



**Town of Holden Beach
Board of Commissioners
Regular Meeting**

**Tuesday, October 19, 2021
5:00 PM**

**Holden Beach Town Hall
Public Assembly**



**TOWN OF HOLDEN BEACH
BOARD OF COMMISSIONERS' REGULAR MEETING
HOLDEN BEACH TOWN HALL – PUBLIC ASSEMBLY
TUESDAY, OCTOBER 19, 2021 - 5:00 P.M.**

1. Invocation
2. Call to Order/ Welcome
3. Pledge of Allegiance
4. Agenda Approval
5. Approval of Minutes
 - a. Minutes of the Public Hearing/Regular Meeting of September 21, 2021
(Pages 1 – 16)
 - b. Minutes of the Special Meeting of October 1, 2021
(Pages 17 – 18)
6. Public Comments on Agenda Items
7. Police Report – Chief Dixon
(Pages 19 – 31)
8. Discussion and Possible Action on Parking Deliverables, Staff Response to BOC Tasker to the Parking Committee – Town Manager Hewett
(Pages 32 – 86)
9. Discussion and Possible Action on Agreement Between the Town and Otto Connect – Town Manager Hewett
(Pages 87 – 90)
10. Discussion and Possible Action Relating to the No Wake Zone – Mayor Holden
11. Discussion and Possible Action Relating to the Boat Ramp and Trailer Parking – Mayor Holden
12. Discussion and Possible Action on Block Q Property – Commissioner Murdock (Pages 91 – 92)
13. Discussion and Possible Action on Amending Holden Beach Code of Ordinances, Section 94.05, Digging of Holes on Beach Strand, to Include a Section on Metal Detecting on the Beach Strand – Commissioner Smith
(Pages 93 – 94)
14. Posting of Documents Related to the Proposed Purchase of the Pier Property – Commissioner Sullivan
(Separate Packet)

15. Discussion and Possible Direction to Staff on Oceanfront Lighting – Commissioner Smith
16. Public Comments on General Items (Pages 95 – 97)
17. Town Manager’s Report
18. Mayor’s Comments
19. Board of Commissioners’ Comments
20. Executive Session Pursuant to North Carolina General Statute 143-318.11(A)(5), To Instruct the Staff or Agent Concerning the Negotiation of the Price and Terms of a Contract Concerning the Acquisition of Real Property (Commissioner Kwiatkowski) and North Carolina General Statute 143-318.11(A)(3), To Consult with the Attorney (Town Manager Hewett)
21. Adjournment

* The remote meeting will be livestreamed on the Town’s Facebook page. Visit <https://www.facebook.com/holdenbeachtownhall/> to watch the livestream. Public comments can be submitted to heather@hbtownhall.com prior to 3:00 p.m. on October 19, 2021.



**TOWN OF HOLDEN BEACH
BOARD OF COMMISSIONERS
PUBLIC HEARING/REGULAR MEETING
TUESDAY, SEPTEMBER 21, 2021 – 5:00 P.M.**

The Board of Commissioners of the Town of Holden Beach, North Carolina met for a Public Hearing/Regular Meeting on Tuesday, September 21, 2021 at 5:00 p.m. in the Town Hall Public Assembly. Present were Mayor J. Alan Holden; Mayor Pro Tem Gerald Brown; Commissioners Brian Murdock, Mike Sullivan, Pat Kwiatkowski and Rick Smith; Town Manager David W. Hewett; Town Clerk Heather Finnell; Inspections Director Tim Evans; Assistant Town Manager Christy Ferguson; Public Works Director Chris Clemmons; Lieutenant Frank Dilworth; and Town Attorney Katie Madon. The meeting was livestreamed on the Town's Facebook page.

PUBLIC HEARING: CONSIDERATION OF ENTERING INTO AN INSTALLMENT FINANCING CONTRACT FOR THE REMODELING AND IMPROVEMENT OF LIFT STATIONS FOR THE TOWN'S UTILITIES SYSTEMS AND PURCHASING PROPERTY LOCATED AT 441 OCEAN BOULEVARD WEST, INCLUDING THE PIER

Town Manager Hewett explained this is the public hearing for consideration of entering into a financing contract for the remodeling and improvement of lift stations for the Town's utilities systems and purchasing property located at 441 Ocean Boulevard West, including the pier. This is for lift station 3, located at 794 Ocean Boulevard West, which has already been accomplished. The borrowing would reimburse the Town for the investment already made on a cash basis. It also includes the pending cost of the proposed improvement to lift station 2, at the corner of Greensboro Street. Together those costs are proposed at a price of \$5.2 million. The purchase of the pier property is proposed at an amount not to exceed \$3.3 million. The resolution is in the packet and outlines the particulars of the agreement. We have our bond counsel and financial consultant in attendance if there are questions.

John Witten said he is representing the Holden Beach Property Owners Association (HBPOA). He said they currently have about 1,400 households that are members of the association of the approximately 2,400 households on the island. He said at their Labor Day meeting, their membership adopted a resolution that says the HBPOA doesn't support incurring the \$3.3 million in debt associated with the pier part of the funding and is opposed until there is more information on plans. He said due to COVID, there was only about 30 households represented at the meeting, so they decided to poll their membership. They received about 345 votes from the members. Mr. Witten said the vote was nearly unanimous at the meeting and the poll of members is running at about 82% of the people who responded opposing the purchase.

Dan Alman went over his math for the purchase of the pier, which comes out to \$10,700 per month for 30 years. He said that doesn't include insurance or loss of taxes from the current owner. He asked if the Town has that kind of money, not to mention for the repairs that need to be done.

Gay Atkins asked if an inspection was done on the pier and the results of it. She inquired about the cost of tearing down the restaurant, tearing out the septic tank and the cost of insurance. She asked if there will be a public and owners' access and that cost. She asked how the Town will make money to pay for everything.

Beverly Compton thinks more information should be provided before the public speaks. She doesn't know how to comment if she doesn't have the presentation.

Mayor Holden closed the public hearing at 5:15 p.m.

REGULAR MEETING

Mayor Holden asked for a moment of silence and then called the Regular Meeting to order.

PLEDGE OF ALLEGIANCE

AGENDA APPROVAL

Motion by Commissioner Smith to approve the agenda as written; second by Mayor Pro Tem Brown; approved by unanimous vote.

APPROVAL OF MINUTES

Motion by Mayor Pro Tem Brown to approve the minutes (Public Hearing/Regular Meeting of August 17, 2021 and Special Meeting of September 1, 2021); second by Commissioner Murdock; approved by unanimous vote.

PUBLIC COMMENTS ON AGENDA ITEMS

No comments were made.

SEPTEMBER MONTHLY REPORT AND WASHINGTON LEGISLATIVE AND ADVOCACY UPDATE – MIKE MCINTYRE, WARD AND SMITH AND ROGER GWINN, THE FERGUSON GROUP

Assistant Town Manager Ferguson introduced Mike McIntyre, Roger Gwinn and Stephanie Missert (Ms. Missert was on the phone). Mr. McIntyre talked about the Corps' project. The Corps agreed the Town should not have to start again. We are able to use the 1966 authorization which saves the Town a significant amount of time and time is money. Now the benefits can occur earlier. Working with Senator Burr, Senator Tillis, Congressman Rouzer and their staff and the Ferguson Group, we were able to unite as a team to secure approval of the study to move forward. The Corps will enter 3/3/3 Project, which is an opportunity for no more than \$3 million to be spent on a study, split 50/50 between the federal government and the Town; three years to get it done and the three levels of review. The feasibility cost sharing agreement was signed on August 27th. Mr. McIntyre congratulated the Town.

Mr. McIntyre said they are continuing to track two other major pieces of legislation that are moving through Congress. One is the fiscal year 2022 appropriations. Congress decided to extend a continuing

resolution to keep the government functioning at least until December 3rd. He knows the maintenance dredging of the Lockwood Folly Inlet is an ongoing concern. This is the year that Congress gave up on earmarks. It ended up letting agencies with bureaucrats make decisions. Congress realized that they had given away an opportunity to oversee these decisions. This is the first year after 10 years for Congressionally directed spending, where they can make direction on how certain money is spent. They went through that process and worked closely with Congressman Rouzer's office. They made a request and the request was granted at \$1.05 million to help with Lockwood Folly maintenance dredging. In the Senate, Senator Burr submitted a request. They worked with his office and they got a \$1 million request to support Lockwood Folly. The Senate Appropriations Committee did not include it in their final decision for the Energy and Water Development Appropriations Bill. When it goes to conference between the House and the Senate, they will need to work out the differences. Mr. McIntyre said they are also tracking the Bipartisan Infrastructure Package. If that is passed it will include \$4 billion for the Corps' operations and maintenance budget. That budget is where the dredging money comes from to help places like Lockwood Folly. They are optimistic that if the other situation doesn't work out, the Corps will have abundant money to get it done in operations and maintenance. They are also passing the budget reconciliation package, the \$3.5 trillion bill. If that passes, they want to make sure that is another opportunity to help with projects.

Mr. McIntyre provided information on a couple other items of interest they are tracking including a component that includes a ban on offshore drilling; an order directing FEMA to extend the 100% cost share for all eligible Category B, Protective Measures incurred by local governments in light of COVID-19; the revision of FEMA's Preliminary Damage Assessment Guide and Pocket Guide; and the announcement from FEMA of the partial implementation of a federal flood risk management standard for all areas designated as being assisted by hazard mitigation assistance programs. FEMA is seeking public comment on the National Flood Insurance Program that could affect everybody with regard to flood insurance rates. They want input from the public on the Community Rating System. FEMA has revised the regulation regarding the public assistance appeals process. The NEPA process is being looked at to be revised.

Commissioner Kwiatkowski asked where the EPA is on their PFAS Program they are supposed to be putting together. Mr. McIntyre said PFAS Assistance money is being made available for water and sewer projects for ones that are yet to be built and ones that are currently being built. He can follow up with more details.

Mr. Gwinn congratulated the Town on the Corps' study. It is exceptional how quickly it has been moved forward from a dormant status to signing the agreement. Resources seem to be in a good place at this time.

Beverly Compton asked what the 1966 request was for. Mr. McIntyre went over the original authorization and progress since that point.

Mr. McIntyre spoke to the governor's office today about keeping the state share for the beach monies. Mayor Holden said he is proud to report that the relationship between the Town and the Corps is as good as it has ever been.

DISCUSSION AND POSSIBLE ACTION ON RESOLUTION 21-13, RESOLUTION APPROVING AN INSTALLMENT FINANCING CONTRACT AND DELIVERY THEREOF AND PROVIDING FOR CERTAIN OTHER RELATED MATTERS

Assistant Town Manager Ferguson explained the resolution was prepared by our bond attorney firm and is required for the financing package. She introduced Scott Leo from Parker Poe and Andrew Carter from DEC Associates. Commissioner Kwiatkowski questioned the appropriateness of having one resolution, instead of two separate ones. She believes the Board needs to reexamine how much the Town wants to borrow for the sewer station. She stated when the Board initially approved the resolution last October, we were not looking at additional borrowing like we are now, which might reach an additional \$5 million. She said she prefers to have separate resolutions for the lift stations and the pier. Mr. Leo explained the resolution was prepared as part of the financing package for when the Town sought proposals from banks. The winning bidder at this point was Truist Bank to finance all of the projects together. This resolution was prepared that way, but it is the Board's prerogative to do what they see fit. He said the Board can split the resolution if it's the Board's prerogative. At this point the Local Government Commission (LGC) has not approved it yet, so the application would need to be revised. Mr. Leo added we would need to go back to the banking partner to see if they are still willing to approve it on the basis the Board wants to approve it on. Town Manager Hewett said when the financing package was developed, they put out solicitations for an amount not to exceed \$8.5 million. He inquired if that would need to be resolicited since the amounts would be different. He said that wouldn't be able to get done to meet the October 15th LGC date. Mr. Carter said if the deal changes enough, they would need to work with the winning bank.

Motion by Commissioner Kwiatkowski that we rewrite Resolution 21-13 to cover the financing related to the improvement/remodeling of lift stations and write a separate resolution for the pier; second by Commissioner Sullivan.

Commissioner Murdock said his concern would be that the terms would change enough if you split them up. He said you have a not to exceed number, which means you don't have to spend it all. He doesn't know the benefit to splitting them up. Mr. Carter said we have told them we would borrow no more than \$8.5 million, but close to that amount. If the amount drops in half as an example, he may need to go back to the bank to see if there are issues on the lending side. He won't know the answers until he talks to the bank. Town Manager Hewett stated he thinks the Board needs to be aware if there is a delay moving the application forward, he would forecast the next time the Board will be able to apply for financing is probably in the February timeframe.

The motion failed. Commissioners Sullivan and Kwiatkowski voted for the motion and Mayor Pro Tem Brown and Commissioners Murdock and Smith voted in the negative.

Motion by Commissioner Smith to approve the resolution as written, 21-13; second by Commissioner Murdock; approved by a 3 – 2 vote, with Mayor Pro Tem Brown and Commissioners Murdock and Smith voting for the motion and Commissioners Sullivan and Kwiatkowski voting in the negative.

DISCUSSION AND POSSIBLE AWARD OF CONTRACT FOR VACUUM SEWER SYSTEM #2 UPGRADE

Town Manager Hewett provided background on the topic. Mr. Green said the first time we advertised it, we only received one bid. They readvertised it and opened the bid yesterday. T.A. Loving is the company

that has built the improvements to lift stations 3 and 4. He went over the information he provided to the Board with previous amounts paid and the current bid of \$2,664,000. Mr. Green said it is indicative of what we are seeing in the construction industry. Prices continue to go up and the availability of labor is limited. There is plenty of work and materials are scarce. That is all reflected in the bid we received. Mr. Green went over some of the differences in the projects. The Board talked about the prices and availability of supplies. Mr. Green explained they backed off the aggressive schedule and added about five months to it. They did everything they could to keep the price down. He talked about options for proceeding. He confirmed we will need to go through another hurricane season before it is finished.

Mayor Pro Tem Brown stated that wood prices in construction are getting back to normal. He wondered if we would see the same thing on metal and wire if the time factor plays in. He suggested the Board should give thought to waiting. Commissioner Murdock said there is also the interest rate factor. Town Manager Hewett said there will be a whole bunch of American Recovery Act money that will enter in for the purpose of water and sewer improvements. That will further favor the contractors on coming in with higher prices. Mr. Green agreed. Commissioner Sullivan said after the Central Reach Project happened, we thought the next project would be more expensive because of the lack of ships and dredgers that would be able to do the job. When we put out the bid, we were able to save \$20 million from what we were authorized to spend. He said he has not heard that interest rates will climb to 4% or 5% in the next year. He said he thinks the Town would be better to wait and rebid the project. He thinks we are buying in at the highest point. Commissioner Kwiatkowski agreed. Mr. Green confirmed that if there is a delay it will not change the engineering costs. Town Manager Hewett said part of the facility upgrade required that the Town procure the skid for the equipment that goes on that. That is a \$200,000 piece of equipment with a lead time of four – five months. They ordered that in July. The Board discussed waiting.

Motion by Commissioner Kwiatkowski that we do not accept the current bid and we defer work on lift station 2 until there is a determination it is an appropriate time to go back in; second by Commissioner Sullivan; approved by unanimous vote.

Town Manager Hewett asked if the Board is in agreement that the Town should move forward with the reimbursement loan request for lift station 3 that has already been paid for. The Board agreed. Commissioner Sullivan asked if this change will materially change the application so that we will not be able to get it done in a timely manner. Mr. Carter responded that he would need to go back to the bank because the amounts have changed enough. The collateral in the deal were the sewer lift stations and we are taking about half of that away. He said there is a very small window of time to make any decisions. The amount for lift station 3 is \$2.517 million.

DISCUSSION AND POSSIBLE ACTION ON DRAFT PARKS & RECREATION MASTER PLAN

Assistant Town Manager Ferguson provided background information on the draft plan. The plan is useful for grants. We have used excerpts for the grant application in the Board's packet. The draft was unanimously approved by Parks & Recreation Advisory Board (PRAB) and it is before the Board for consideration. She introduced Michael Norton and Mike Norris from McGill. Members of the PRAB are also in attendance. Town Manager Hewett stated this is the second plan. The first one was done 10 years ago. It was the foundation document required for the grants that went into Bridgeview Park. Assistant Town Manager Ferguson said the granting agencies look at plans being reviewed every five – seven years

to be current. They will accept up to 10. It serves as a guide; you can modify it. You can do things outside of the plan if opportunities present themselves.

Commissioner Kwiatkowski said she put a couple of pages of comments together (hereby incorporated into the minutes). She reviewed some of her comments, including working in the AARP livable community concept; a forward-looking framework acknowledging that as an island community there are things that are special to us around resiliency, the need to protect our investments; and suggestions for 796 Ocean Boulevard West. Commissioner Kwiatkowski has questions about the demographics. She talked about COVID-19 challenges and would like to send the plan back to the community. She thinks it would benefit from another four – six weeks of work. Assistant Town Manager Ferguson said she did review old minutes. McGill was not directed during their contract process to include AARP as part of the plan. It was in the Land Use Plan and they were to compare with the Land Use Plan to make sure it was not in conflict, but they were not directed to do this as part of the plan. Since the Board did not communicate that request, she did not take that forth to McGill.

Mike Norris stated they received a lot of good community input. The meetings were well attended and had a good cross section of participants. This was a plan driven by the community. A lot of the recommendations were made from public input, stakeholder focus groups and the survey. Mr. Norris said as a standard for parks & recreation master plans, you want to make sure they are consistent with the state and national standards with how and what they put as recommendations. He said particular elements of a plan are looked at, so they wanted to make sure that followed a recognized standard for recreation. He said they wanted to make sure the plan was inclusive of all ages and for people of all abilities. Mr. Norris said the footprint of what they are proposing is a minimal footprint. He went over some of the recommendations in the plan and went over why it was prepared the way it is. He stated he thinks the plan meets the spirit of the community. Visitor input was very consistent with property owners. He thinks that reinforces what they are proposing.

Commissioner Murdock reviewed his view of what is contained in the plan. As of right now, he thinks the plan is as good as it can get. It's a document that can be changed and he thinks the Board needs to move forward with it. He thinks they did good job. Commissioner Smith stated he was part of a couple of focus groups and it was interesting to see that a number of the people on and off the island had the same ideas. He said as someone who attends the activities, those things seem to be what makes the community gel together. The plan seems to continue to move that forward. Commissioner Sullivan thanked the members of the PRAB for their hard work. He went to a couple of meetings and they reviewed the plan with a fine tooth comb. He looks at page 31 and thinks the Town is in good shape when it comes to the amenities and facilities that are expected for a community of our size.

Motion by Commissioner Smith to approve the Parks & Recreation Master Plan as written; second by Commissioner Murdock. The motion was approved by a 4 – 1 vote with Mayor Pro Tem Brown and Commissioners Murdock, Sullivan and Smith voting for the motion and Commissioner Kwiatkowski voting in the negative.

POLICE REPORT – LIEUTENANT DILWORTH

- Experienced the normal decline after Labor Day in the amount of visitors, traffic and call volume. Planned to do Booze it or Lose it that weekend, but had staffing shortage due to COVID.

- The next major event is the Run HB half marathon which is October 9th. It is put on by Coastal Race Productions, in coordination with the Town. The event occurs on and off the island. Went over the details.
- Pets can be back on the beach all the time. When you are off of your personal property they need to be on a lease and you need to clean up after them.
- Speed limit changes October 1st from Greensboro Street west to 45 MPH. Low speed vehicles (LSV) can no longer be operated on Ocean Boulevard in a 45 MPH zone because of state law.
- Keep a watch on hurricane activity.
- Went over the report on the LSV extraction of charges.

Commissioner Smith said in watching the golf carts over the summer, it is hard to imagine only five infractions in a 30-day period. Lieutenant Dilworth stated they look at the big picture on the island and enforce things as they observe them. They still had 483 other events in the month of August.

DISCUSSION AND POSSIBLE ACTION ON REVISED SYSTEM DEVELOPMENT FEES

Town Manager Hewett explained the proposed revision is based on the report created by Raftelis. The Board adopted an effective date of October 1, ²⁰²¹. The proposed fees are \$460 per bedroom for a water system development fee and \$2,240 per bedroom for a sewer system development fee. The credit for prior paid sewer share fees remains the same, the fee is amended to reflect the cost of \$2,240. Inspections Director Evans went over current fees versus proposed fees. He said it is relatively a decrease across the board. Commissioner Kwiatkowski explained she thinks the Town should at least be neutral in the fees. That would mean the water system development fees should be \$560 per bedroom so that no building development activity would pay less moving forward than it would have paid in the past couple of years.

Motion by Commissioner Kwiatkowski that the water system development fee should be \$560 per bedroom rather than \$460 and the sewer development fees be the \$2,240 as allowed. No second was made.

Motion by Commissioner Murdock to approve Resolution 21-14 as written; second by Commissioner Smith; approved by a 4 – 1 vote with Mayor Pro Tem Brown and Commissioner Murdock, Sullivan and Smith voting for the motion and Commissioner Kwiatkowski voting in the negative.

