform persons violating this article of the appropriate provisions thereof.
- (f) Notwithstanding any other provision of this article, an employee or member of the public may request legal action against a person, business, or organization in violation of this article to enforce this article.
- (g) In addition to the remedies provided by the provisions of this section, the town or any person aggrieved by the failure of the owner, operator, manager, or other person in control of a public place or a place of employment to comply with the provisions of this article may apply for injunctive relief to enforce those provisions in any court of competent jurisdiction.

Sec. 7-143. - Violations and penalties.

- (a) A person who smokes in an area where smoking is prohibited by the provisions of this article shall be guilty of a civil infraction, punishable by a fine of not less than ten dollars (\$10.00) nor more than twenty-five dollars (\$25.00).
- (b) Violations shall be issued on a uniform ordinance summons.
- (c) Violators shall only be cited by police officers or authorized code enforcement officials.
- (d) Violators shall appear and be subject to the jurisdiction of the town's municipal court.
- (e) Violators shall have a right to a jury trial upon proper request.
- (f) Violators shall be subject to set-off debt process and failure to pay or appear may result in a non-resident violator compact (NRVC) notice for South Carolina licensed drivers.
- (g) Violators shall not be subject to incarceration.
- (h) A person who owns, manages, operates, or otherwise controls a public place or place of employment and who fails to comply with the provisions of this article shall be guilty of a civil infraction, punishable by a fine of not less than ten dollars (\$10.00) nor more than twenty-five dollars (\$25.00) and may be subject to provisions contained in subsections 7-143 (b)—(g).
- (i) In addition to the fines established by this section, repeated violations of this article by a person who owns, manages, operates, or otherwise controls a public place or place of employment may result in the suspension or revocation of any occupancy permit or business license issued to the person for the premises on which the violation occurred.
- (j) Violation of this article is hereby declared to be a public nuisance, which may be abated by the town by restraining order, preliminary and permanent injunction, or other means provided for by law, and the town may take action to recover the costs of the nuisance abatement.
- (k) Each day of a continuing violation of this article shall be considered a separate and distinct offense and may result in cumulative fines and business license suspension, if applicable.

Sec. 7-144. - Public education. The town shall engage in a continuing program to explain and clarify the purposes and requirements of this article to citizens affected by it, and to guide owners/operators, and managers in their compliance with it. The program may include publication of a brochure for affected businesses and individuals explaining the provisions of this article.

Sec. 7-145. - Governmental agency cooperation. The town shall annually request other governmental and educational agencies having facilities within the town to establish local operating procedures in cooperation and compliance with this article. This includes urging all federal, state, county, town, and school district agencies to update their existing smoking control regulations to be consistent with the current health findings regarding secondhand smoke.

Sec. 7-146. - Other applicable laws. This article shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws.

Sec. 7-147. - Interpretation for intent. It is the intent of council to prohibit smoking whenever the private choice of smoking intrudes or has the capacity to intrude upon the right of persons concerned about protecting their own rights to be free from the hazards and inconvenience of secondhand smoke in places where they work, stand, sit, walk, dine, drink, read, study, or engage in entertainment and recreation. All provisions shall be construed to achieve these purposes in compliance with the "Memorandum in Re: Smoking Ordinance Violations," issued by the S.C. Supreme Court dated April 24, 2009.