DISCUSSION AND POSSIBLE SELECTION ON PARKING FIRM

Town Manager Hewett explained staff met with Premium Parking and Otto Connect to see which firm would be better suited to implement a paid program for the Town. Six staff members participated in the process, inquiring as to price, user interface and some of the program implementation logistics. Otto Connect was unanimously selected as the staff's recommendation to the Board.

Commissioner Sullivan stated he doesn't think the Board approved paid parking yet. He thinks it is premature to award a contract to the vendor until they do. There has been some discussion about preventing people from parking in the rights-of-way. The Parking Committee hasn't made the recommendation to the Board on what they would like paid parking to look like. He is fine with accepting Otto as the potential vendor, but not asking for a contract before the Parking Committee gives the Board something to vote on. Commissioner Murdock agreed. He thinks the Town needs a vendor that is knowledgeable in paid parking before the idea can be entertained. He said he thinks the Board needs to

get someone so the Parking Committee has someone to work with so we can take a step forward or not do it at all. Attorney Madon said it sounds like the Board may want Otto as a consultant at this point, rather than a contract for services. It may be something they are willing to do.

Motion by Commissioner Murdock that we approve Otto as the Town's parking vendor if paid parking does come to pass at Holden Beach; second by Mayor Pro Tem Brown.

Attorney Madon said she thinks the wording is difficult. At this point it might be best to table the item or see if they would be willing to come on as a consultant.

Commissioner Murdock amended his motion that we ask Otto as a potential parking vendor to come on as a consultant at this time for the Parking Committee to further make a decision on paid parking. Mayor Pro Tem Brown agreed with the amended motion.

Commissioner Kwiatkowski asked the budget consideration if this needs to be an agreement with money attached. Attorney Madon said the Board would need to see what they would propose. Right now, they are looking at approving them as a consultant. They may not be willing to do that.

Town Clerk Finnell read the motion.

After discussion Commissioner Murdock withdrew the motion.

Town Manager Hewett said he can ask Otto what would be involved in asking them to be our consultant and get a fee schedule from them. He said a parking consulting services proposal could be brought back to the Board. The Board all agreed to his suggestion.

DISCUSSION AND POSSIBLE ACTION ON DIVISION OF COASTAL MANAGEMENT, NORTH CAROLINA PUBLIC BEACH AND WATERFRONT ACCESS GRANT APPLICATION

Assistant Town Manager Ferguson went over the grant background. The final grant application is for the 50-foot-wide oceanfront lot only based on the lack of clarity DCM has in their current funding policy regarding public parking purposed for paid parking. The grant was for \$180,460. If the grant is awarded, the Board would still have to choose to accept the funds.

Commissioner Sullivan asked if there is still a question on if the Town could pay for parking in the 50-foot area or for the whole piece of property. Assistant Town Manager Ferguson answered that they separated it out to make sure it is free and clear of any rules that come with parking. The CRC is voting on language. It sounds like they are going with if you have paid parking at a site that they fund, it has to be for the purpose of maintaining that site only. They carved out just this access point, not where we are considering paid parking.

Motion by Commissioner Smith to have the grant application considered for funding by the Division of Coastal Management; second by Mayor Pro Tem Brown; approved by unanimous vote.

DISCUSSION AND POSSIBLE ACTION ON ORDINANCE 21-29, AN ORDINANCE AMENDING ORDINANCE 21-13, THE REVENUES AND APPROPRIATIONS ORDINANCE FOR FISCAL YEAR 2021 -2022 (AMENDMENT NO. 5)

Town Manager Hewett said we received the first allotment of ARP funding. The funding allotment was a little higher than what we originally estimated in the budget to the tune of \$8,807.55. That same amount should come to us again next year. The proposed amendment allocates the \$17,614.10 to ARP Project Expenses and recognizes the corresponding revenues and expenses. The original amount in the ARP Project Expenses was budgeted for in the annual budget and was earmarked for stormwater expenses.

Motion by Mayor Pro Tem Brown to approve Ordinance 21-29; second by Commissioner Smith; approved by unanimous vote.

DISCUSSION AND POSSIBLE ACTION ON ORDINANCE 21-30, AN ORDINANCE AMENDING ORDINANCE 21-13, THE REVENUES AND APPROPRIATIONS ORDINANCE FOR FISCAL YEAR 2021 -2022 (AMENDMENT NO. 6)

Assistant Town Manager Ferguson said the proposed ordinance provides \$168,090 in current year funding via a reappropriation of a prior year encumbrance for vegetation and sand fence installation. The work has been completed.

Motion by Mayor Pro Tem Brown to adopt Ordinance 21-30; second by Commissioner Murdock; approved by unanimous vote.

DISCUSSION AND POSSIBLE ACTION ON LIMITING MEETING TIME

Mayor Pro Tem Brown suggested prioritizing Town business to limit the meeting time to two and a half hours. If the Board is not finished, the business could be moved to another agenda. Commissioner Murdock explained he is diabetic. He can sit up there, but the last meetings were three hours and 45 minutes for two of them and four and a half hours for the last one. They didn't finish at the last meeting and the Board was exhausted and out of patience. He would rather have a second meeting a month if that's what it takes. He talked about tabling items or taking a recess when the meetings run long. He would sit through it for the benefit of the Town, but he thinks for everybody's benefit, it should be limited. Commissioner Murdock said there is a limit on public comments. If the Board can have 30 minutes to talk, so should the public.

Motion by Commissioner Murdock that we limit the meetings to somewhere between two and a half and three hours; second by Mayor Pro Tem Brown.

Attorney Madon suggested that when the meetings get long, someone can make a motion to recess to be voted on by the Board. She thinks a blanket rule could potentially cause issues. Mayor Holden stated he thinks what she is saying is that with parliamentary procedure, they have what they want, without having to do that. Mayor Holden stated some of the Board still works at 6:30 a.m. or 7:00 a.m. and go to the meetings at 5:00 p.m. That turns into 15- or 16-hour days. Commissioner Kwiatkowski states she doesn't think anyone would object to recessing as long as a time is set within a couple of days to come back and finish the business. She went over the Board's Rules of Procedure for time limits.

Commissioner Murdock withdrew the motion. Mayor Holden said he thinks everyone is in agreement that they want to be reasonable with time.

PUBLIC COMMENTS ON GENERAL ITEMS

No comments were made.

TOWN MANAGER'S REPORT

- Encouraged everyone to get your hurricane decals if you haven't procured them yet. We are in the middle of hurricane season, now is the time to get them. Don't wait until we have one banging on our door.
- We have submitted our draft grant application to the Grand Strand Area Transportation Authority for federal directly attributable funds for the bike path burden share. It will be reviewed by the Transportation Coordinating Committee on Friday and hopefully will be moving to the Transportation Advisory Committee later in October.
- Just received a \$79,000 reimbursement from the Division of Water Resources for a portion of our vegetation project.
- Passed along comments from the PRAB chair on how clean the beach was.
- The Mountains to the Sea Cycle NC will be using the Town as its terminus in October 2022.

Commissioner Kwiatkowski asked about the October festival. Mayor Holden said he made several calls and talked to several people. The summary is the festival is on go for the last weekend of October. The parade is in question. The festival is subject to the governor's regulations, but they are planning on having it.

MAYOR'S COMMENTS

- Three weekends ago, counted the boat trailers and trucks on the east and west side of the bridge. Stopped counting when he got to 75. Estimated the number was around 100 – 105. They were lined up past the HB Chapel. They were mixed and mingled in between cars. We are going to have to do something. The land that Holden Beach Enterprises had for sale for a reasonable price is now \$5.5 million. There is no way the Town can afford that at the present time. Doesn't know what the answer is. It upsets him when he goes to Sunset Beach, Ocean Isle Beach and Oak Island. It seems everyone that is an island has a better boat ramp facility than the Town. We have the smallest, most out of date, most unsafe boat ramp facility for any of the municipalities of our islands. It is embarrassing. People are talking about almost fist fights at the ramp and people are waiting over an hour to use the ramp. Talked about people's experience. Something needs to be done. He doesn't know where everyone will go when Holden Beach Enterprise's property is gone. Asked that the boat ramp and trailer parking be on the agenda for the next meeting. It may involve asking Wildlife and other state officials to be here and give the opportunity for these people that are complaining to let these people hear what the Board is hearing. When you go to the other boat ramps, the concrete finish is much safer than the one here.
- No wake zone – doesn't know if this needs to be part of the same subject. If not, wants that on the agenda as well. Have a no wake zone from essentially Betty's Waterfront to the west end of the Yacht

Watch Subdivision. Boats and jet skis run under the bridge wide open. Lives on South Shore half the time and 191 East half the time. There are five boat docks within a couple hundred yards of his house that had work done on them this year, beating and banging from some of the bigger boats making wakes. The laws are on the books and we need to do what the law states.

- As he always says, if there is not a storm in sight October 15th it means we made it.

BOARD OF COMMISSIONERS' COMMENTS

Mayor Pro Tem Brown

- Mayor Holden covered things pretty well.

Commissioner Smith

- Thanked Assistant Town Manager Ferguson and the PRAB for all the hard work putting the plan together. There was a lot of hard work that went into it and it is very much appreciated.
- Low Speed Vehicles State Regulation Enforcement - there seems to be a disconnect. With us always being worried about the safety of the people on the island, doesn't understand why that is being overlooked.
- Thanked Town staff for working hard to find a good parking vendor. If we can get them to come on board and work with us, is hopeful we can have some of this in place by next year.
- Been a great summer, great concerts and activities. Hope we can make it through another three weeks to get through the danger zone of hurricane season. With the Police Department and the right turns on Saturday it seemed to be an easier summer, even though there seemed to be more people here.
- Thanked Mayor Holden for talking about the no wake zone. Has been talking about this with Dr. Caldwell for months. There is something on the books that seems to have all of a sudden fallen off a cliff. Having that on the agenda for the next meeting is a great idea and a move in the right direction.

Commissioner Murdock

- Thanked staff. They work hard to put this stuff together for the good of the Town. It's not an easy feat.
- The pier has been a subject of conversation. Do we have a solid plan to purchase the pier right at this second, no. The pier is under contract pending an inspection, which he doesn't expect to be good and doesn't think anyone in the Town does. If the pier and building weren't there, there are seven oceanfront lots that we are purchasing at a very good price, \$460,000 apiece. He thinks in the market right now they are bringing in about \$690,000, if there are any available at all. Realizes it would take about \$20,000 to remove the pier building, not sure what it would take to take down the pier, but at the worst, we would have seven oceanfront lots, public access and property that is preserved for generations to come. There has to be a way to get the pier fixed, rebuilt, raised up. We may tear it down and build something better. Everyone wants to know if we have a plan in place to pay for it. We've had some great years of occupancy tax. Part of that money has to be spent on things such as that. We can take some of that money if we need to, not all of it. If we get paid parking implemented; we don't really have that many parking spaces right now. They all will be in someone's yard. All of those yards and vacant lots are going away every time someone puts pilings in the ground. If they put pilings in the yard at Block Q, doesn't know where you will have festivals, how people will get to the boat ramp or where people will park for concerts. There have been two previous boards that had really good opportunities to buy it. It was a whole lot cheaper, nowhere near what they are asking

today. Thinks if we had enough spaces for paid parking, it is conceivable we would have most of the money to make the payments to make this work. If you let it go, hindsight will get you. Brought Block Q to this Board in January and it was shot down. Thinks the HBPOA puts out great information, but also thinks some of the information gets a little twisted. Can drive the bus just as good in a different direction. Thinks if it was worded the same and if you tried to get support from the community instead of discourage or make it look like it is going to be a burden; even if the taxes had to be raised to pay for every bit of it, it would be about \$100 a year. You have been willing to absorb money for sewer and the Central Reach Project. Why not \$100 a year for the pier and seven oceanfront lots. If it is the consensus of the HBPOA that you don't want people to have parking or accesses, that whole canal community will not have access to the beach, just say it. Wants people to enjoy the beach. Unfortunately, it is one of the best economic times to sell, prices are high. Need to figure out if there is a way we can come together as a community and figure out how to pay for this, whether we use it or not. That pier never has to open, but it's there in case we decide to do something with it in the future, just like 796 Ocean Boulevard West has been sitting there for two years. It is the same principal. This is Holden Beach and Holden Beach needs property.

Commissioner Sullivan

- He and Commissioner Murdock have different ideas on the pier and what is important and necessary for Holden Beach. If you look and read the comments of the Parks and Recreation Master Plan, there are a lot more comments for keeping Holden Beach the way it is and not worrying about the people who come here to visit and the people who come here for daytrips. Read the comments and see what they have to say about the cost for making it more accessible and more inviting. We already have plenty. We are an open community and are welcome to everyone. If you have to get here at 5:00 a.m.; he came from the east coast, when you wanted to go to the beach you had to get there early or else there was no place to park. If you can't park and get to the beach you had to come home. That's not unique to this island. Had the conversation about the pier for the last five months. Problem is there is so little information that is out to the people. The reason for that is that the laws in NC make us have closed sessions to discuss items. Going to have a closed session tonight. We just got in a very preliminary report on the inspection of the pier. Going to consult with counsel to find out what can be put on the Town's website so that people have access to the information the Board has, everything that is legally permissible. Wants people's input. If we can purchase the property at a reasonable price and we can pay for it, that is great. Thinks everybody is in favor of that, but nobody wants to purchase something without knowing what the eventual total cost would be and the potential impact on taxes. The more people we invite and the more people it is available to, the more this beach changes. People come here and pay rentals of \$6,000 - \$7,000. They don't pay that because they want to be sitting on the same blanket as the guy next to them. They don't pay that because they want to be on Ocean Boulevard for 15 minutes to get where it used to take them five minutes. All of these proposals that will increase the traffic and increase the amount of people on the island, you need to think how it will affect the people on the island, not just the people who are allowed to go home at the end of the day.

Commissioner Kwiatkowski

- Will be having discussions about the pier and they probably will go on for a while. The initial discussion around preserving Holden Beach; we want to keep Holden Beach the way it is. There is a fishing pier, we want to maintain the fishing pier. There is an old restaurant, we don't want to make big changes.

We want to have a restaurant there, maybe a little better. This was the initial discussion, she is not sure where it is anymore, but she can assure you initial discussions were about trying to maintain the status quo and bringing it back to its glory days. Was in favor of pursuing it if it can be shown that it will more or less break even. Still in favor of pursuing that if it will more or less break even, but there have been no assumptions put together. Believes assumptions could be put together on this that could give a reasonable idea. Doesn't get when the discussions morph into let's make a boardwalk or do other things; thought they were trying to maintain something. Will try to stay open minded. When it starts getting into a big change, that's not where she started out or where she is going to go. Thanked the HBPOA for what they are doing and all of the people who wrote comments. All will do the best they can.

EXECUTIVE SESSION PURSUANT TO NORTH CAROLINA GENERAL STATUTE 143-318.11(A)(5), TO INSTRUCT THE STAFF OR AGENT CONCERNING THE NEGOTIATION OF THE PRICE AND TERMS OF CONTRACTS CONCERNING THE ACQUISITION OF REAL PROPERTY

Town Clerk Finnell read the reason to enter into Executive Session.

Motion by Mayor Pro Tem Brown to go into Executive Session at 7:48 p.m.; second by Commissioner Murdock; approved by unanimous vote.

OPEN SESSION

The Board went back into Open Session at 8:26 p.m. No action was taken.

RECESS

Motion by Mayor Pro Tem Brown at 8:26 p.m. to recess until next Wednesday morning (September 29, 2021) at 8:00 a.m.; second by Commissioner Murdock; approved by unanimous vote.

RECONVENE – WEDNESDAY, SEPTEMBER 29, 2021

Mayor Holden called the reconvened meeting to order at 8:01 a.m. on Wednesday, September 29, 2021. Present were Mayor J. Alan Holden; Mayor Pro Tem Gerald Brown; Commissioners Brian Murdock, Mike Sullivan, Pat Kwiatkowski and Rick Smith; Town Manager David W. Hewett; Town Clerk Heather Finnell; Assistant Town Manager Christy Ferguson; Inspections Director Tim Evans; and Town Attorneys Katie Madon and Rick Green.

EXECUTIVE SESSION PURSUANT TO NORTH CAROLINA GENERAL STATUTE 143-318.11(A)(5), TO INSTRUCT THE STAFF OR AGENT CONCERNING THE NEGOTIATION OF THE PRICE AND TERMS OF CONTRACTS CONCERNING THE ACQUISITION OF REAL PROPERTY

Town Clerk Finnell read the reason for entering into Executive Session.

Motion by Commissioner Sullivan to enter into Executive Session at 8:01 a.m.; second by Mayor Pro Tem Brown; approved by unanimous vote.

OPEN SESSION

The Board went back into Open Session at 9:15 a.m.

Motion by Commissioner Sullivan that the Town go back to the seller of the pier property and ask for an extension of the due diligence and closing periods; second by Commissioner Kwiatkowski.

Commissioner Sullivan said this is based on the information the Board has, the lack of the full inspection for the pier property, which he thinks is information that is necessary to make a decision on how much it will cost to repair it and keep it safe. At this point the due diligence period is going to expire in two days. He would like to get an extension of the due diligence period so that the inspection could be completely done and the Board would have a full understanding of the entire cost of the purchase of the property, not just the purchase price. The Board discussed how long of an extension the Town should ask for.

Commissioner Sullivan amended his motion to extend the due diligence period to November 19, 2021. Commissioner Kwiatkowski agreed to the amendment.

The Board further discussed the extension.

The motion passed by unanimous vote.

Attorney Madon said the Board needs to put a timeframe on when the extension request has to be accepted. They also need to address the closing date. The closing date and extension timeframe were discussed.

Motion by Commissioner Kwiatkowski to define the closing date in the contract as the last day of February; second by Commissioner Sullivan; approved by unanimous vote.

The extension timeframe was further discussed. Commissioner Sullivan suggested having the response due by noon Friday. Attorney Green suggested making a motion to terminate if the change is not accepted. Attorney Madon added that would be put in writing with the offer to extend.

Commissioner Sullivan amended the motion to request a response by the end of business on Friday and failure to receive a response will result in termination of the contract at that time. Commissioner Sullivan amended his motion to 12:00 p.m. on Friday.

Meeting on Friday was discussed.

Commissioner Sullivan amended his motion to that we get a response from Mr. Bass by 12:00 p.m. noon on Friday. If the response is in the negative to our request, or requesting some type of counter proposal, at that point we will have a special meeting and if it is a denial we will terminate. No second was made.

Motion by Commissioner Kwiatkowski that we request a response from Mr. Bass by noon on Friday, no response will be taken as negative and the contract will be terminated; second by Commissioner Sullivan.

Town Clerk Finnell read the motion. Commissioner Sullivan said the motion with the language to terminate was suggested by our counsel. He believes that based on that it should be part of the request to Mr. Bass.

The motion passed by unanimous vote.

Attorney Madon explained there is an option to offer more due diligence or earnest money. After discussion, the Board decided to talk about money on Friday.

Commissioner Kwiatkowski stated there are three items that are in hand related to the purchase, the appraisal, the engineer's report and the Town inspector's report that she believes should be made available for the public so people can review them. She said they could be put in the October packets or on the website. Commissioner Sullivan suggested doing both. The lack of information in great part is due to the open meetings law. We are getting to the point where certain documents can be disclosed.

Motion by Commissioner Sullivan that we include the documents that were referred to in the packet for the next Board of Commissioners' meeting and we also post it on the Town website under proposed pier property purchase; second by Commissioner Kwiatkowski; approved by unanimous vote.

Attorney Madon explained that Parker Poe created a resolution reflecting the removal of the lift station project that is now on hold (lift station2). The pier would also need to be removed. Town Manager Hewett said it would now be only for the reimbursement of the lift station that has already been constructed. Attorney Madon said the proposed resolution in front of the Board would need to be amended to reflect the removal of the pier property.

Motion by Mayor Pro Tem Brown to approve the resolution (Resolution 21-15) with the amendments discussed; second by Commissioner Smith; approved by unanimous vote.

The Board agreed to schedule a Special Meeting for 12:15 p.m. on Friday to discuss the pier contract.

Mayor Holden stated he has been scheduled for weeks to be out of town beginning on Thursday. He mentioned the fact that he can't participate and has not been participating in the discussions of the pier and the fact that there is registered certified mail going out stating that he is continuing to be the agent for the pier property and that he continues to participate, which everyone in the room knows is not true. Individuals are also spreading that information which is not true. The fact is that he has not or will not participate in the meeting Friday, other than procedurally. If he is not here, it doesn't really make a difference because Mayor Pro Tem Brown can run the meeting. If he is not there, it is because he is out of the state and it has been planned for an extended period of time. He hopes this is another opportunity to everyone who is listening and accusing him of participating to reaffirm he is not getting any commission from this and he is not participating. Mayor Holden said he thinks it is continuing to be unfair to put this false information out about him and some of the commissioners. There is so much misinformation out there and it is confusing to the public, it is infuriating. It is a frustrating event, either way it goes. It does not help when people are sending out false information, knowing it is false information.

ADJOURNMENT

Motion to adjourn at 9:58 a.m. by Mayor Pro Tem Brown; second by Commissioner Smith; approved by unanimous vote.

J. Alan Holden, Mayor

ATTEST:

Heather Finnell, Town Clerk



**TOWN OF HOLDEN BEACH
BOARD OF COMMISSIONERS
SPECIAL MEETING
FRIDAY, OCTOBER 1, 2021 – 12:15 P.M.**

The Board of Commissioners of the Town of Holden Beach, North Carolina met for a Special Meeting on October 1, 2021 at 12:15 p.m. Present were Mayor J. Alan Holden; Mayor Pro Tem Gerald Brown; Commissioners Brian Murdock, Mike Sullivan, Pat Kwiatkowski and Rick Smith; Town Manager David W. Hewett; Town Clerk Heather Finnell; Assistant Town Manager Christy Ferguson; Inspections Director Tim Evans; and Town Attorney Katie Madon.

PUBLIC COMMENT

No comments were made.

EXECUTIVE SESSION PURSUANT TO NORTH CAROLINA GENERAL STATUTE 143-318.11(A)(5), TO INSTRUCT THE STAFF OR AGENT CONCERNING THE NEGOTIATION OF THE PRICE AND TERMS OF CONTRACTS CONCERNING THE ACQUISITION OF REAL PROPERTY

Motion by Commissioner Sullivan to go into Executive Session at 12:19 p.m.; second by Commissioner Smith.

Town Clerk Finnell read the reason to enter into Executive Session.

The motion passed by unanimous vote.

OPEN SESSION

The Board went back into Open Session at 12:25 p.m.

DISCUSSION AND POSSIBLE ACTION ON CONTRACT FOR 441 OCEAN BOULEVARD WEST (THE PIER PROPERTY)

Attorney Madon explained the Board is going to entertain a motion to extend the due diligence and closing dates, along with a due diligence fee of \$50,000.

Motion by Commissioner Smith to appropriate the funds to pay the \$50,000 due diligence fee on the purchase of lot 1 and lot 2, the pier and accessway; second by Commissioner Murdock.

Town Manager Hewett suggested changing the motion to approve the amended contract as prepared by the attorney, which contains all of the conditions necessary. Attorney Madon agreed.

Commissioner Smith amended his motion to approve the request to amend the contract and alternatively intent to terminate, with the due diligence fee of \$50,000. Commissioner Murdock agreed with the amendment.

Commissioner Sullivan stated he is happy Mr. Bass is agreeing to extend the due diligence period. He doesn't think the Town should have to spend \$50,000 more for the extended period because the reason we need to request an extension is in the delay of Mr. Bass originally signing the contract. He went over the timeline of the contract and the due diligence period.

The motion passed by a 3 – 2 vote with Mayor Pro Tem Brown and Commissioners Murdock and Smith voting for the motion and Commissioners Sullivan and Kwiatkowski voting in the negative.

ADJOURNMENT

Motion by Commissioner Murdock to adjourn at 12:31 p.m.; second by Commissioner Smith; approved by unanimous vote.

J. Alan Holden, Mayor

ATTEST:

Heather Finnell, Town Clerk

Activity Log Event Summary (Totals)

HOLDEN BEACH POLICE DEPT.

(09/01/2021 - 09/30/2021)

911 Hang Up/Open Line	4	Alarm Activation	10
Animal Carcass	2	Animal Control	5
Attempt to Locate-ATL	15	B&E in Progress	1
Business Check	121	Disabled Motorist	3
Disturbance/Fight	5	Domestic Disturbance	1
EMS/Medical Call	17	Escort/Relay	2
Fire Call	7	Fireworks	1
Incident Report	10	Keep Check	12
Lost/Found Property	11	Meet Complainant	82
Message Delivery	2	Motor Vehicle Crash	3
Open Door	2	Parking	33
Phone Call Request	28	Public Works/Water Leak	1
Special Assignment	20	Suspicious Activity	5
Traffic Stop	24	Trespassers	1
Welfare Check	3		

Total Number Of Events: 431

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2021

SESSION LAW 2021-33
SENATE BILL 241

AN ACT AMENDING MOTOR VEHICLE LAWS REGULATING MODIFIED UTILITY VEHICLES AND DIRECTING THE USE OF CERTAIN FUNDS APPROPRIATED TO THE DEPARTMENT OF TRANSPORTATION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-4.01(27) reads as rewritten:

"(27) Passenger Vehicles. –

...

- g2. Modified utility vehicle. – A motor vehicle that (i) is manufactured or upfitted by a licensed manufacturer, dealer, or person or business otherwise engaged in vehicle manufacturing or modification for off-road use with equipment required by G.S. 20-121.1(2), G.S. 20-121.1(2a), except a vehicle identification number, and (ii) has four wheels, an engine displacement greater than 2,400 cubic centimeters, an overall length of 142-110 inches or greater, an overall width of 58 inches or greater, an overall height of 70-60 inches or greater, a maximum speed capability of 40 miles per hour or greater, and does not require an operator or passenger to straddle a seat. "Modified utility vehicle" does not include an all-terrain vehicle, golf cart, or utility vehicle, as defined in this section, or a riding lawn mower.

...."

SECTION 2. G.S. 20-121.1 reads as rewritten:

"§ 20-121.1. Operation of a low-speed vehicle, mini-truck, or modified utility vehicle on certain roadways.

The operation of a low-speed vehicle, mini-truck, or modified utility vehicle is authorized with the following restrictions:

- (1) A low-speed vehicle may be operated only on streets and highways where the posted speed limit is 35 miles per hour or less. A mini-truck or modified utility vehicle may be operated only on streets and highways where the posted speed limit is 55 miles per hour or less; provided, a modified utility vehicle may not be operated on any street or highway having four or more travel lanes unless the posted speed limit is 35 miles per hour or less. This subdivision does not prohibit a low-speed vehicle, mini-truck, or modified utility vehicle from crossing a road or street at an intersection where the road or street being crossed has a posted speed limit of more than 35 miles per hour.
- (2) A low-speed ~~vehicle, mini-truck, or modified utility vehicle~~ or mini-truck shall be equipped with headlamps, stop lamps, turn signal lamps, tail lamps, reflex reflectors, parking brakes, rearview mirrors, windshields, windshield wipers, speedometer, seat belts, and a vehicle identification number. Any such required equipment shall be maintained in proper working order. ~~If a modified~~



~~utility vehicle does not have a vehicle identification number, upon application by the owner, the Division shall assign a vehicle identification number to the modified utility vehicle prior to registration.~~

- (2a) A modified utility vehicle shall be equipped with headlamps, stop lamps, turn signal lamps, tail lamps, reflex reflectors, parking brakes, rearview mirrors, a speedometer, seat belts, and a vehicle identification number. Any such required equipment shall be maintained in proper working order. If a modified utility vehicle does not have a vehicle identification number, upon application by the owner, the Division shall assign a vehicle identification number to the modified utility vehicle prior to registration. The operator of and all passengers on a modified utility vehicle that is not equipped with a windshield and windshield wipers shall wear a safety helmet, with a retention strap properly secured, that complies with Federal Motor Vehicle Safety Standard (FMVSS) 218.

- ...
- (4) The Notwithstanding the provisions of any other subdivision of this section, the Department of Transportation may prohibit the operation of low-speed vehicles, mini-trucks, or modified utility vehicles on any road or highway if it determines that the prohibition is necessary in the interest of safety.

...."

SECTION 2.3. G.S. 20-286(10) reads as rewritten:

- "(10) Motor vehicle. – Any motor propelled vehicle, trailer or semitrailer, required to be registered under the laws of this State. This term does not include modified utility vehicles or mopeds, as ~~that term is defined~~ in G.S. 20-4.01.

...."

SECTION 3. Notwithstanding Article 8 of Chapter 143 of the General Statutes, G.S. 136-28.1, and any other provision of law to the contrary, the Department of Transportation, Ferry Division, shall lease a passenger ferry vessel for operation between Hatteras and Ocracoke. The term of the lease shall end no later than August 15, 2021. Except as otherwise provided in this section, of the funds appropriated in S.L. 2020-91 from the Highway Fund to the Department of Transportation, the sum of seven hundred thousand dollars (\$700,000) in nonrecurring funds shall be used by the Division to lease and operate the ferry. The Division shall exercise the opt-out clause of the lease when the Division determines the State-owned ferry for passenger service on the Hatteras-Ocracoke route can be operationalized within 30 days if the cost of opting out is less than the cost of completing the term of the lease. Following the expiration or termination of the lease, any remaining funds shall be deposited in the Ferry Systemwide reserve account established in G.S. 136-82(f2) for use in accordance with that subsection.

SECTION 4. Sections 1, 2, and 2.3 of this act become effective October 1, 2021.
The remainder of this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 10th day of June, 2021.

s/ Steve Jarvis
Presiding Officer of the Senate

s/ Tim Moore
Speaker of the House of Representatives

s/ Roy Cooper
Governor

Approved 3:32 p.m. this 14th day of June, 2021



2021 Legislation Amends Rules for Modified Utility Vehicles – North Carolina Criminal Law

by Shea Denning

Last year, I wrote about new legislation defining and regulating modified utility vehicles. The legislature returned to that subject again this year in S.L. 2021-33 (S 241), amending that definition and modifying the rules governing the use of such vehicles.

What is a modified utility vehicle? If you are like me, you may need a picture. The one below is from The High Point Enterprise. It features State Senator Steve Jarvis (a sponsor of Senate Bill 241) sitting in the passenger seat of such a vehicle on the grounds of the State Legislative Building.



Photo by The High Point Enterprise

S.L. 2021-33 amends the definition of modified utility vehicle in G.S. 20-4.01(27), effective October 1, 2021. As redefined, modified utility vehicles are four-wheeled motor vehicles that are manufactured or upfitted for off-road use. They must be at least 110 inches long, at least 58 inches wide, and 60 inches tall. As before, they must have a maximum speed of 40 miles per hour or greater. The requirement that

modified utility vehicles have an engine displacement of greater than 2,400 cubic centimeters is, however, eliminated by this year's legislation. (Some folks asked me last year whether this requirement was intentionally included as part of the definition because they thought that was an awfully large engine for this type of vehicle.)

Modified utility vehicles must be equipped with the following operable safety features:

- headlamps,
- stop lamps,
- turn signal lamps,
- tail lamps,
- reflex reflectors,
- parking brakes,
- rearview mirrors,
- a speedometer, and
- seat belts.

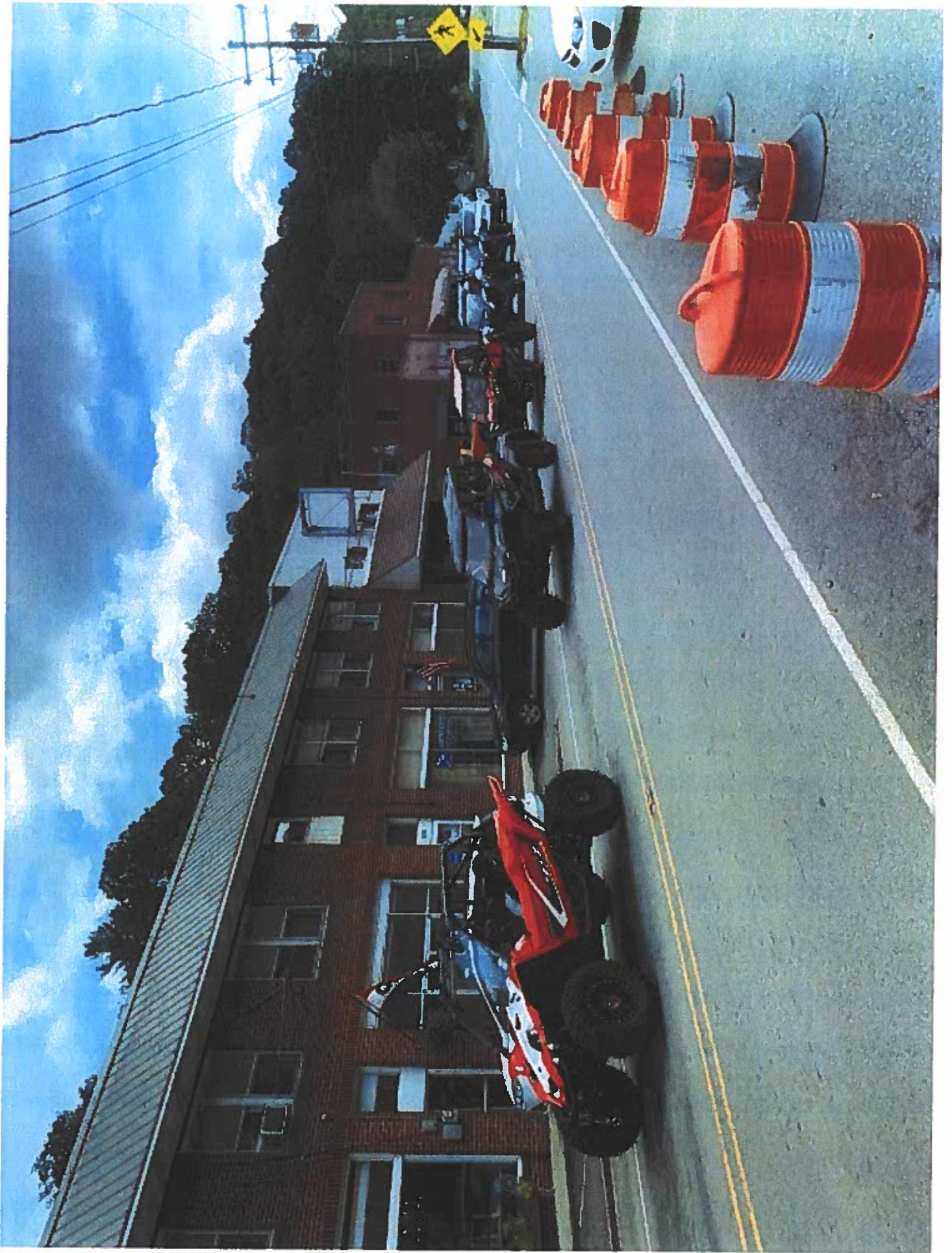
The 2020 legislation had required that modified utility vehicles also be equipped with windshields and windshield wipers; that requirement is eliminated effective October 1, 2021. The driver of and all passengers on a modified utility vehicle that is not equipped with a windshield and windshield wipers must wear a safety helmet.

As before, modified utility vehicles must have a vehicle identification number. If they were not manufactured with one, DMV must assign one before registration.

Where may modified utility vehicles be driven? S.L. 2021-33 amends G.S. 20-121.1 to specify that, while modified utility vehicles generally may be operated only on roadways where the posted speed limit is 55 miles per hour or less, they may only be operated on a roadway with four or more travel lanes if the posted speed limit is 35 miles per hour or less. These amendments likewise are effective October 1, 2021.

Not always motor vehicles. Sure, modified utility vehicles are vehicles. And they have motors. But S.L. 2021-33 amends G.S. 20-286(10) to specify that a modified utility vehicle, like a moped, is not a "motor vehicle" for purposes of the laws governing the licensure of motor vehicle dealers and manufacturers. These vehicles still are classified as motor vehicles for other purposes — including applying the rules governing financial responsibility. Indeed, G.S. 20-121.1(3) continues to require that modified utility vehicles be registered and insured.





GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2021

SESSION LAW 2021-128
HOUSE BILL 692

AN ACT PROHIBITING CERTAIN MODIFICATIONS TO PASSENGER VEHICLES
OPERATING ON HIGHWAYS OR PUBLIC VEHICULAR AREAS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-135.4 reads as rewritten:

"§ 20-135.4. Certain automobile safety standards.

(a) Definitions. – For the purposes of this section, the term "private passenger automobile" ~~shall mean means~~ a four-wheeled motor vehicle designed principally for carrying passengers, ~~for use passengers on public roads and highways, except a multipurpose passenger vehicle which is constructed either on a truck chassis or with special features for occasional off-road operation highways.~~

(b), (c) Repealed by Session Laws 1975, c. 856.

(d) ~~The manufacturer's specified height of any passenger motor vehicle shall not be elevated or lowered, either in front or back, more than six inches by modification, alteration, or change of the physical structure of said vehicle without prior written approval of the Commissioner of Motor Vehicles. On or after January 1, 1975, no self-propelled passenger vehicle that has been so altered, modified or changed~~ Prohibited Modifications. – A private passenger automobile shall not be operated upon any highway or public vehicular area without the prior written approval of the Commissioner if, by alteration of the suspension, frame, or chassis, the height of the front fender is 4 or more inches greater than the height of the rear fender. For the purposes of this subsection, the height of the fender shall be a vertical measurement from and perpendicular to the ground, through the centerline of the wheel, and to the bottom of the fender.

SECTION 2. G.S. 20-17 reads as rewritten:

"§ 20-17. Mandatory revocation of license by Division.

(a) The Division shall forthwith revoke the license of any driver upon receiving a record of the driver's conviction for any of the following offenses:

...
(17) A third or subsequent conviction of operating a private passenger automobile with prohibited modifications on any highway or public vehicular area under G.S. 20-135.4(d). A conviction for violating G.S. 20-135.4(d) is a third or subsequent conviction if at the time of the current infraction the person has two or more previous convictions under G.S. 20-135.4 that occurred in the 12 months immediately preceding the date of the current infraction.

...."

SECTION 3. G.S. 20-19 reads as rewritten:

"§ 20-19. Period of suspension or revocation; conditions of restoration.

...
(c2a) When a license is revoked under G.S. 20-17(a)(17), the period of revocation shall be not less than one year.

...."



* H 6 9 2 - V - 4 *

SECTION 4. This act becomes effective December 1, 2021, and applies to offenses committed on or after that date.

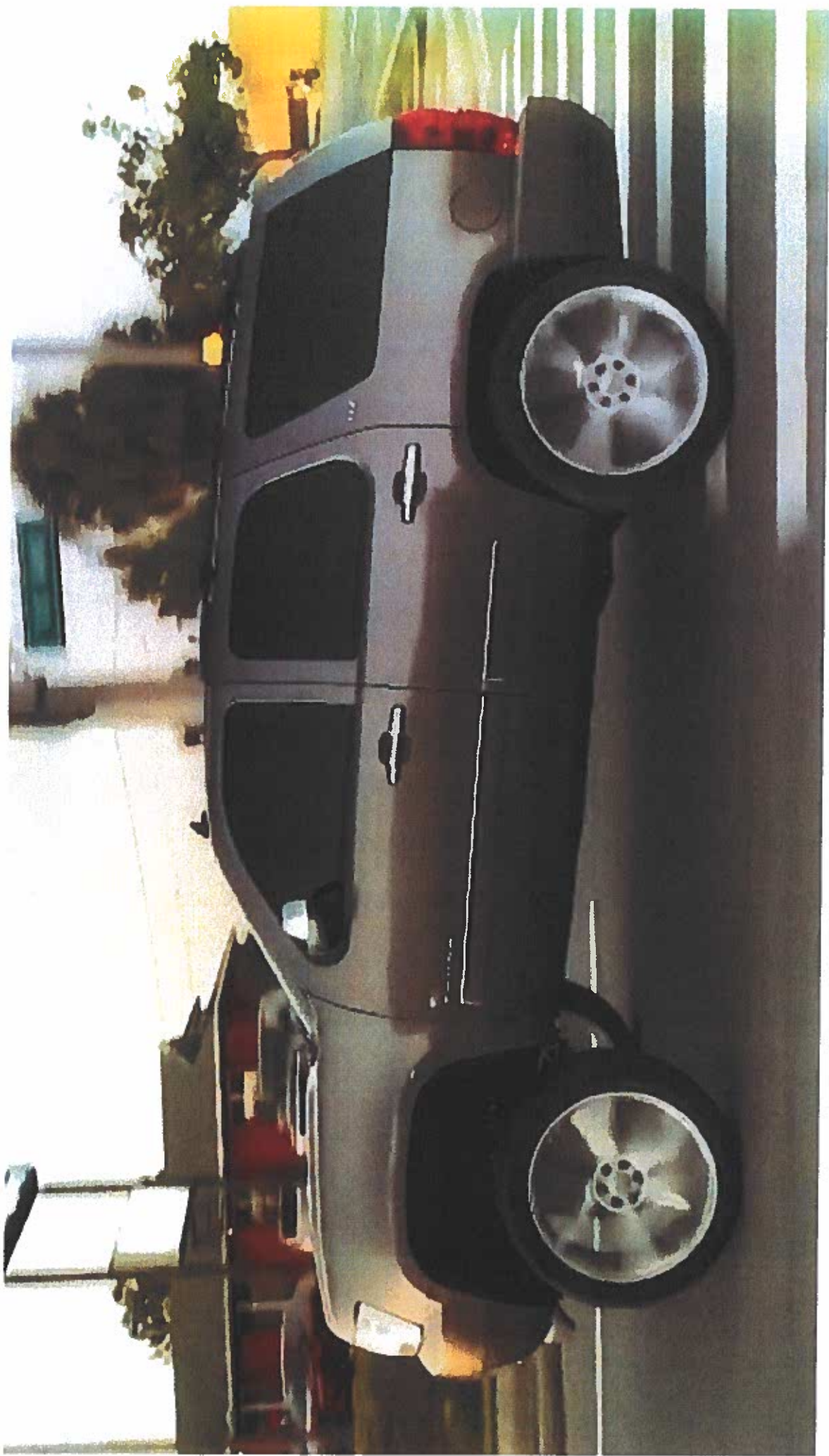
In the General Assembly read three times and ratified this the 25th day of August, 2021.

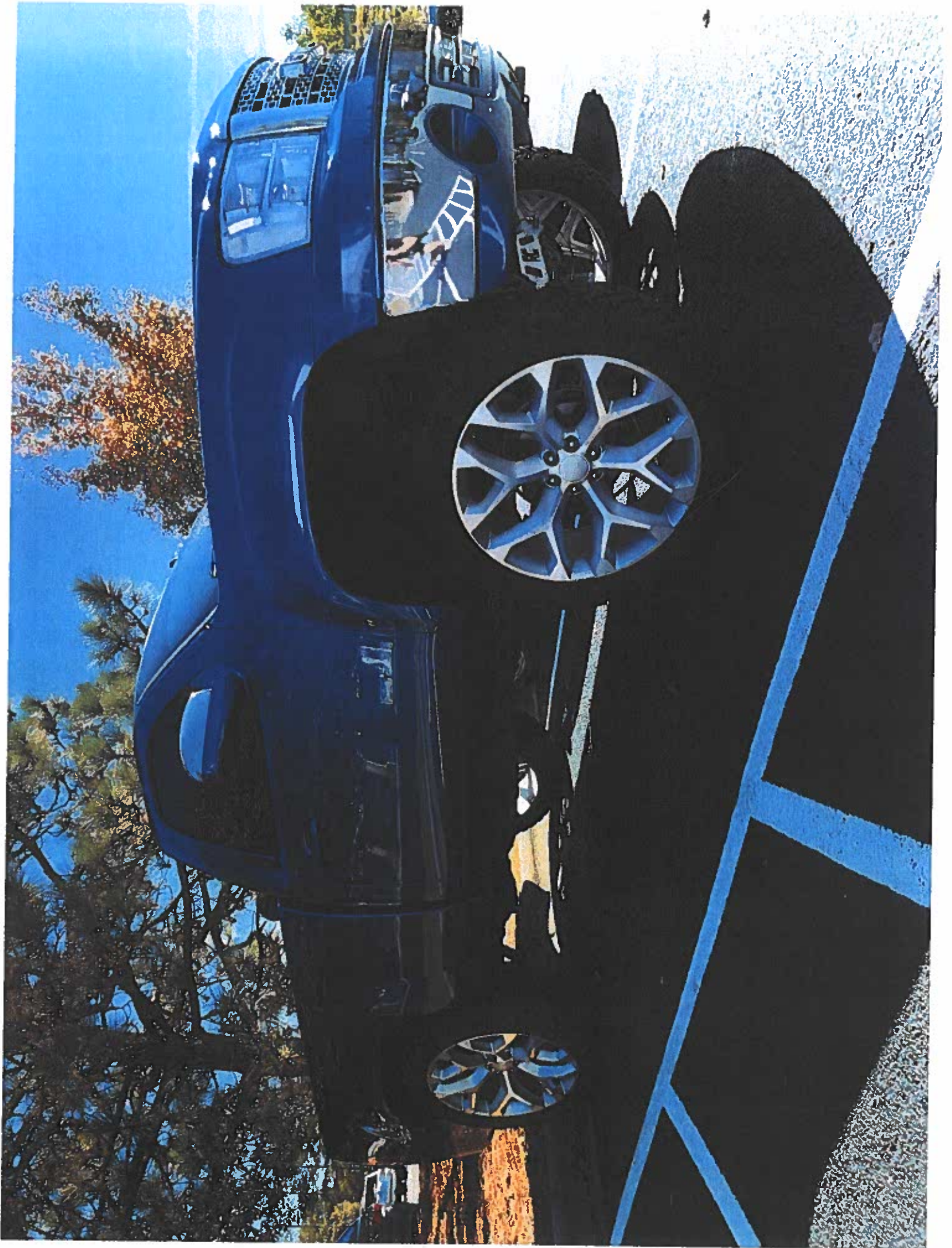
s/ Phil Berger
President Pro Tempore of the Senate

s/ Tim Moore
Speaker of the House of Representatives

s/ Roy Cooper
Governor

Approved 11:50 a.m. this 30th day of August, 2021





Memo To: Holden Beach Board of Commissioners

13 October 2021

RE: Paid Parking Plan

From: Town Manager 

This memo responds to Board direction to prepare a map in accordance with Tasker dated 15 Jun 21 (atch1). It provides a framework to address specific issues regarding implementation of a paid parking program at Holden Beach.

Specific charge questions were:

Parking Lots (suggest committee show lots and spaces on a town map, color code for a, b, c.)

- a. What town owned lots currently exist and how many spaces are available paid parking?
- b. What town owned property is suitable for conversion to paid parking before Spring and what is the estimated cost for conversion?
- c. What properties (if any) are proposed for purchase and how many spaces will be available for paid parking? What is the estimated cost to purchase?

A map has been prepared and is on display in the Board room. It has been developed within the existing framework of administrative, legal, logistical and practical considerations. Further details are as follows:

1. Administrative and Legal:

The tasker itself evolved from the Board's Objectives for FY21/22 which included as high priority "Determine if paid parking is economically viable; if so, implement paid parking (atch 2). The determination of what is construed as a "lot" for the purposes of determining parking is aided by a discussion of related terms, definitions and constructs. It is of particular import to note the inherent differences in the meaning of a "lot" in real estate parlance and what is nominally referred to as a "lot" that may or may not be used for parking and are shown in fact to be street ends within the town right of way. Example: NE Corner of Bruns Ave/Davis versus southern end of Ferry.

- a. The Town's street system map (Powell Bill) is at atch 3 and has been manually transposed onto the Town Zoning Map for clarity. Both Town maintained streets and State streets are shown. Town streets are depicted in **GREEN** and State streets are shown in **PINK**. The authority for Town maintained streets is GS 136-41.1 thru 41.4 and is at atch 4.
- b. The NC DOT publication "Standard Specifications for Roads and Structures is included at atch 5. It includes definitions for streets, right of ways, roads and other relevant definitions which coupled with the Powell Bill Map referenced above serve to refine the focus of the dialogue on implementing paid parking at Holden Beach.
- c. The authority governing Town Streets, Traffic and Parking is contained in GS 160A-296 thru 309; hereto included at atch 6; specifically relevant to paid parking is GS 160A-301 (a) and (b) which categorically differentiates between "on street" and "off street" parking and the manner in which revenues generated from each may be used.

- d. Enabling legislation has been granted (atch 7) to New Hanover County municipalities providing for greater flexibility in the use of “on street” and “off street” paid parking revenue. If the Town implements a paid parking program that has an on street component it should consider seeking similar enabling legislation.
- e. Standards for Public Access – 15A NCAC 07M.0310 (d)- Public access sites funded by CAMA may charge user fees but the use of those fees are restricted to providing for public access. (Atch 8)
- f. A listing of town real estate -prepared by the Holden Beach Tax Collector and the Subdivision Administrator- is at atch 9. These properties are shown in **BLUE** on the map and includes dredge spoil islands and public walkways.

2. Relevant Town Regulations

- a. Street Right of Way: Encourages Landscaping and allows exclusionary practices by adjacent to street property owners (post and rope) – Atch 10
- b. Parking Regulations: Identifies no parking areas, streets, times and worker exceptions Atch 11. No parking streets and areas are marked in **RED**.

3. An attempt to perform a “density calibration” has been made by identifying structures at the parcel level. The Brunsco GIS system was used to spatially identify developed parcels primarily for the purpose of gauging development by the depiction of residences and businesses. All parcels with structures are indicated with a black “dot”.

- a. Vacant to developed lots counts by subdivision/area have been made for the following:
 - i. Holden Beach Harbor 25/281/9% (no OBW or “ICW dock” parcels)
 - ii. Heritage Harbor 20/153/13% (no OBW parcels)
 - iii. Harbor Acres & Herons 65/337/19% (no OBW parcels)
 - iv. Holden Beach West N/A
 - v. Dunescape N/A
 - vi. 349 BAW – Rothschild 39/145/27%
 - vii. Quinton – Ferry 29/158/18% (no OBE parcels)
 - viii. Ferry- OBE/McCray 40/196/40% (n0 OBE parcels)
 - ix. Density calcs have not been made for the public area east of OBE/McRay split
 - x. The Commercial areas adjacent to Jordan Boulevard require detailed review beyond the scope of this analysis

4. Atypical house/lot/driveway configuration

- a. The vast majority of Holden Beach lots that front public streets are 50 feet wide.

- b. Residences constructed thereon have either a two driveway connection or a single driveway connection with a landscaped area substituting for the second driveway.
 - c. Sideyard setbacks are 5 feet.
 - d. Pile separation to allow for vehicle clearance is nominally 10 feet
 - e. Nominal dimensions of parking spaces are 9x18
 - f. Valve pits and water meters intrude into the ROWs
 - g. The above constraints imposed by the current built upon environment alone would seem to significantly constrict the ability of the Town to implement paid parking abutting developed lots.
 - h. The acceptance of a paid parking program abutting developed but unbuilt upon lots is unknown at this time but is anticipated to not be favorable.
- 5. Areas most suited to considering implementation of a paid parking program
 - a. several localized areas east of the McCray/OBE split to include town ROWs
 - b. Jordan Blvd – Requires a more in depth review
 - c. All of the high ground town owned properties and ROWs adjacent to same depicted on the map
 - d. Staff had previously developed estimates for construction of parking spaces in the 800 block, the two through streets between OBW and BAW, Avenue A and Hillside Drive. Those estimates are included at atch 12.
- 6. Block Q: A draft parking plan (atch 13) for the area known as block Q (near the boat ramp) has been prepared. Development of the plan as drafted would require procurement of all subject properties and an abandonment of the Carolina Avenue ROW with a recombination of the properties into a contiguous whole. Thusly configured it is estimated to provide for 214 10 by 18 foot parking spaces. Boat trailer accommodations were not considered in the preparation of this plan. The extent to what improvements would be required (and cost) to support the development of a parking lot are unknown at this time.
- 7. The Town is currently under contract to purchase the Pier Property located at 441 Ocean Blvd West. It is estimated to be able to provide 80 parking spaces which is the current configuration of the site.

RECOMMENDATION

BOC consider memo and provide staff direction.

13 Atchs

- 1. BOC tasker 15 June 2021
- 2. BOC goals excerpt
- 3. Town Powell Bill Map – *as display*
- 4. GS 136-41.1-41-4 "State Aid for streets"
- 5. NC DOT "Standard Specs"
- 6. NCGS Article 15 Streets, Traffic and Parking

7. HB 1596, HB 212
8. 15A NCAC 07M.0310 (d) "CAMA user fee rule"
9. Tax scroll of municipal properties
10. Town Ordinance Chapter 95.05 Streets Right of Way
11. Town Ordinance Chapters 72.01 thru 72.06 Parking Regulations
12. Staff cost estimates for parking area development
13. Block Q parking concept

Town of Holden Beach Board Advisory Board/Committee Recommendation

From the BOC to the Parking Committee

Date of BOC Meeting When Directive was Made: June 15, 2021

Agenda Item #:

Issue and Action Requested: In order for paid parking to be successfully rolled out in Spring pf 2022, there are a number of decisions that will need to be made by the BOC before the end of 2021. The Parking Committee is asked to develop a paid parking plan with financials covering the years 2022-2025 in line with the charge questions below.

Background and Potential Implications: With the continuing popularity and growth of Holden Beach and Brunswick County, parking on the island during many months of the year is increasingly problematic for both visitors and property owners. Additionally, increasing numbers of off island beach goers translate to increasing costs for the Town in terms of trash pickup, facilities maintenance, beach patrol and traffic control.

In order to better organize visitor parking and help defray seasonal costs, the decision has been made to implement a paid parking program starting in Spring 2022. It is important to have a clear description of the parking facilities and cost plus a communication plan for rollout of the paid parking program to avoid miscommunication and confusion.

Charge Questions:

1. **Parking Lots (suggest the committee shows lots and spaces on a town map, color code for a, b, c)**
 - a. What town owned lots currently exist and how many spaces are available for paid parking?
 - b. What town owned property is suitable for conversion to paid parking before next Spring and what is the estimated cost for conversion?
 - c. What properties (if any) are proposed for purchase and how many spaces will be available for paid parking? What is the estimated cost to purchase, assumed timeframe for establishing the parking lot and cost for conversion?
2. **Financials**
 - a. Rate proposal and date range for paid parking
 - b. Estimated gross profit associated with 1a, 1b and 1c for 2022, 2023 and 2024
 - c. Estimated initial costs for signage and equipment (show where on map)
 - d. Estimated expenses associated with 1a, 1b and 1c for 2022, 2023 and 2024 (including personnel)
 - e. Estimated net profit for 1a, 1b and 1c for 2022, 2023 and 2024
3. **Public Communication and Engagement Plan**

Who, when, where

Proposed Deadline: no later than the October BOCM.

BOC Objectives for Fiscal Year 2021/2022

Priorities

- 18 Ensure funding for hurricane related FEMA projects and proceed with necessary steps for target commencement of sand on beach in Fall 2021
- 17 Ensure contracting, budgeting and funding for sewer lift station 2 to allow completion in 2022
- 17 Make decision on and implement new THB development fees
- 17 Ensure funding for 2022 DOT bike lane project, including any grant money
- 17 Address increasing stormwater issues with a study followed by appropriate actions for recurring problem areas along Ocean Boulevard (in advance of bike lane project)
- 17 Request help from Brunswick County for a second water tower (after completing a needs assessment)
- 17 Ensure advocacy resources are given to limit expansion of the IHA
- 16 Support and participate in beach and inlet related advocacy efforts at local, state and federal level
 - a. Become more involved in and lead where possible regional advocacy groups and committees
 - b. Develop advocacy strategy, plan and material for county and state efforts and implement the plan
 - c. Review and as appropriate amend directions to Poyner Spruill for federal advocacy; ensure funds are designated for the three-year Corps study (1.5 million total)
 - d. Support and participate in advocacy efforts at any level as appropriate
 - e. Greater involvement in coastal community advocacy
- 16 Ensure definition and implementation of new water rates for January 2022
- 16 Determine if paid parking is economically viable; if so, implement paid parking
- 15 Oversee progress on internal control plan for fiscal year 2021/2022 completion
- 14 Ensure adequate resources to undertake enforcement/compliance objectives decided by the Board (Increase enforcement of ordinances)
- 14 Request help from Brunswick County to establish an off-island parking and trolley/bus service to the beach 100 days or more a year
- 14 Purchase all or a portion of Holden Beach Pier
- 14 Maintain an up-to-date strategy to protect the beach and dune system and ensure adequate budget for implementation of plans, including soil sampling and plant modification where appropriate

Evergreens (mostly financial)

- 18 Balance the budget while preserving the minimum fund balance as defined by the Board; Balance the budget without raising taxes
- 18 Ensure the Town meets or exceeds annual financial budget goals
- 18 Work together for the good of Holden Beach
- 17 Raise revenues
- 17 Continue to support LWI access to ocean
- 16 Ensure the Town achieves an unmodified opinion rating on annual fiscal audit and addresses noted deficiencies
- 16 Ensure qualified resources are available to perform audit and accounting procedures to ensure there are no material deficiencies noted in the annual fiscal audit
- 14 Ensure an updated capital project budget sheet is included in final budget documents

North Carolina General Statutes that Govern the State Aid to Municipalities (Powell Bill) Program

(Extracted from the NC General Assembly website on 1/29/2021)

§ 136-41.1. Appropriation to municipalities; allocation of funds generally; allocation to Butner.

(a) Upon appropriation of funds by the General Assembly to the Department of Transportation for State aid to municipalities, one-half of the amount appropriated shall be allocated in cash on or before October 1 of each year to the cities and towns of the State in accordance with this section. The second one-half of the amount appropriated shall be allocated in cash on or before January 1 of each year to the cities and towns of the State in accordance with this section.

Seventy-five percent (75%) of the funds appropriated for cities and towns shall be distributed among the several eligible municipalities of the State in the percentage proportion that the population of each eligible municipality bears to the total population of all eligible municipalities according to the most recent annual estimates of population as certified to the Secretary of Revenue by the State Budget Officer. This annual estimation of population shall include increases in the population within the municipalities caused by annexations accomplished through July 1 of the calendar year in which these funds are distributed. Twenty-five percent (25%) of said fund shall be distributed among the several eligible municipalities of the State in the percentage proportion that the mileage of public streets in each eligible municipality which does not form a part of the State highway system bears to the total mileage of the public streets in all eligible municipalities which do not constitute a part of the State highway system.

It shall be the duty of the mayor of each municipality to report to the Department of Transportation such information as it may request for its guidance in determining the eligibility of each municipality to receive funds under this section and in determining the amount of allocation to which each is entitled. Upon failure of any municipality to make such report within the time prescribed by the Department of Transportation, the Department of Transportation may disregard such defaulting unit in making said allotment.

The funds to be allocated under this section shall be paid in cash to the various eligible municipalities on or before October 1 and January 1 of each year as provided in this section. Provided that eligible municipalities are authorized within the discretion of their governing bodies to enter into contracts for the purpose of maintenance, repair, construction, reconstruction, widening, or improving streets of such municipalities at any time after January 1 of any calendar year in total amounts not to exceed ninety percent (90%) of the amount received by such municipality during the preceding fiscal year, in anticipation of the receipt of funds under this section during the next fiscal year, to be paid for out of such funds when received.

The Department of Transportation may withhold each year an amount not to exceed one percent (1%) of the total amount appropriated for distribution under this section for the purpose of correcting errors in allocations: Provided, that the amount so withheld and not used for correcting errors will be carried over and added to the amount to be allocated for the following year.

The word "street" as used in this section is hereby defined as any public road maintained by a municipality and open to use by the general public, and having an average width of not less than 16 feet. In order to obtain the necessary information to distribute the funds herein allocated, the Department of Transportation may require that each municipality eligible to receive funds under this section submit to it a statement, certified by a registered engineer or surveyor of the total number of miles of streets in such municipality. The Department of Transportation may in its discretion require the certification of mileage on a biennial basis.

(b) For purposes of this section and of G.S. 136-41.2 and 136-41.3, urban service districts defined by the governing board of a consolidated city-county in which street services are provided by the consolidated city-county, as defined by G.S. 160B-2(1), shall be considered eligible municipalities, and the allocations to be made thereby shall be made to the government of the consolidated city-county.

(c) Any funds allocated to the unincorporated area known as the Butner Reservation shall be transferred to the Town of Butner.

(d) Nature. – The General Assembly finds that the revenue distributed under this section is local revenue, not a State expenditure, for the purpose of Section 5(3) of Article III of the North Carolina Constitution. Therefore, the Governor may not reduce or withhold the distribution. (1951, c. 260, s. 2; c. 948, ss. 2, 3; 1953, c. 1127; 1957, c. 65, s. 11; 1963, c. 854, ss. 1, 2; 1969, c. 665, ss. 1, 2; 1971, c. 182, ss. 1-3; 1973, c. 476, s. 193; c. 500, s. 1; c. 507, s. 5; c. 537, s. 6; 1975, c. 513; 1977, c. 464, s. 7.1; 1979, 2nd Sess., c. 1137, s. 50; 1981, c. 690, s. 4; c. 859, s. 9.2; c. 1127, s. 54; 1985 (Reg. Sess., 1986), c. 982, s. 1; 1989, c. 692, s. 1.6; 1995, c. 390, s. 26; c. 461, s. 18; 1997-443, s. 11A.118(a); 2000-165, s. 1; 2002-120, s. 5; 2007-269, s. 13; 2011-145, s. 28.10(a); 2013-183, s. 3.1; 2014-100, s. 34.1; 2015-241, s. 29.17D(a).)

§ 136-41.2. Eligibility for funds; municipalities incorporated since January 1, 1945.

(a) No municipality shall be eligible to receive funds under G.S. 136-41.1 unless it has conducted the most recent election required by its charter or the general law, whichever is applicable, for the purpose of electing municipal officials. The literal requirement that the most recent required election shall have been held may be waived only:

- (1) Where the members of the present governing body were appointed by the General Assembly in the act of incorporation and the date for the first election of officials under the terms of that act has not arrived; or,

- (2) Where validly appointed or elected officials have advertised notice of election in accordance with law, but have not actually conducted an election for the reason that no candidates offered themselves for office.

(b) No municipality shall be eligible to receive funds under G.S. 136-41.1 unless it has levied an ad valorem tax for the current fiscal year of at least five cents (5¢) on the one hundred dollars (\$100.00) valuation upon all taxable property within its corporate limits, and unless it has actually collected at least fifty percent (50%) of the total ad valorem tax levied for the preceding fiscal year; provided, however, that, for failure to have collected the required percentage of its ad valorem tax levy for the preceding fiscal year:

- (1) No municipality making in any year application for its first annual allocation shall be declared ineligible to receive such allocation; and
- (2) No municipality shall be declared ineligible to receive its share of the annual allocation to be made in the year 1964.

(c) No municipality shall be eligible to receive funds under G.S. 136-41.1 unless it has formally adopted a budget ordinance in substantial compliance with G.S. 159-8 and G.S. 159-13, showing revenue received from all sources, and showing that funds have been appropriated for at least two of the following municipal services if the municipality was incorporated with an effective date prior to January 1, 2000, water distribution; sewage collection or disposal; garbage and refuse collection or disposal; fire protection; police protection; street maintenance, construction, or right-of-way acquisition; or street lighting, or at least four of the following municipal services if the municipality was incorporated with an effective date of on or after January 1, 2000: (i) police protection; (ii) fire protection; (iii) solid waste collection or disposal; (iv) water distribution; (v) street maintenance; (vi) street construction or right-of-way acquisition; (vii) street lighting; and (viii) zoning.

(d) The provisions of this section shall not apply to any municipality incorporated prior to January 1, 1945. (1963, c. 854, ss. 3, 3½; 1985 (Reg. Sess., 1986), c. 934, ss. 5, 6; 1999-458, s. 5; 2017-102, s. 20.)

§ 136-41.2A. Eligibility for funds; municipalities incorporated before January 1, 1945.

(a) No municipality shall be eligible to receive funds under G.S. 136-41.1 unless it has been within the four-year period next preceding the annual allocation of funds conducted an election for the purpose of electing municipal officials and currently imposes an ad valorem tax or provides other funds for the general operating expenses of the municipality.

(b) The provisions of this section apply only to municipalities incorporated prior to January 1, 1945. (1985 (Reg. Sess., 1986), c. 934, s. 4.)

§ 136-41.2B. Eligibility for funds; municipalities with no road miles ineligible.

No municipality shall be eligible to receive funds under G.S. 136-41.1 unless the municipality maintains public streets that (i) are within its jurisdiction and (ii) do not form a part of the State highway system. (2011-145, s. 28.10(b).)

§ 136-41.3. Use of funds; records and annual statement; excess accumulation of funds; contracts for maintenance, etc., of streets.

(a) **Uses of Funds.** – Except as otherwise provided in this subsection, the funds allocated to cities and towns under the provisions of G.S. 136-41.1 and G.S. 136-41.2 shall be expended by said cities and towns primarily for the resurfacing of streets within the corporate limits of the

municipality but may also be used for the purposes of maintaining, repairing, constructing, reconstructing or widening of any street or public thoroughfare including bridges, drainage, curb and gutter, and other necessary appurtenances within the corporate limits of the municipality or for meeting the municipality's proportionate share of assessments levied for such purposes, or for the planning, construction and maintenance of bikeways, greenways, or sidewalks. Cities and towns shall strongly prefer the use of seeds and plants the U.S. Department of Agriculture has classified as native to North Carolina when the use of funds under this subsection includes landscaping. The funds allocated to cities and towns under the provisions of G.S. 136-41.1 and G.S. 136-41.2 shall not be expended for the construction of a sidewalk into which is built a mailbox, utility pole, fire hydrant, or other similar obstruction that would impede the clear passage of pedestrians on the sidewalk.

(b) **Records and Annual Statement.** – Each municipality receiving funds by virtue of G.S. 136-41.1 and 136-41.2 shall maintain a separate record of accounts indicating in detail all receipts and expenditures of such funds. It shall be unlawful for any municipal employee or member of any governing body to authorize, direct, or permit the expenditure of any funds accruing to any municipality by virtue of G.S. 136-41.1 and 136-41.2 for any purpose not herein authorized. Any member of any governing body or municipal employee shall be personally liable for any unauthorized expenditures. On or before the first day of August each year, the treasurer, auditor, or other responsible official of each municipality receiving funds by virtue of G.S. 136-41.1 and 136-41.2 shall file a statement under oath with the Secretary of Transportation showing in detail the expenditure of funds received by virtue of G.S. 136-41.1 and 136-41.2 during the preceding year and the balance on hand. The Department of Transportation shall submit to the chairs of the Joint Legislative Transportation Oversight Committee an annual report no later than October 1 of each year detailing the uses by each municipality of funds received under G.S. 136-41.1 and G.S. 136-41.2 during the preceding year.

(b1) **Failure to File.** – A municipality that fails to file the statement required under subsection (b) of this section by October 1 is ineligible to receive funds allocated on October 1 under G.S. 136-41.1 or G.S. 136-41.2 for the fiscal year in which the municipality failed to file the statement. A municipality that fails to file the statement required under subsection (b) of this section by January 1 is ineligible to receive funds allocated under G.S. 136-41.1 or G.S. 136-41.2 for the fiscal year in which the municipality failed to file the statement.

(c) **Excess Accumulation of Funds Prohibited.** – No funds allocated to municipalities pursuant to G.S. 136-41.1 and 136-41.2 shall be permitted to accumulate for a period greater than permitted by this section. Interest on accumulated funds shall be used only for the purposes permitted by the provisions of G.S. 136-41.3. Except as otherwise provided in this section, any municipality having accumulated an amount greater than the sum of the past 10 allocations made, shall have an amount equal to such excess deducted from the next allocation after receipt of the report required by this section. Such deductions shall be carried over and added to the amount to be allocated to municipalities for the following year. Notwithstanding the other provisions of this section, the Department shall adopt a policy to allow small municipalities to apply to the Department to be allowed to accumulate up to the sum of the past 20 allocations if a municipality's allocations are so small that the sum of the past 10 allocations would not be sufficient to accomplish the purposes of this section.

(d) **Contracts for Maintenance and Construction.** – In the discretion of the local governing body of each municipality receiving funds by virtue of G.S. 136-41.1 and 136-41.2 it may contract with the Department of Transportation to do the work of maintenance, repair, construction,

reconstruction, widening or improving the streets in such municipality; or it may let contracts in the usual manner as prescribed by the General Statutes to private contractors for the performance of said street work; or may undertake the work by force account. The Department of Transportation within its discretion is hereby authorized to enter into contracts with municipalities for the purpose of maintenance, repair, construction, reconstruction, widening or improving streets of municipalities. And the Department of Transportation in its discretion may contract with any city or town which it deems qualified and equipped so to do that the city or town shall do the work of maintaining, repairing, improving, constructing, reconstructing, or widening such of its streets as form a part of the State highway system.

In the case of each eligible municipality, as defined in G.S. 136-41.2, having a population of less than 5,000, the Department of Transportation shall upon the request of such municipality made by official action of its governing body, on or prior to June 1, 1953, or June 1 in any year thereafter, for the fiscal year beginning July 1, 1953, and for the years thereafter do such street construction, maintenance, or improvement on nonsystem streets as the municipality may request within the limits of the current or accrued payments made to the municipality under the provisions of G.S. 136-41.1.

In computing the costs, the Department of Transportation may use the same rates for equipment, rental, labor, materials, supervision, engineering and other items, which the Department of Transportation uses in making charges to one of its own department or against its own department, or the Department of Transportation may employ a contractor to do the work, in which case the charges will be the contract cost plus engineering and inspection. The municipality is to specify the location, extent, and type of the work to be done, and shall provide the necessary rights-of-way, authorization for the removal of such items as poles, trees, water and sewer lines as may be necessary, holding the Department of Transportation free from any claim by virtue of such items of cost and from such damage or claims as may arise therefrom except from negligence on the part of the Department of Transportation, its agents, or employees.

If a municipality elects to bring itself under the provisions of the two preceding paragraphs, it shall enter into a two-year contract with the Department of Transportation and if it desires to dissolve the contract at the end of any two-year period it shall notify the Department of Transportation of its desire to terminate said contract on or before April 1 of the year in which such contract shall expire; otherwise, said contract shall continue for an additional two-year period, and if the municipality elects to bring itself under the provisions of the two preceding paragraphs and thereafter fails to pay its account to the Department of Transportation for the fiscal year ending June 30, by August 1 following the fiscal year, then the Department of Transportation shall apply the said municipality's allocation under G.S. 136-41.1 to this account until said account is paid and the Department of Transportation shall not be obligated to do any further work provided for in the two preceding paragraphs until such account is paid.

Section 143-129 of the General Statutes relating to the procedure for letting of public contracts shall not be applicable to contracts undertaken by any municipality with the Department of Transportation in accordance with the provisions of the three preceding paragraphs.

(e) Permitted Offsets to Funding. – The Department of Transportation is authorized to apply a municipality's share of funds allocated to a municipality under the provisions of G.S. 136-41.1 to any of the following accounts of the municipality with the said Department of Transportation, which the municipality fails to pay:

- (1) Cost sharing agreements for right-of-way entered into pursuant to G.S. 136-66.3, but not to exceed ten percent (10%) of any one year's allocation until the debt is repaid,
- (2) The cost of relocating municipally owned waterlines and other municipally owned utilities on a State highway project which is the responsibility of the municipality,
- (3) For any other work performed for the municipality by the Department of Transportation or its contractor by agreement between the Department of Transportation and the municipality, and
- (4) For any other work performed that was made necessary by the construction, reconstruction or paving of a highway on the State highway system for which the municipality is legally responsible. (1951, c. 260, s. 3; c. 948, s. 4; 1953, c. 1044; 1957, c. 65, s. 11; 1969, c. 665, ss. 3, 4; 1971, c. 182, s. 4; 1973, c. 193; c. 507, s. 5; 1977, c. 464, ss. 7.1, 20; c. 808; 1993 (Reg. Sess., 1994), c. 690, s. 1.1; 2011-145, s. 28.10(d); 2013-183, s. 3.3; 2015-241, s. 29.17D(b); 2017-57, s. 34.17(a); 2020-91, s. 4.11A.)

§ 136-41.4. Municipal use of allocated funds; election.

(a) A municipality that qualifies for an allocation of funds pursuant to G.S. 136-41.1 shall have the following options:

- (1) Accept all or a portion of funds allocated to the municipality for use as authorized by G.S. 136-41.3(a).
- (2) Use some or all of its allocation to match federal funds administered by the Department for independent bicycle and pedestrian improvement projects within the municipality's limits, or within the area of any metropolitan planning organization or rural transportation planning organization.
- (3) Elect to have some or all of the allocation reprogrammed for any Transportation Improvement Project currently on the approved project list within the municipality's limits or within the area of any metropolitan planning organization or rural transportation planning organization.

(b) If a municipality chooses to have its allocation reprogrammed, the amount that may be reprogrammed is an amount equal to that amount necessary to complete one full phase of the project selected by the municipality or an amount that, when added to the amount already programmed for the Transportation Improvement Project selected, would permit the completion of at least one full phase of the project. The restriction set forth in this subsection shall not apply to any bicycle or pedestrian projects. (2007-428, s. 5; 2013-183, s. 3.4.)

**NORTH CAROLINA
DEPARTMENT OF TRANSPORTATION
RALEIGH**

**STANDARD SPECIFICATIONS
FOR
ROADS AND STRUCTURES**



JANUARY 2018

FOREWORD

This publication has been prepared to provide a compilation of standard requirements used by the North Carolina Department of Transportation for construction contracts.

When this publication, entitled *Standard Specifications for Roads and Structures*, dated January 2018, is incorporated by reference into the Department's construction bid proposals or contracts; it is made a part of that document and shall be known as the *Standard Specifications*. The requirements stated herein may be revised or amended from time to time by Supplemental Specifications, by Standard Special Provisions which are unique to a select group of projects or by Project Special Provisions which are unique to the specific bid proposal or contract.

Working titles have a masculine gender, such as workman, workmen and foreman. Pronouns such as he, his, and him are used in the *Standard Specifications* for the sake of brevity and are intended to refer to persons of either sex or corporate entities.

Reference by title and date will be made to the governing provisions on plans and contract documents.

GENERAL INFORMATION

For general questions about this publication, please contact the Contract Standards and Development Unit at specs@ncdot.gov or (919) 707-6900.

ORDERING INFORMATION

Copies of the *Standard Specifications* and the *Roadway Standard Drawings* may be purchased through the Contract Standards and Development Unit:

North Carolina Department of Transportation
Contract Standards and Development Unit – Manual Distribution
1591 Mail Service Center
Raleigh, NC 27699-1591
Telephone: (919) 707-6944
Website: <http://www.ncdot.gov/>

The order form is available at <http://www.ncdot.gov/business/order/puborder.html>.

Electronic copies of the *Standard Specifications* and the *Roadway Standard Drawings* are available for download on the Contract Standards and Development Unit's website at <https://connect.ncdot.gov/resources/Specifications/Pages/default.aspx>.

**TABLE 101-1
MEASUREMENT SYMBOLS**

Symbol	Unit Name	Symbol	Unit Name
"	Inch, Inches	lb	Pound, Pounds
%	Percent	lbf	Pound(s) Force
±	Plus or Minus	nm	Nanometer(s)
°	Degree, Degrees	mcd/lux/m ²	Millicandellas per Lux per Square Meter
>	Greater Than	mg-cm	Milligram-Centimeter
≥	Greater Than or Equal to	mm	Millimeter, Millimeters
<	Less Than	mph	Mile(s) per Hour
≤	Less Than or Equal to	oz	Ounce, Ounces
μ	Micro	pcf	Pounds per Cubic Foot
A, amp	Ampere, Amperes	ppm	Parts per Million
cf	Cubic Foot, Cubic Feet	psf	Pounds per Square Foot
cu.in.	Cubic Inch, Cubic Inches	psi	Pounds per Square Inch
cy	Cubic Yard, Cubic Yards	qt	Quart, Quarts
dB	Decibel, Decibels	rpm	Rotations per Minute
F	Fahrenheit	sec	Second, Seconds
ft	Foot, Feet	sf	Square Foot, Square Feet
ft-lb	Foot-Pounds	SFS	Saybolt Furol Seconds
gal	Gallon, Gallons	sq.in.	Square Inch, Square Inches
gpm	Gallon(s) per Minute	sy	Square Yard, Square Yards
G _{mm} @N _{ini}	Maximum Specific Gravity at Initial Number of Gyrations	tsf	Tons per Square Foot
hr	Hour, Hours	V, VAC	Voltage, Voltage of Alternating Current
Hz	Hertz	vpm	Vibrations per Minute
J	Joule, Joules	W	Watt, Watts
kbps	Kilobit per Second	Yd	Yard, Yards
ksi	Kips per Square Inch		

101-3 DEFINITIONS

ACT OF GOD: Events in nature so extraordinary that the history of climate variations and other conditions in the particular locality affords no reasonable warning of them.

ADDITIONAL WORK: Additional work is that which results from a change or alteration to the contract and for which there are existing contract unit prices.

ADVERTISEMENT: The public advertisement inviting bids for the construction of specific projects.

AMOUNT BID: The amount bid for a particular item of work in a proposal.

ARTICLE: A primary numbered subdivision of a section of the *Standard Specifications*.

AWARD: The decision of the Department of Transportation to accept the bid of the lowest responsible responsive bidder for work that is subject to the furnishing of payment and performance bonds and such other conditions as may be otherwise provided by law, the proposal and these specifications.

BASE COURSE: That portion of the pavement structure of planned thickness placed immediately below the pavement or surface course.

BID (OR PROPOSAL): *Paper Bid:* The offer of a bidder on the proposal furnished by the Department to perform the work and to furnish the labor and materials at the prices quoted.

Section 101

- 1 *Electronic Bid*: The electronic offer of a bidder via Bid Express® to the Department to
2 perform the work and to furnish the labor and materials at the prices quoted.
- 3 **BID BOND OR BID DEPOSIT**: The security furnished by the bidder with his bid as
4 guaranty that he will furnish the required bonds and execute such documents as may be
5 required if his bid is accepted.
- 6 **BIDDER**: An individual, partnership, firm, corporation, LLC or joint venture formally
7 submitting a bid for the work contemplated.
- 8 **BOARD OR BOARD OF TRANSPORTATION**: The Board created by the provisions of
9 NCGS § 143B-350 for formulating policies for the Department of Transportation and
10 awarding all transportation construction contracts.
- 11 **BRIDGE**: A structure including supports, erected over a depression or an obstruction such as
12 water, highway or railway, and having a track or passage way for carrying traffic or other
13 moving loads and having a length measured along the center of the roadway of more than
14 20 ft between undercopings of end supports, spring lines of arches or between extreme ends
15 of openings for multiple reinforced concrete box structures.
- 16 **BRIDGE LENGTH**: The length of a bridge structure is the overall length measured along
17 the line of survey stationing back to back of backwalls of abutments, if present, otherwise end
18 to end of the bridge floor.
- 19 **BRIDGE WIDTH**: The clear width measured at right angles to the longitudinal centerline of
20 the bridge between the bottom of curbs, guard timbers or face of parapets, or in the case of
21 multiple heights of curbs, between the bottoms of the lower risers.
- 22 **CALENDAR DAY**: A day shown on the calendar beginning and ending at midnight.
- 23 **CHIEF ENGINEER**: The Chief Engineer, Division of Highways, North Carolina
24 Department of Transportation acting directly or through his duly authorized representatives.
- 25 **COMPLETION DATE**: That date established as set forth in the contract or as revised by
26 authorized extensions, by which it is required that the work set forth in the contract be
27 satisfactorily completed. When observation periods are required by the Specifications, they
28 are not a part of the work to be completed by the completion date or intermediate contract
29 times stated in the contract unless otherwise noted.
- 30 **CONSTRUCTION EASEMENT**: A right owned by the Department of Transportation in
31 a parcel of land owned by a third party outside the highway right of way for containing
32 construction that exceeds the right of way.
- 33 **CONTRACT**: The executed agreement between the Department and the successful bidder,
34 covering the performance of and compensation for the work.
- 35 The term contract is all inclusive with reference to all written and electronic agreements
36 affecting a contractual relationship and all documents referred to therein. The contract shall
37 include, but not be limited to, the proposal, the printed contract form and attachments,
38 contract bonds, plans, standard specifications and supplemental specifications, standard
39 special provisions and project special provisions contained in the proposal and all executed
40 supplemental agreements. All references to contracts shall include electronic agreements and
41 printed paper agreements. These may include, but not be limited to, the electronic bid bond,
42 Non-Collusion Certification, Debarment Certification, Gift Ban Certification and award
43 limits.
- 44 The contract shall constitute one instrument.
- 45 **CONTRACT ITEM**: A specifically described unit of work for which a unit or lump sum
46 price is provided in the contract. Synonymous with Pay Item.

- 1 **CONTRACT LUMP SUM PRICE:** The amount bid for a lump sum item that has been
2 submitted by the Contractor in his proposal.
- 3 **CONTRACT PAYMENT BOND:** A bond furnished by the Contractor and his corporate
4 surety securing the payment of those furnishing labor, materials and supplies for the
5 construction of the project.
- 6 **CONTRACT PERFORMANCE BOND:** A bond furnished by the Contractor and his
7 corporate surety guaranteeing the performance of the contract.
- 8 **CONTRACT TIME:** The number of calendar days inclusive between the date of availability
9 and the completion date, said dates being established as set forth in the special provisions,
10 including authorized extensions to the completion date.
- 11 **CONTRACT UNIT PRICE:** The unit bid price for a unit item that has been submitted by
12 the Contractor in his proposal.
- 13 **CONTRACTOR:** The successful bidder to whom the contract has been awarded, and who
14 has executed the contract and furnished acceptable contract bonds.
- 15 **CULVERT:** Any structure not classified as a bridge that provides an opening under the
16 roadway.
- 17 **CURRENT CONTROLLING OPERATION OR OPERATIONS:** Any operation or
18 operations, as determined by the Engineer, that if delayed would delay the completion of the
19 project.
- 20 **DATE OF AVAILABILITY:** That date, established as set forth in the special provisions, by
21 which it is anticipated that sufficient work sites within the project limits will be available for
22 the Contractor to begin his controlling operations that are not otherwise limited by
23 moratoriums, listed third party conflicts, or by weather conditions.
- 24 **DEPARTMENT or DEPARTMENT OF TRANSPORTATION:** A principal department
25 of the Executive Branch that performs the functions of planning, design, construction and
26 maintenance of an integrated statewide transportation system.
- 27 **DIVISION OF HIGHWAYS:** The division of the Department of Transportation that, under
28 the direction of the Secretary of Transportation, carries out state highway planning, design,
29 construction and maintenance functions assigned to the Department of Transportation.
- 30 **DRAINAGE EASEMENT:** A right, owned by the Department of Transportation, in a parcel
31 of land owned by a third party outside the highway right of way, to construct and maintain
32 ditches, channels, or structures for directing the course and flow of water outside the highway
33 right of way.
- 34 **EASEMENT:** A property right to use or control real property of another.
- 35 **ENGINEER:** The Chief Engineer of the North Carolina Department of Transportation,
36 acting directly or through a duly authorized representative, such representative acting within
37 the scope of particular assigned duties or authority.
- 38 **EQUIPMENT:** All machinery and equipment, together with the necessary supplies, tools
39 and apparatus for upkeep and maintenance, all of which are necessary for the proper
40 construction and acceptable completion of the work.
- 41 **EXTRA WORK:** Work found necessary or desirable to fully complete the work as
42 contemplated in the contract for which payment is not provided for by the contract unit or
43 lump sum prices in the original contract. Extra work shall not be work that in the terms of the
44 contract is incidental to work for which there is a contract price or work that payment is
45 included in some other contract unit or lump sum price.

Section 101

- 1 **FINAL ACCEPTANCE DATE:** That date on which all work set forth in the contract and
2 work modified by the Engineer is satisfactorily completed excluding any observation periods
3 not specifically made a part of the work by the specifications or special provisions.
- 4 **FINAL ESTIMATE:** The document that contains a final statement of all quantities and total
5 dollar amount for each item of work performed during the life of the contract including any
6 adjustments to those amounts made under the terms of the contract. The final statement will
7 be titled The Final Estimate and will be the document used to document final payment to the
8 Contractor. Receipt of this document by the Contractor will begin the time frame for filing of
9 a verified claim with the Department as provided for in NCGS § 136-29.
- 10 **FINAL ESTIMATE ASSEMBLY:** As constructed plans and other project records that
11 establish the final statement of quantities to be paid and document work performed on the
12 project.
- 13 **FORCE ACCOUNT NOTICE:** A written notice to the Contractor that extra work ordered
14 by the Engineer will be paid as force account work.
- 15 **FORCE ACCOUNT WORK:** Work that is paid in accordance with Article 109-3 or on the
16 basis of the force account formula provided in the contract.
- 17 **HIGHWAY:** A general term denoting a public way for purposes of vehicular travel,
18 including the entire area within the right of way. Synonymous with Road and Street.
- 19 **HOUR:** One of the 24 equal parts of a day.
- 20 **INSPECTOR:** The authorized representative of the Engineer assigned to make a detailed
21 inspection of any or all portions of the work and materials.
- 22 **INTERMEDIATE COMPLETION DATE:** That date established as set forth in the special
23 provisions or as revised by authorized extensions, by which date it is required that the portion
24 of work set forth in the contract be satisfactorily completed.
- 25 **INTERMEDIATE COMPLETION TIME:** The time established as set forth in the special
26 provisions or as revised by authorized extensions, by which it is required that the portion of
27 work set forth in the contract be satisfactorily completed.
- 28 **INTERMEDIATE CONTRACT TIME (DAYS):** The number of calendar days inclusive
29 between the date of availability and the intermediate completion date, said days being
30 established as set forth in the special provisions, or as revised by authorized extensions, by
31 which it is required that a portion of that work set forth in the contract be satisfactorily
32 completed.
- 33 **INTERMEDIATE CONTRACT TIME (HOURS):** The number of hours inclusive
34 between the time of availability and the intermediate completion time, said times being
35 established as set forth in the special provisions, including authorized extensions to the
36 intermediate completion time.
- 37 **INVERT:** The lowest point in the internal cross section of a pipe or other culvert.
- 38 **INVITATION TO BID:** The notification that bids will be received for the construction of
39 specific projects.
- 40 **LABORATORY:** The testing laboratory of the Department of Transportation or any other
41 testing laboratory that may be designated or approved by the Engineer.
- 42 **LOCAL TRAFFIC:** Traffic that must use the facility under construction to reach its
43 destination.
- 44 **MAJOR AND MINOR CONTRACT ITEMS:** Major contract items are listed as such in
45 the project special provisions. All other original contract items and extra work shall be
46 considered as minor items.

- 1 **MATERIALS:** Any substances that may be incorporated into the construction of the project.
- 2 **MEDIAN:** The center section of a divided highway that separates the traffic lanes in one
- 3 direction from the traffic lanes in the opposite direction.
- 4 **MOBILIZATION:** The work described in Article 800-1.
- 5 **PAVEMENT STRUCTURE:** The combination of base and surface courses placed on
- 6 a subgrade to support the traffic load and distribute it to the roadbed.
- 7 **PAY ITEM:** Synonymous with Contract Item.
- 8 **PLANS:** The approved plans, profiles, typical roadway sections, appropriate standard
- 9 drawings, supplemental plans and working drawings, or exact reproductions thereof, that
- 10 show the location, dimensions and details of the work to be done and that are a part of the
- 11 contract.
- 12 **PREBID CONFERENCE:** A conference held before bids are accepted on a project at which
- 13 representatives of the Department will provide information and accept and answer questions
- 14 from interested parties.
- 15 **PROJECT:** The work specified under the contract.
- 16 **PROJECT SPECIAL PROVISIONS:** Special provisions peculiar to the project and not
- 17 otherwise thoroughly or appropriately set forth in the standard specifications or plans.
- 18 **PROPOSAL:** The electronic or paper document provided by the Department that the bidder
- 19 uses to develop his electronic or paper offer to perform the work at designated bid prices.
- 20 **PURCHASE ORDER BIDDER:** A Bidder that can bid on any Department Purchase Order
- 21 Contract or Division Let Contract.
- 22 **RIGHT OF WAY:** The land area shown in the plans as right of way to be furnished by the
- 23 Department of Transportation within which the project is to be constructed.
- 24 **ROAD:** Synonymous with Highway and Street.
- * 25 **ROADBED:** The graded portion of a highway usually considered as the area between the
- 26 intersections of top and side slopes, upon which the base course, surface course, shoulders and
- 27 medians are constructed.
- * 28 **ROADSIDE:** A general term denoting the area within the limits of the right of way adjoining
- 29 the outer edge of the roadway. Extensive areas between the roadways of a divided highway
- 30 may be considered roadside.
- 31 **ROADWAY:** The portion of a highway within limits of construction.
- 32 **SECTION:** A numbered chapter of the standard specifications.
- * 33 **SHOULDER:** The portion of the roadway adjacent to the traveled way for accommodation
- 34 of stopped vehicles, for emergency use and for lateral support of base and surface courses.
- 35 **SIDEWALK:** That portion of the roadway primarily constructed for pedestrian traffic.
- 36 **SKEW ANGLE:** The angle between the centerline of the project and the centerline of a pipe,
- 37 culvert, bridge pier, bent, abutment, or other drainage feature, measured to the right of the
- 38 project centerline facing in the direction of progressing stations.
- 39 **SPECIAL PROVISIONS:** Project special provisions and standard special provisions taken
- 40 together as one body of special provisions.
- 41 **SPECIFICATIONS:** The general term comprising all the directions, provisions and
- 42 requirements contained or referred to in the *Standard Specifications*, including the
- 43 Supplemental Specifications, together with such additional directions, provisions and
- 44 requirements that may be added or adopted as special provisions.

- 1 **STANDARD DRAWINGS:** The general term comprising all the directions, provisions and
- 2 requirements contained or referred to in the book entitled *Roadway Standard Drawings* and in
- 3 any subsequent revisions or additions to such book that are issued as Detail Drawings.
- 4 **STANDARD SPECIAL PROVISIONS:** Special directions or requirements not otherwise
- 5 thoroughly or appropriately set forth in the standard specifications and that are peculiar to
- 6 a selected group of projects.
- 7 **STANDARD SPECIFICATIONS:** The general term comprising all the directions,
- 8 provisions and requirements contained or referred to in this book entitled *Standard*
- 9 *Specifications for Roads and Structures* and in any subsequent revisions or additions to such
- 10 book that are issued as Supplemental Specifications.
- 11 **STATE:** The State of North Carolina.
- 12 **STATION:** A station, when used as a term of measurement, will be 100 linear feet measured
- 13 horizontally. When used as a location, it will be a designated point on the project.
- 14 **STREET:** Synonymous with Highway and Road.
- 15 **SUBCONTRACTOR:** An individual, partnership, firm, joint venture, LLC or corporation to
- 16 whom the Contractor, with the written consent of the Engineer, sublets any part of the
- 17 contract.
- 18 **SUBGRADE:** That portion of the roadbed prepared as a foundation for the pavement
- 19 structure including curb and gutter. On portions of projects that do not include the
- 20 construction of a base course or pavement, the presence of the subgrade will not be
- 21 recognized during the life of such contract.
- 22 **SUBSTRUCTURE:** All of that part of the structure below the bearings of simple and
- 23 continuous spans, spans, skew back of arches and tops of footings of rigid frames, together
- 24 with the backwalls and wingwalls.
- 25 **SUCCESSFUL BIDDER:** The bidder awarded a contract.
- 26 **SUPERINTENDENT:** The representative of the Contractor authorized to supervise and
- 27 direct the construction for the Contractor and to receive and fulfill directions from the
- 28 Engineer.
- 29 **SUPERSTRUCTURE:** All of the part of the structure exclusive of the substructure.
- 30 **SUPPLEMENTAL AGREEMENT:** A written agreement between the Contractor and the
- 31 Department of Transportation covering amendments to the contract.
- 32 **SUPPLEMENTAL SPECIFICATIONS:** Specifications, regulations, standards, manuals or
- 33 codes referenced in the contract or general revisions or additions to this book of standard
- 34 specifications that are issued under the title of Supplemental Specifications. Supplemental
- 35 Specifications shall be considered part of the *Standard Specifications*.
- 36 **SURETY:** A corporate bonding company furnishing the bid bond or furnishing the contract
- 37 payment and performance bonds.
- 38 **TEMPORARY CONSTRUCTION EASEMENT:** A temporary right, owned by the
- 39 Department of Transportation, in a parcel of land owned by a third party outside the highway
- 40 right of way, for the use of the Department of Transportation during the construction and that
- 41 reverts to the third party on completion of construction.
- 42 **THROUGH TRAFFIC:** Traffic that can reach its destination by a route or routes other than
- 43 the facility under construction.
- 44 **TIME OF AVAILABILITY:** That time established as set forth in the special provisions, by
- 45 which it is anticipated that sufficient work sites within the project limits will be available for
- 46 the Contractor to begin his controlling operations.

Section 102

1 **TOTAL AMOUNT BID:** Same as total price bid. The total amount bid will be considered
2 to be the correct sum total obtained by adding together the amounts bid for every item in the
3 proposal other than items that are authorized alternates to those items for which an amount bid
4 has been established.

5 **UNBALANCED BID:** A bid that includes any unbalanced bid price.

6 **UNBALANCED BID PRICE:** A unit or lump sum bid price that does not reflect reasonable
7 actual costs that the bidder anticipates for the performance of the item in question along with
8 a reasonable proportionate share of the bidder's anticipated profit, overhead costs and other
9 indirect costs.

10 **WORK:** Work shall mean the furnishing of all labor, materials, equipment and incidentals
11 necessary or convenient to the successful completion of the project, or any part, portion or
12 phase thereof, and the carrying out of all duties and obligations imposed by the contract.

13 **WORKING DRAWINGS:** Stress sheets, shop drawings, erection drawings, falsework
14 drawings, cofferdam drawings, catalog cuts, or any other supplementary drawings or similar
15 data that the Contractor is required to submit to the Engineer for review or approval.

SECTION 102

BIDDING REQUIREMENTS AND CONDITIONS

102-1 INVITATION TO BID

19 After the advertisement has been made, an invitation to Bid will be made available on the
20 Department's website to interested parties, informing them that bids will be received for the
21 construction of specific projects. Such invitations will indicate the contract identification
22 number, length, locations and descriptions; a general summary of the items and approximate
23 quantities of work to be performed; and the time and place for the public opening and reading
24 of the bids received. Information concerning the cost and availability of plans and proposals
25 will be indicated in the Invitation to Bid.

26 All projects will be advertised in daily newspapers throughout the state before the bid
27 opening.

102-2 CONTRACTOR PREQUALIFICATION

29 Contractors desiring to perform work on Department projects shall prequalify with the
30 Department. Upon prequalification, contractors will be placed on the Department's
31 Prequalified Contractors' List on the Directory of Transportation Firms. The requirements for
32 prequalification are as follows:

33 (A) Bidder Prequalification

34 (1) Applicant shall submit a completed Bidder Experience Questionnaire, along with any
35 additional supporting information requested by the Department, as noted in the
36 experience questionnaire package. Additional requirements for prequalification may
37 be set forth in the bid proposal.

38 (2) Applicant shall demonstrate that he has sufficient ability and experience in related
39 transportation construction projects to perform the work specified in the
40 Department's contracts, including the type and dollar value of previous contracts.

41 (3) Applicant shall demonstrate a history of successful performance and completion of
42 projects in a timely manner, subject to contract time adjustments.

43 (4) Applicant shall demonstrate the financial ability to furnish bonds as specified in
44 NCGS § 44A-26 and any other relevant statutes.

45 (5) Applicant shall demonstrate sufficient and readily available equipment to perform
46 transportation construction contracts in a timely manner.

Article 15

Streets, Traffic and Parking.

§ 160A-296. Establishment and control of streets; center and edge lines.

(a) A city shall have general authority and control over all public streets, sidewalks, alleys, bridges, and other ways of public passage within its corporate limits except to the extent that authority and control over certain streets and bridges is vested in the Board of Transportation. General authority and control includes but is not limited to all of the following:

- (1) The duty to keep the public streets, sidewalks, alleys, and bridges in proper repair.
- (2) The duty to keep the public streets, sidewalks, alleys, and bridges open for travel and free from unnecessary obstructions.
- (3) The power to open new streets and alleys, and to widen, extend, pave, clean, and otherwise improve existing streets, sidewalks, alleys, and bridges, and to acquire the necessary land therefor by dedication and acceptance, purchase, or eminent domain.
- (4) The power to close any street or alley either permanently or temporarily.
- (5) The power to regulate the use of the public streets, sidewalks, alleys, and bridges.
- (6) The power to regulate, license, and prohibit digging in the streets, sidewalks, or alleys, or placing therein or thereon any pipes, poles, wires, fixtures, or appliances of any kind either on, above, or below the surface. To the extent a municipality is authorized under applicable law to impose a fee or charge with respect to activities conducted in its rights-of-way, the fee or charge must apply uniformly and on a competitively neutral and nondiscriminatory basis to all comparable activities by similarly situated users of the rights-of-way. No fee or charge for activities conducted in the right-of-way shall be assessed on businesses listed in G.S. 160A-206(b), except the following:
 - a. Fees to recover any difference between a city's right-of-way management expenses related to the activities of businesses listed in G.S. 160A-206(b) and distributions under Article 5 of Chapter 105 of the General Statutes.
 - b. Payments under agreements subject to G.S. 62-350.
- (7) The power to provide for lighting the streets, alleys, and bridges of the city.
- (8) The power to grant easements in street rights-of-way as permitted by G.S. 160A-273.

(a1) A city with a population of 250,000 or over according to the most recent decennial federal census may also exercise the power granted by subdivision (a)(3) of this section within its extraterritorial planning jurisdiction. Before a city makes improvements under this subsection, it shall enter into a memorandum of understanding with the Department of Transportation to provide for maintenance.

(b) Repealed by Session Laws 1991, c. 530, s. 6, effective January 1, 1992. (1917, c. 136, subch. 5, s. 1; subch. 10, s. 1; 1919, cc. 136, 237; C.S., ss. 2787, 2793; 1925, c. 200; 1963, c. 986; 1971, c. 698, s. 1; 1973, c. 507, s. 5; 1979, c. 598; 1991, c. 530, s. 6; 2001-261, s. 1; 2006-151, s. 14; 2016-103, s. 9(a).)

§ 160A-297. Streets under authority of Board of Transportation.

(a) A city shall not be responsible for maintaining streets or bridges under the authority and control of the Board of Transportation, and shall not be liable for injuries to persons or property resulting from any failure to do so.

(b) Nothing in this Article shall authorize any city to interfere with the rights and privileges of the Board of Transportation with respect to streets and bridges under the authority and control of the Board of Transportation. (1925, c. 71, s. 3; 1957, c. 65, s. 11; 1971, c. 698, s. 1; 1973, c. 507, s. 5; 1987, c. 747, s. 3.1.)

§ 160A-298. Railroad crossings.

(a) A city shall have authority to direct, control, and prohibit the laying of railroad tracks and switches in public streets and alleys and to require that all railroad tracks, crossings, and bridges be constructed so as not to interfere with drainage patterns or with the ordinary travel and use of the public streets and alleys.

(b) The costs of constructing, reconstructing, and improving public streets and alleys, including the widening thereof, within areas covered by railroad cross ties, including cross timbers, shall be borne equally by the city and the railroad company. The costs of maintaining and repairing such areas after construction shall be borne by the railroad company.

(c) A city shall have authority to require the installation, construction, erection, reconstruction, and improvement of warning signs, gates, lights, and other safety devices at grade crossings, and the city shall bear ninety percent (90%) of the costs thereof and the railroad company shall bear ten percent (10%) of the costs. The costs of maintaining warning signs, gates, lights, and other safety devices installed after January 1, 1972, shall be borne equally by the city and the railroad company. The maintenance shall be performed by the railroad company and the city shall pay annually to the railroad company fifty percent (50%) of these costs. In maintaining maintenance cost records and determining such costs, the city and the railroad company shall use the same methods and procedures as are now or may hereafter be used by the Board of Transportation.

(d) A city shall have authority to require that a grade crossing be eliminated and replaced by a railroad bridge or by a railroad underpass, if the council finds as a fact that the grade crossing constitutes an unreasonable hazard to vehicular or pedestrian traffic. In such event, the city shall bear ninety percent (90%) of the costs and the railroad company shall bear ten percent (10%) of the costs. If the city constructs a new street which requires a grade separation and which does not replace an existing street, the city shall bear all of the costs. If a railroad company constructs a new track across at grade, or under, or over an existing street, the railroad company shall pay the entire cost thereof. The city shall pay the costs of maintaining street bridges which cross over railroads. Railroad companies shall pay the cost of maintaining railroad bridges over streets, except that cities shall pay the costs of maintaining street pavement, sidewalks, street drainage, and street lighting where streets cross under railroads.

(e) Whenever the widening, improving, or other changes in a street require that a railroad bridge be relocated, enlarged, heightened, or otherwise reconstructed, the city shall bear ninety percent (90%) of the costs and the railroad company shall bear ten percent (10%) of the costs.

(f) It is the intent of this section to make uniform the law concerning the construction and maintenance of railroad crossings, bridges, underpasses, and warning devices within cities. To this end, all general laws and local acts in conflict with this section are repealed, and no local act taking effect on or after January 1, 1972, shall be construed to modify, amend, or repeal any portion of

this section unless it specifically so provides by express reference to this section. (1917, c. 136, subch. 5, s. 1; 1919, cc. 136, 237; C.S., s. 2787; 1971, c. 698, s. 1; 1973, c. 507, s. 5.)

§ 160A-299. Procedure for permanently closing streets and alleys.

(a) When a city proposes to permanently close any street or public alley, the council shall first adopt a resolution declaring its intent to close the street or alley and calling a public hearing on the question. The resolution shall be published once a week for four successive weeks prior to the hearing, a copy thereof shall be sent by registered or certified mail to all owners of property adjoining the street or alley as shown on the county tax records, and a notice of the closing and public hearing shall be prominently posted in at least two places along the street or alley. If the street or alley is under the authority and control of the Department of Transportation, a copy of the resolution shall be mailed to the Department of Transportation. At the hearing, any person may be heard on the question of whether or not the closing would be detrimental to the public interest, or the property rights of any individual. If it appears to the satisfaction of the council after the hearing that closing the street or alley is not contrary to the public interest, and that no individual owning property in the vicinity of the street or alley or in the subdivision in which it is located would thereby be deprived of reasonable means of ingress and egress to his property, the council may adopt an order closing the street or alley. A certified copy of the order (or judgment of the court) shall be filed in the office of the register of deeds of the county in which the street, or any portion thereof, is located.

(b) Any person aggrieved by the closing of any street or alley including the Department of Transportation if the street or alley is under its authority and control, may appeal the council's order to the General Court of Justice within 30 days after its adoption. In appeals of streets closed under this section, all facts and issues shall be heard and decided by a judge sitting without a jury. In addition to determining whether procedural requirements were complied with, the court shall determine whether, on the record as presented to the city council, the council's decision to close the street was in accordance with the statutory standards of subsection (a) of this section and any other applicable requirements of local law or ordinance.

No cause of action or defense founded upon the invalidity of any proceedings taken in closing any street or alley may be asserted, nor shall the validity of the order be open to question in any court upon any ground whatever, except in an action or proceeding begun within 30 days after the order is adopted. The failure to send notice by registered or certified mail shall not invalidate any ordinance adopted prior to January 1, 1989.

(c) Upon the closing of a street or alley in accordance with this section, subject to the provisions of subsection (f) of this section, all right, title, and interest in the right-of-way shall be conclusively presumed to be vested in those persons owning lots or parcels of land adjacent to the street or alley, and the title of such adjoining landowners, for the width of the abutting land owned by them, shall extend to the centerline of the street or alley.

The provisions of this subsection regarding division of right-of-way in street or alley closings may be altered as to a particular street or alley closing by the assent of all property owners taking title to a closed street or alley by the filing of a plat which shows the street or alley closing and the portion of the closed street or alley to be taken by each such owner. The plat shall be signed by each property owner who, under this section, has an ownership right in the closed street or alley.

(d) This section shall apply to any street or public alley within a city or its extraterritorial jurisdiction that has been irrevocably dedicated to the public, without regard to whether it has actually been opened. This section also applies to unopened streets or public alleys that are shown

on plats but that have not been accepted or maintained by the city, provided that this section shall not abrogate the rights of a dedicator, or those claiming under a dedicator, pursuant to G.S. 136-96.

(c) No street or alley under the control of the Department of Transportation may be closed unless the Department of Transportation consents thereto.

(f) A city may reserve a right, title, and interest in any improvements or easements within a street closed pursuant to this section. An easement under this subsection shall include utility, drainage, pedestrian, landscaping, conservation, or other easements considered by the city to be in the public interest. The reservation of an easement under this subsection shall be stated in the order of closing. The reservation also extends to utility improvements or easements owned by private utilities which at the time of the street closing have a utility agreement or franchise with the city.

(g) The city may retain utility easements, both public and private, in cases of streets withdrawn under G.S. 136-96. To retain such easements, the city council shall, after public hearing, approve a "declaration of retention of utility easements" specifically describing such easements. Notice by certified or registered mail shall be provided to the party withdrawing the street from dedication under G.S. 136-96 at least five days prior to the hearing. The declaration must be passed prior to filing of any plat or map or declaration of withdrawal with the register of deeds. Any property owner filing such plats, maps, or declarations shall include the city declaration with the declaration of withdrawal and shall show the utilities retained on any map or plat showing the withdrawal. (1971, c. 698, s. 1; 1973, c. 426, s. 47; c. 507, s. 5; 1977, c. 464, s. 34, 1981, c. 401; c. 402, ss. 1, 2; 1989, c. 254; 1993, c. 149, s. 1; 2015-103, s. 1.)

§ 160A-299.1. Applications for intermittent closing of roads within watershed improvement project by municipality; notice; costs; markers.

(a) Upon proper application by the board of commissioners of a drainage district established under the provisions of Chapter 156 of the General Statutes by the board of trustees of a watershed improvement district established under the provisions of Article 2 of Chapter 139 of the General Statutes, by the board of county commissioners of any county operating a county watershed improvement program under the provisions of Article 3 of Chapter 139 of the General Statutes, by the board of commissioners of any watershed improvement commission appointed by a board of county commissioners, or by the board of supervisors of any soil and water conservation district designated by a board of county commissioners to exercise authority in carrying out a county watershed improvement program, any municipality for roads or streets coming under its jurisdictional control is hereby authorized to permit the intermittent closing of any highway or public road within the boundaries of any watershed improvement project operated by the applicants, whenever in the judgment of the municipality it is necessary to do so, and when the highway or public road will be intermittently subject to inundation by floodwaters retained by an approved watershed improvement project.

(b) Before any permit may be issued for the temporary inundation and closing of such a road, an application for such permit shall be made to the appropriate municipality by the public body having jurisdiction over the watershed improvement project. The application shall specify the highway, road, or street involved, and shall request that a permit be granted to the applicant public body to allow the intermittent closing of the road.

(c) Upon receipt of such an application the municipality shall give public notice of the proposed action by publication in a newspaper of general circulation in the county or counties, within which the proposed intermittent closing of road or roads would occur; and such notices shall contain a description of the places of beginning and the places of ending of such intermittent

closing. In addition, the municipality shall give notice to all public utilities or common carriers having facilities located within the rights-of-way of any roads being closed by mailing copies of such notices to the appropriate offices of the public utility or common carrier having jurisdiction over the affected facilities of the public utility or common carrier. Not sooner than 14 days after publication and mailing of notices, the municipality may issue its permit with respect to such road.

(d) All cost in connection with the publication and mailing of notices shall be paid by the applicant. In the event any municipality issues a permit allowing the intermittent closing of a road, the permit shall contain a provision that the applicant public body having jurisdiction over the watershed improvement project causing the potential flooding shall cause suitable markers to be installed on the road to advise the general public of the intermittent closing of the road. (1975, c. 639, s. 2.)

§ 160A-300. Traffic control.

A city may by ordinance prohibit, regulate, divert, control, and limit pedestrian or vehicular traffic upon the public streets, sidewalks, alleys, and bridges of the city. (1917, c. 136, subch. 5, s. 1; 1919, cc. 136, 237; C.S., s. 2787; 1941, c. 153, ss. 1, 2; c. 272; 1947, c. 7; 1953, c. 171; 1965, c. 945; 1971, c. 698, s. 1.)

§ 160A-300.1. Use of traffic control photographic systems.

(a) A traffic control photographic system is an electronic system consisting of a photographic, video, or electronic camera and a vehicle sensor installed to work in conjunction with an official traffic control device to automatically produce photographs, video, or digital images of each vehicle violating a standard traffic control statute or ordinance.

(b) Any traffic control photographic system or any device which is a part of that system, as described in subdivision (a) of this section, installed on a street or highway which is a part of the State highway system shall meet requirements established by the North Carolina Department of Transportation. Any traffic control system installed on a municipal street shall meet standards established by the municipality and shall be consistent with any standards set by the Department of Transportation.

(b1) Any traffic control photographic system installed on a street or highway must be identified by appropriate advance warning signs conspicuously posted not more than 300 feet from the location of the traffic control photographic system. All advance warning signs shall be consistent with a statewide standard adopted by the Department of Transportation in conjunction with local governments authorized to install traffic control photographic systems.

(c) Municipalities may adopt ordinances for the civil enforcement of G.S. 20-158 by means of a traffic control photographic system, as described in subsection (a) of this section. Notwithstanding the provisions of G.S. 20-176, in the event that a municipality adopts an ordinance pursuant to this section, a violation of G.S. 20-158 at a location at which a traffic control photographic system is in operation shall not be an infraction. An ordinance authorized by this subsection shall provide that:

- (1) The owner of a vehicle shall be responsible for a violation unless the owner can furnish evidence that the vehicle was, at the time of the violation, in the care, custody, or control of another person. The owner of the vehicle shall not be responsible for the violation if the owner of the vehicle, within 30 days after notification of the violation, furnishes the officials or agents of the municipality which issued the citation either of the following:

- a. An affidavit stating the name and address of the person or company who had the care, custody, and control of the vehicle.
 - b. An affidavit stating that the vehicle involved was, at the time, stolen. The affidavit must be supported with evidence that supports the affidavit, including insurance or police report information.
- (1a) Subdivision (1) of this subsection shall not apply, and the registered owner of the vehicle shall not be responsible for the violation, if notice of the violation is given to the registered owner of the vehicle more than 90 days after the date of the violation.
 - (2) A violation detected by a traffic control photographic system shall be deemed a noncriminal violation for which a civil penalty of fifty dollars (\$50.00) shall be assessed, and for which no points authorized by G.S. 20-16(c) shall be assigned to the owner or driver of the vehicle nor insurance points as authorized by G.S. 58-36-65.
 - (3) The owner of the vehicle shall be issued a citation which shall clearly state the manner in which the violation may be challenged, and the owner shall comply with the directions on the citation. The citation shall be processed by officials or agents of the municipality and shall be forwarded by personal service or first-class mail to the address given on the motor vehicle registration. If the owner fails to pay the civil penalty or to respond to the citation within the time period specified on the citation, the owner shall have waived the right to contest responsibility for the violation, and shall be subject to a civil penalty not to exceed one hundred dollars (\$100.00). The municipality may establish procedures for the collection of these penalties and may enforce the penalties by civil action in the nature of debt.
 - (4) The municipality shall institute a nonjudicial administrative hearing to review objections to citations or penalties issued or assessed under this section.

(c1) The duration of the yellow light change interval at intersections where traffic control photographic systems are in use shall be no less than the yellow light change interval duration specified on the traffic signal plan of record signed and sealed by a professional engineer, licensed in accordance with the provisions of Chapter 89C of the General Statutes, and shall comply with the provisions of the Manual on Uniform Traffic Control Devices.

(d) This section applies only to the Cities of Albemarle, Charlotte, Durham, Fayetteville, Greensboro, Greenville, High Point, Locust, Lumberton, Newton, Rocky Mount, and Wilmington, to the Towns of Chapel Hill, Cornelius, Huntersville, Matthews, Nags Head, Pineville, and Spring Lake, and to the municipalities in Union County. (1997-216, ss. 1, 2; 1999-17, s. 1; 1999-181, ss. 1, 2; 1999-182, s. 2; 1999-456, s. 48(c); 2000-37, s. 1; 2000-97, s. 2; 2001-286, ss. 1, 2; 2001-487, s. 37; 2003-86, s. 1; 2003-380, s. 2; 2007-341, s. 2; 2010-132, s. 17.)

§ 160A-300.5: Repealed by Session Laws 2009-459, s. 2, effective October 1, 2009.

§ 160A-300.6. Regulation of golf carts on streets, roads, and highways.

(a) Notwithstanding the provisions of G.S. 20-50 and G.S. 20-54, a city may, by ordinance, regulate the operation of golf carts, as defined in G.S. 20-4.01(12b), on any public street, road, or highway where the speed limit is 35 miles per hour or less within its municipal limits or on any property owned or leased by the city.

(b) By ordinance, a city may require the registration of golf carts, charge a fee for the registration, specify who is authorized to operate golf carts, and specify the required equipment, load limits, and the hours and methods of operation of golf carts. No person less than 16 years of age may operate a golf cart on a public street, road, or highway. (2009-459, s. 3.)

§ 160A-301. Parking.

(a) **On-Street Parking.** – A city may by ordinance regulate, restrict, and prohibit the parking of vehicles on the public streets, alleys, and bridges within the city. When parking is permitted for a specified period of time at a particular location, a city may install a parking meter at that location and require any person parking a vehicle therein to place the meter in operation for the entire time that the vehicle remains in that location, up to the maximum time allowed for parking there. Parking meters may be activated by coins, tokens, cash, credit cards, debit cards, or electronic means. **Proceeds from the use of parking meters on public streets must be used to defray the cost of enforcing and administering traffic and parking ordinances and regulations.**

(b) **Off-Street Parking.** – A city may by ordinance regulate the use of lots, garages, or other facilities owned or leased by the city and designated for use by the public as parking facilities. The city may impose fees and charges for the use of these facilities, and may provide for the collection of these fees and charges through parking meters, attendants, automatic gates, or any other feasible means. The city may make it unlawful to park any vehicle in an off-street parking facility without paying the established fee or charge and may ordain other regulations pertaining to the use of such facilities.

Revenues realized from off-street parking facilities may be pledged to amortize bonds issued to finance such facilities, or used for any other public purpose.

(c) Nothing contained in Public Laws 1921, Chapter 2, Section 29, or Public Laws 1937, Chapter 407, Section 61, shall be construed to affect the validity of a parking meter ordinance or the revenues realized therefrom.

(d) The governing body of any city may, by ordinance, regulate the stopping, standing, or parking of vehicles in specified areas of any parking areas or driveways of a hospital, shopping center, apartment house, condominium complex, or commercial office complex, or any other privately owned public vehicular area, or prohibit such stopping, standing, or parking during any specified hours, provided the owner or person in general charge of the operation and control of that area requests in writing that such an ordinance be adopted. The owner of a vehicle parked in violation of an ordinance adopted pursuant to this subsection shall be deemed to have appointed any appropriate law-enforcement officer as his agent for the purpose of arranging for the transportation and safe storage of such vehicle.

(e) The registered owner of a vehicle that has been leased or rented to another person or company shall not be liable for a violation of an ordinance adopted pursuant to this section if, after receiving notification of the civil violation within 90 days of the date of occurrence, the owner, within 30 days thereafter, files with the officials or agents of the municipality an affidavit including the name and address of the person or company that leased or rented the vehicle. If notification is given to the owner of the vehicle after 90 days have elapsed from the date of the violation, the owner is not required to provide the name and address of the lessee or renter, and the owner shall not be held responsible for the violation. (1917, c. 136, subch. 5, s. 1; 1919, cc. 136, 237; C.S., s. 2787; 1941, c. 153, ss. 1, 2; c. 272; 1947, c. 7; 1953, c. 171; 1965, c. 945; 1971, c. 698, s. 1; 1973, c. 426, s. 48; 1979, c. 745, s. 2; 2003-380, s. 1; 2015-226, s. 1.)

§ 160A-302. Off-street parking facilities.

A city shall have authority to own, acquire, establish, regulate, operate, and control off-street parking lots, parking garages, and other facilities for parking motor vehicles, and to make a charge for the use of such facilities. (1917, c. 136, subch. 5, s. 1; 1919, cc. 136, 237; C.S., s. 2787; 1941, c. 153, ss. 1, 2; c. 272; 1947, c. 7; 1953, c. 171; 1965, c. 945; 1971, c. 698, s. 1.)

§ 160A-302.1. Fishing from bridges regulated.

The governing body of any city is hereby authorized to enact an ordinance prohibiting or regulating fishing from any bridge for the purpose of protecting persons fishing on the bridge from passing vehicular or rail traffic. Such ordinance may also prohibit or regulate fishing from any bridge one mile beyond the corporate limits of the city where the board or boards of county commissioners by resolution agree to such prohibition or regulation; provided, however, that the board or boards of county commissioners may upon 30 days' written notice withdraw their respective approval of the municipal ordinance, and that ordinance shall have no further effect within that county's jurisdiction. The ordinance shall provide that signs shall be posted on any bridge where fishing is prohibited or regulated reflecting such prohibition or regulation. In any event, no one may fish from the drawspan of any regularly attended drawbridge.

The police department of the city is hereby vested with the jurisdiction and authority to enforce any ordinance passed pursuant to this section.

The authority granted under the provisions of this section shall be subject to the authority of the Board of Transportation to prohibit fishing on any bridge on the State highway system. (1971, c. 690, ss. 2, 3, 6; c. 896, s. 15; 1973, c. 426, s. 49; c. 507, s. 5.)

§ 160A-303. Removal and disposal of junked and abandoned motor vehicles.

(a) A city may by ordinance prohibit the abandonment of motor vehicles on the public streets or on public or private property within the city, and may enforce any such ordinance by removing and disposing of junked or abandoned motor vehicles according to the procedures prescribed in this section.

(b) A motor vehicle is defined to include all machines designed or intended to travel over land or water by self-propulsion or while attached to any self-propelled vehicle.

(b1) An abandoned motor vehicle is one that:

- (1) Has been left upon a street or highway in violation of a law or ordinance prohibiting parking; or
- (2) Is left on property owned or operated by the city for longer than 24 hours; or
- (3) Is left on private property without the consent of the owner, occupant, or lessee thereof for longer than two hours; or
- (4) Is left on any public street or highway for longer than seven days or is determined by law enforcement to be a hazard to the motoring public.

(b2) A junked motor vehicle is an abandoned motor vehicle that also:

- (1) Is partially dismantled or wrecked; or
- (2) Cannot be self-propelled or moved in the manner in which it was originally intended to move; or
- (3) Is more than five years old and worth less than one hundred dollars (\$100.00) or is more than five years old and worth less than five hundred dollars (\$500.00) as provided by the municipality in an ordinance adopted under this section; or

(3a) Repealed by Session Laws 2009-97, s. 1, effective October 1, 2009.

(4) Does not display a current license plate.

(c) Any junked or abandoned motor vehicle found to be in violation of an ordinance adopted under this section may be removed to a storage garage or area, but no such vehicle shall be removed from private property without the written request of the owner, lessee, or occupant of the premises unless the council or a duly authorized city official or employee has declared it to be a health or safety hazard. The city may require any person requesting the removal of a junked or abandoned motor vehicle from private property to indemnify the city against any loss, expense, or liability incurred because of the removal, storage, or sale thereof. When an abandoned or junked motor vehicle is removed, the city shall give notice to the owner as required by G.S. 20-219.11(a) and (b).

(d) Hearing Procedure. – Regardless of whether a city does its own removal and disposal of motor vehicles or contracts with another person to do so, the city shall provide a hearing procedure for the owner. For purposes of this subsection, the definitions in G.S. 20-219.9 apply.

(1) If the city operates in such a way that the person who tows the vehicle is responsible for collecting towing fees, all provisions of Article 7A, Chapter 20, apply.

(2) If the city operates in such a way that it is responsible for collecting towing fees, it shall:

- a. Provide by contract or ordinance for a schedule of reasonable towing fees.
- b. Provide a procedure for a prompt fair hearing to contest the towing.
- c. Provide for an appeal to district court from that hearing.
- d. Authorize release of the vehicle at any time after towing by the posting of a bond or paying of the fees due, and
- e. Provide a sale procedure similar to that provided in G.S. 44A-4, 44A-5, and 44A-6, except that no hearing in addition to the probable cause hearing is required. If no one purchases the vehicle at the sale and if the value of the vehicle is less than the amount of the lien, the city may destroy it.

(e) Repealed by Session Laws 1983, c. 420, s. 13.

(f) No person shall be held to answer in any civil or criminal action to any owner or other person legally entitled to the possession of any abandoned, lost, or stolen motor vehicle for disposing of the vehicle as provided in this section.

(g) Nothing in this section shall apply to any vehicle in an enclosed building or any vehicle on the premises of a business enterprise being operated in a lawful place and manner if the vehicle is necessary to the operation of the enterprise, or to any vehicle in an appropriate storage place or depository maintained in a lawful place and manner by the city.

(h) Repealed by Session Laws 1983, c. 420, s. 13, effective July 1, 1983. (1965, c. 1156; 1967, cc. 1215, 1250; 1971, c. 698, s. 1; 1973, c. 426, s. 50; 1975, c. 716, s. 5; 1983, c. 420, ss. 11-13; 1997-456, s. 27; 2005-10, ss. 1, 3; 2006-15, s. 1; 2006-166, s. 2; 2006-171, s. 1; 2007-208, s. 1; 2009-97, s. 1; 2010-132, s. 20.)

§ 160A-303.1. Regulation of the placing of trash, refuse and garbage within municipal limits.

The governing body of any municipality is hereby authorized to enact an ordinance prohibiting the placing, discarding, disposing or leaving of any trash, refuse or garbage upon a street or highway located within that municipality or upon property owned or operated by the municipality

unless such garbage, refuse or trash is placed in a designated location or container for removal by a specific garbage or trash service collector. Any ordinance adopted pursuant hereto may prohibit the placing, discarding, disposing or leaving of any trash, refuse or garbage upon private property located within the municipality without the consent of the owner, occupant, or lessee thereof and may provide that the placing, discarding, disposing or leaving of the articles forbidden by this section shall, for each day or portion thereof the articles or matter are left, constitute a separate offense.

The governing body of a municipality, in any ordinance adopted pursuant hereto, may provide that a person who violates the ordinance may be punished by a fine not exceeding fifty dollars (\$50.00) or imprisoned not exceeding 30 days, or both, for each offense. (1973, c. 953.)

§ 160A-303.2. Regulation of abandonment of junked motor vehicles.

(a) A municipality may by ordinance regulate, restrain or prohibit the abandonment of junked motor vehicles on public grounds and on private property within the municipality's ordinance-making jurisdiction upon a finding that such regulation, restraint or prohibition is necessary and desirable to promote or enhance community, neighborhood or area appearance, and may enforce any such ordinance by removing or disposing of junked motor vehicles subject to the ordinance according to the procedures prescribed in this section. The authority granted by this section shall be supplemental to any other authority conferred upon municipalities. Nothing in this section shall be construed to authorize a municipality to require the removal or disposal of a motor vehicle kept or stored at a bona fide "automobile graveyard" or "junkyard" as defined in G.S. 136-143.

For purposes of this section, the term "junked motor vehicle" means a vehicle that does not display a current license plate and that:

- (1) Is partially dismantled or wrecked; or
- (2) Cannot be self-propelled or moved in the manner in which it originally was intended to move; or
- (3) Is more than five years old and appears to be worth less than one hundred dollars (\$100.00) or is more than five years old and appears to be worth less than five hundred dollars (\$500.00) as provided by the municipality in an ordinance adopted under this section.
- (4) Repealed by Session Laws 2009-97, s. 2, effective October 1, 2009.

(a1) Any junked motor vehicle found to be in violation of an ordinance adopted pursuant to this section may be removed to a storage garage or area, but no such vehicle shall be removed from private property without the written request of the owner, lessee, or occupant of the premises unless the council or a duly authorized city official or employee finds in writing that the aesthetic benefits of removing the vehicle outweigh the burdens imposed on the private property owner. Such finding shall be based on a balancing of the monetary loss of the apparent owner against the corresponding gain to the public by promoting or enhancing community, neighborhood or area appearance. The following, among other relevant factors, may be considered:

- (1) Protection of property values;
- (2) Promotion of tourism and other economic development opportunities;
- (3) Indirect protection of public health and safety;
- (4) Preservation of the character and integrity of the community; and
- (5) Promotion of the comfort, happiness, and emotional stability of area residents.

(a2) The city may require any person requesting the removal of a junked or abandoned motor vehicle from private property to indemnify the city against any loss, expense, or liability incurred because of the removal, storage, or sale thereof. When an abandoned or junked motor vehicle is removed, the city shall give notice to the owner as required by G.S. 20-219.11(a) and (b).

(a3) **Hearing Procedure.** – Regardless of whether a city does its own removal and disposal of motor vehicles or contracts with another person to do so, the city shall provide a prior hearing procedure for the owner. For purposes of this subsection, the definitions in G.S. 20-219.9 apply.

- (1) If the city operates in such a way that the person who tows the vehicle is responsible for collecting towing fees, all provisions of Article 7A, Chapter 20, apply.
- (2) If the city operates in such a way that it is responsible for collecting towing fees, it shall:
 - a. Provide by contract or ordinance for a schedule of reasonable towing fees.
 - b. Provide a procedure for a prompt fair hearing to contest the towing.
 - c. Provide for an appeal to district court from that hearing.
 - d. Authorize release of the vehicle at any time after towing by the posting of a bond or paying of the fees due, and
 - e. Provide a sale procedure similar to that provided in G.S. 44A-4, 44A-5, and 44A-6, except that no hearing in addition to the probable cause hearing is required. If no one purchases the vehicle at the sale and if the value of the vehicle is less than the amount of the lien, the city may destroy it.

(a4) Any person who removes a vehicle pursuant to this section shall not be held liable for damages for the removal of the vehicle to the owner, lienholder or other person legally entitled to the possession of the vehicle removed; however, any person who intentionally or negligently damages a vehicle in the removal of such vehicle, or intentionally or negligently inflicts injury upon any person in the removal of such vehicle, may be held liable for damages.

(b) Any ordinance adopted pursuant to this section shall include a prohibition against removing or disposing of any motor vehicle that is used on a regular basis for business or personal use. (1983, c. 841, s. 2; 1985, c. 737, s. 2; 1987, c. 42, s. 2; c. 451, s. 2; 1989, c. 3; c. 743, s. 2; 2005-10, ss. 2, 3; 2006-15, s. 3; 2006-166, s. 2; 2006-171, s. 1; 2007-208, s. 2; 2007-505, s. 3; 2009-97, s. 2.)

§ 160A-304. Regulation of taxis.

(a) A city may by ordinance license and regulate all vehicles operated for hire in the city. The ordinance may require that the drivers and operators of taxicabs engaged in the business of transporting passengers for hire over the public streets shall obtain a license or permit from the city; provided, however, that the license or permit fee for taxicab drivers shall not exceed fifteen dollars (\$15.00). As a condition of licensure, the city may require an applicant for licensure to pass a controlled substance examination. The ordinances may also specify the types of taxicab services that are legal in the municipality; provided, that in all cases shared-ride services as well as exclusive-ride services shall be legal. Shared-ride service is defined as a taxi service in which two or more persons with either different origins or with different destinations, or both, occupy a taxicab at one time. Exclusive-ride service is defined as a taxi service in which the first passenger

or party requests exclusive use of the taxicab. In the event the applicant is to be subjected to a national criminal history background check, the ordinance shall specifically authorize the use of FBI records. The ordinance shall require any applicant who is subjected to a national criminal history background check to be fingerprinted.

The Department of Public Safety may provide a criminal record check to the city for a person who has applied for a license or permit through the city. The city shall provide to the Department of Public Safety, along with the request, the fingerprints of the applicant, any additional information required by the Department of Public Safety, and a form signed by the applicant consenting to the check of the criminal record and to the use of the fingerprints and other identifying information required by the State or national repositories. The applicant's fingerprints shall be forwarded to the State Bureau of Investigation for a search of the State's criminal history record file, and the State Bureau of Investigation shall forward a set of the fingerprints to the Federal Bureau of Investigation for a national criminal history check. The city shall keep all information pursuant to this subsection privileged, in accordance with applicable State law and federal guidelines, and the information shall be confidential and shall not be a public record under Chapter 132 of the General Statutes.

The Department of Public Safety may charge each applicant a fee for conducting the checks of criminal history records authorized by this subsection.

The following factors shall be deemed sufficient grounds for refusing to issue a permit or for revoking a permit already issued:

- (1) Conviction of a felony against this State, or conviction of any offense against another state which would have been a felony if committed in this State;
- (2) Violation of any federal or State law relating to the use, possession, or sale of alcoholic beverages or narcotic or barbiturate drugs;
- (3) Addiction to or habitual use of alcoholic beverages or narcotic or barbiturate drugs;
- (4) Violation of any federal or State law relating to prostitution;
- (5) Noncitizenship in the United States;
- (6) Habitual violation of traffic laws or ordinances.

The ordinance may also require operators and drivers of taxicabs to display prominently in each taxicab, so as to be visible to the passengers, the city taxi permit, the schedule of fares, a photograph of the driver, and any other identifying matter that the council may deem proper and advisable. The ordinance may also establish rates that may be charged by taxicab operators, may limit the number of taxis that may operate in the city, and may grant franchises to taxicab operators on any terms that the council may deem advisable.

(b) When a city ordinance grants a taxi franchise for operation of a stated number of taxis within the city, the holder of the franchise shall report at least quarterly to the council the average number of taxis actually in operation during the preceding quarter. The council may amend a taxi franchise to reduce the number of authorized vehicles by the average number not in actual operation during the preceding quarter, and may transfer the unused allotment to another franchised operator. Such amendments of taxi franchises shall not be subject to G.S. 160A-76. Allotments of taxis among franchised operators may be transferred only by the city council, and it shall be unlawful for any franchised operator to sell, assign, or otherwise transfer allotments under a taxi franchise.

(c) Nothing in this Chapter authorizes a city to adopt an ordinance doing any of the following with respect to a TNC service regulated under Article 10A of Chapter 20 of the General Statutes:

- (1) Requiring licensing or regulating.
- (2) through (5) Repealed by Session Laws 2015-237, s. 6. effective October 1, 2015.
- (6) Requiring or prohibiting taxi franchises or taxi operators from contracting with a transportation network company regulated under Article 10A of Chapter 20 of the General Statutes. (1943, c. 639, s. 1; 1945, c. 564, s. 2; 1971, c. 698, s. 1; 1981, c. 412, s. 4; c. 606, s. 5; c. 747, s. 66; 1987, c. 777, s. 7; 2002-147, s. 14; 2003-65, s. 1; 2013-413, s. 12.1(b); 2014-100, s. 17.1(o); 2014-115, s. 17; 2015-237, s. 6.)

§ 160A-305. Agreements under National Highway Safety Act.

Any city is hereby authorized to enter into agreements with the State of North Carolina and its agencies, and with the federal government and its agencies, to secure the full benefits available to the city under the National Highway Safety Act of 1966, and to cooperate with State and federal agencies, other public and private agencies, interested organizations, and individuals, to effectuate the purposes of the act and subsequent amendments thereof. (1967, c. 1255; 1971, c. 698, s. 1.)

§ 160A-306. Building setback lines.

(a) A city shall have authority to (i) classify all or a portion of the streets in the city according to their size, present and anticipated traffic loads, and other characteristics relevant to the achievement of the purposes of this section, and (ii) establish by ordinance minimum distances that buildings and other permanent structures or improvements constructed along each class or type of street shall be set back from the right-of-way line or the center line of an existing or proposed street. Portions of any street may be classified in a manner different from other portions of the same street where the characteristics of the portions differ.

(b) Any setback line shall be designed

- (1) To promote the public safety by providing adequate sight distances for persons using the street and its sidewalks, lessening congestion in the street and sidewalks, facilitating the safe movement of vehicular and pedestrian traffic on the street and sidewalks and providing adequate fire lanes between buildings, and
- (2) To protect the public health by keeping dwellings and other structures an adequate distance from the dust, noise, and fumes created by traffic on the street and by insuring an adequate supply of light and air.

(c) A setback-line ordinance shall permit affected property owners to appeal to the council for variance or modification of setback requirements as they apply to a particular piece of property. The council may vary or modify the requirements upon a showing that

- (1) The peculiar nature of the property results in practical difficulties or unnecessary hardships that impede carrying out the strict letter of the requirement.
- (2) The property will not yield a reasonable return or cannot be put to reasonable use unless relief is granted, and

- (3) Balancing the public interest in enforcing the setback requirements and the interest of the owner, the grant of relief is required by considerations of justice and equity.

In granting relief, the council may impose reasonable and appropriate conditions and safeguards to protect the interest of neighboring properties. The council may delegate authority to hear appeals under setback-line ordinances to any authorized body to hear appeals under zoning ordinances. If this is done, appeal to the council from the board shall be governed by the same laws and rules as appeals from decisions granting or denying variances or modifications under the zoning ordinance. (1971, c. 698, s. 1; 1987, c. 747, ss. 13, 14.)

§ 160A-307. Curb cut regulations.

(a) A city may by ordinance regulate the size, location, direction of traffic flow, and manner of construction of driveway connections into any street or alley. The ordinance may require the construction or reimbursement of the cost of construction and public dedication of medians, acceleration and deceleration lanes, and traffic storage lanes for driveway connections into any street or alley if all of the following apply:

- (1) The need for such improvements is reasonably attributable to the traffic using the driveway.
- (2) The improvements serve the traffic of the driveway.

(b) No street or alley under the control of the Department of Transportation may be improved without the consent of the Department of Transportation. A city shall not require the applicant to acquire right-of-way from property not owned by the applicant. However, an applicant may voluntarily agree to acquire such right-of-way. (1971, c. 698, s. 1; 1987, c. 747, s. 16; 2019-111, s. 1.16.)

§ 160A-307.1. Limitation on city requirements for street improvements related to schools.

A city may only require street improvements related to schools that are required for safe ingress and egress to the municipal street system and that are physically connected to a driveway on the school site. The required improvements shall not exceed those required pursuant to G.S. 136-18(29). G.S. 160A-307 shall not apply to schools. A city may only require street improvements related to schools as provided in G.S. 160A-372. The cost of any improvements to the municipal street system pursuant to this section shall be reimbursed by the city. Any agreement between a school and a city to make improvements to the municipal street system shall not include a requirement for acquisition of right-of-way by the school, unless the school is owned by an entity that has eminent domain power. Any right-of-way costs incurred by a school for required improvements pursuant to this section shall be reimbursed by the city. Notwithstanding any provision of this Chapter to the contrary, a city may not condition the approval of any zoning, rezoning, or permit request on the waiver or reduction of any provision of this section. The term "school," as used in this section, means any facility engaged in the educational instruction of children in any grade or combination of grades from kindergarten through the twelfth grade at which attendance satisfies the compulsory attendance law and includes charter schools authorized under G.S. 115C-218.5. (2017-57, s. 34.6A(b); 2017-197, s. 7.5; 2018-5, s. 34.18(a); 2018-97, s. 7.4(a); 2018-114, s. 26.)

§ 160A-308. Regulation of dune buggies.

A municipality may by ordinance regulate, restrict and prohibit the use of dune or beach buggies, jeeps, motorcycles, cars, trucks, or any other form of power-driven vehicle specified by the governing body of the municipality on the foreshore, beach strand and the barrier dune system. Violation of any ordinance adopted by the governing body of a municipality pursuant to this section is a Class 3 misdemeanor.

Provided, a municipality shall not prohibit the use of such specified vehicles from the foreshore, beach strand and barrier dune system by commercial fishermen for commercial activities. Commercial fishermen, however, shall abide by all other regulations or restrictions duly enacted by municipalities under this section. (1973, cc. 856, 1401; 1993, c. 539, s. 1086; 1994, Ex. Sess., c. 14, s. 68, c. 24, s. 14(c).)

§ 160A-309. Intersection and roadway improvements.

A city may contract with a developer or property owner, or with a private party who is under contract with the developer or property owner, for public intersection or roadway improvements that are adjacent or ancillary to a private land development project. Such a contract is not subject to Article 8 of Chapter 143 of the General Statutes if the public cost will not exceed two hundred fifty thousand dollars (\$250,000) and the city or its designated agency determines that: (i) the public cost will not exceed the estimated cost of providing for those public intersection or roadway improvements through either eligible force account qualified labor or through a public contract let pursuant to Article 8 of Chapter 143 of the General Statutes; or (ii) the coordination of separately constructed public intersection or roadway improvements, and the adjacent or ancillary private land development improvements would be impracticable. A city may enact ordinances and policies setting forth the procedures, requirements, and terms for agreements authorized by this section. (2005-426, s. 8(c).)

§ 160A-310. Reserved for future codification purposes.

Attachment 7

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1997

SESSION LAW 1998-86
HOUSE BILL 1596

AN ACT TO ALLOW THE TOWN OF WRIGHTSVILLE BEACH TO USE PROCEEDS FROM ON-STREET PARKING METERS IN THE SAME MANNER IN WHICH PROCEEDS FROM OFF-STREET PARKING FACILITIES ARE USED.

The General Assembly of North Carolina enacts:

Section 1. Notwithstanding G.S. 160A-301(a), a city may use the proceeds from parking meters on public streets in the same manner in which proceeds from off-street parking facilities are permitted under G.S. 160A-301(b).

Section 2. This act applies to the Town of Wrightsville Beach only.

Section 3. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 10th day of August, 1998.

s/ Dennis A. Wicker
President of the Senate

s/ Harold J. Brubaker
Speaker of the House of Representatives

H.B. 212 SESSION LAW 2001-9 AN ACT TO ALLOW CERTAIN MUNICIPALITIES IN NEW HANOVER COUNTY TO USE PROCEEDS FROM ONSTREET PARKING METERS IN THE SAME MANNER IN WHICH PROCEEDS FROM OFF-STREET PARKING FACILITIES ARE USED. The General Assembly of North Carolina enacts: SECTION 1. Section 2 of S.L. 1998-86 reads as rewritten: "Section 2. This act applies to the Town of Wrightsville Beach Beach, the Town of Carolina Beach, the Town of Kure Beach, and the City of Wilmington only." SECTION 2. This act is effective when it becomes law. In the General Assembly read three times and ratified this the 28th day of March, 2001. Became law on the date it was ratified.

15A NCAC 07M .0310

STANDARDS FOR PUBLIC ACCESS

- (a) Public access projects funded under the Public Beach and Coastal Waterfront Access program shall be consistent with public access policies contained in the local government's land use plan as required under 15A NCAC 07B .702(d)(2)(A), its local waterfront access plan, or a local recreation plan that addresses public access.
- (b) Land acquired with Public Beach and Coastal Waterfront Access program funds shall be dedicated in perpetuity for public access and benefit of the general public, and the dedication shall be recorded in the local Register of Deeds by the grantee. Any lease or easement agreement shall extend at least 25 years. If the local government uses the property for a purpose other than beach or coastal water access or elects to sell or otherwise dispose of the property, the local government shall reimburse the State the amount that is greater of the amount of Program grant funds provided to purchase the property or an amount equal to the same proportion of the current market value of the property as the proportion of the original purchase price of the property funded with Program grant funds.
- (c) Local governments that receive or have received funding through this grant program shall operate and maintain the public access sites and their facilities in such a manner that public health and safety is ensured for the useful life of that facility. The useful life of a facility shall be defined in the individual grant contract.
- (d) Local governments with public access sites funded by the Division of Coastal Management pursuant to G.S. 113- 134.3 may charge user fees as long as those fees are used exclusively for the operation and maintenance and enhancement of public access, or the provision of new public access. Local governments shall prepare annual accounting reports for fees generated by Public Beach and Coastal Waterfront Access Program funded access sites and shall make the report publicly available. Any local government that has not made the most recent required accounting report available shall not receive further funding under this program until the inconsistency is corrected.

§ 113A-134.3. Standards for public access program.

(a) The Commission, with the support of the Department, shall establish and carry out a program to assure the acquisition, improvement, and maintenance of a system of public access to coastal beaches and public trust waters. This public access program shall include standards to be adopted by the Commission for the acquisition of property and the use and maintenance of the property. The standards shall be written to assure that land acquisition funds shall only be used to purchase interests in property that will be of benefit to the general public. Priority shall be given to acquisition of lands that due to adverse effects of natural hazards, such as past and potential erosion, flooding, and storm damage, are unsuitable for the placement of permanent structures, including lands for which a permit for improvements has been denied under rules adopted pursuant to State law. The program shall be designed to provide and maintain reasonable public access and necessary parking, within the limitations of the resources available, to all coastal beaches and public trust waters where access is compatible with the natural resources involved and where reasonable access is not available.

(b) To the maximum extent possible, this program shall be coordinated with State and local beach and coastal water management and recreational programs and shall be carried out in cooperation with local governments. Prior to the purchase of any interests in property, the Secretary or his designee shall make a written finding of the public purpose to be served by the acquisition. Once property is purchased, the Department may allow property, without charge, to be controlled and operated by the county or municipality in which the property is located, subject to an agreement requiring that the local government use and maintain the property for its intended public purpose.

(c) Subject to any restrictions imposed by law, any funds appropriated or otherwise made available to the Public Beach and Coastal Waterfront Access Program may be used to meet matching requirements for federal or other funds. The Department shall make every effort to obtain funds from sources other than the General Fund to implement this program. Funds may be used to acquire or develop land for pedestrian access including parking and to make grants to local governments to accomplish the purposes of this Part. All acquisitions or dispositions of property made pursuant to this Part shall be in accordance with the provisions of Chapter 146 of the General Statutes. All grants to local governments pursuant to this Part for land acquisitions shall be made on the condition that the local government agrees to transfer title to any real property acquired with the grant funds to the State if the local government uses the property for a purpose other than beach or coastal waters access. (1981, c. 925, s. 1; 1983, c. 334; c. 757, s. 13; 1987, c. 827, s. 145; 1989, c. 344, s. 2; c. 727, s. 137; c. 751, s. 13; 1995, c. 183, s. 4.)

Attachment 9

NUMBER	PARCEL #	DESCRIPTION	ADDRESS
✓1	232NG001	L-6&7 B-O PLAT 4/2	110 ROTHSCILD/TOWN HALL
✓2	232NG006	DB-417-273 P-4-P-2-B-0-L	107 DAVIS/TOWN HALL
✓3	232NG007	L-15 B-O BY WILL PLAT 4/2	109 DAVIS/TOWN HALL
✓4	232MM005	L-5&6 B-16 HOLDEN BCH EAST	252 & 254 OCEAN BLVD EAST (vw)
✓5	232NB007	DB-437-689 P-4-P-2-B-3-0	120 ROTHSCILD STREET
✓6	232NB008	DB-434-687 P-4-P-2-B-3-0	120 ROTHSCILD STREET
✓7	246CE07103	5.83AC MARSH-	177 SAND DOLLARSAND DOLLAR&SCOTCH BONNETT
✓8	231MC001	18.6 ACRES HOLDEN BEACH	AREA BTWN GREENSBORO & SCOTCH BONNET (WWAY)
9	231MC00127	.15 AC	AREA BEHIND 536 -542 OBW
✓10	231MC00130	L-201 HOLDEN BEACH EAST P	BTWN GREENSBORO & SCOTCH BONNET
✓11	231MC00131	L-202 HOLDEN BEACH EAST P	BTWN GREENSBORO & SCOTCH BONNET
✓12	231MC00132	L-203 HOLDEN BEACH EAST P	BTWN GREENSBORO & SCOTCH BONNET
✓13	231MC00133	L-204 HOLDEN BEACH EAST P	BTWN GREENSBORO & SCOTCH BONNET
✓14	231MC00134	L-205 HOLDEN BEACH EAST P	BTWN GREENSBORO & SCOTCH BONNET
✓15	231MC00135	L-206 HOLDEN BEACH EAST P	BTWN GREENSBORO & SCOTCH BONNET
✓16	231MC00136	L-207 HOLDEN BEACH EAST P	BTWN GREENSBORO & SCOTCH BONNET
✓17	231MC00139	L-212 HOLDEN BEACH EAST P	BTWN GREENSBORO & SCOTCH BONNET
✓18	231MC00140	L-213 HOLDEN BEACH EAST P	BTWN GREENSBORO & SCOTCH BONNET
✓19	231MC00141	L-214 HOLDEN BEACH EAST P	BTWN GREENSBORO & SCOTCH BONNET
✓20	231MC00142	L-215 HOLDEN BEACH EAST P	BTWN GREENSBORO & SCOTCH BONNET
✓21	231MC00143	L-216 HOLDEN BEACH EAST P	BTWN GREENSBORO & SCOTCH BONNET
✓22	231MC00144	L-217 HOLDEN BEACH EAST P	BTWN GREENSBORO & SCOTCH BONNET
✓23	231MC00145	L-218 HOLDEN BEACH EAST P	BTWN GREENSBORO & SCOTCH BONNET
✓24	231MC00148	L-221 HOLDEN BEACH EAST P	BTWN GREENSBORO & SCOTCH BONNET
✓25	231MC00149	L-222 HOLDEN BEACH EAST P	BTWN GREENSBORO & SCOTCH BONNET
✓26	231MC00150	L-223 HOLDEN BEACH EAST P	BTWN GREENSBORO & SCOTCH BONNET
✓27	232NB005	TR-A 0.61 PLAT 20/453	124 & 126 ROTHSCILD
✓28	232NB009	TR-C 0.33 ACRES PLAT 20/4	119 DAVIS the park (119 & 121)
✓29	232NB011	TR-B 0.46 ACRES PLAT 20/1	123 DAVIS/125 DAVIS
✓30	232NB016	L-9 B-2-P PLAT 4/2	120 DAVIS
✓31	232NC067	.14 AC R H HOLDEN PL 4/2	125 SOUTHSORE PARK
✓32	232NG009	L-P/O 6 B-P .03AC HB PLAT	108 DAVIS, SMALL TRIANGULAR LOT

33	246CE07134	✓.12AC SR 1116 HOLDEN BEACH	628 OCEAN BLVD WEST
34	247BB001	✓1.39 ACRES	UNDER BRIDGE AREA
35	246CE096	✓.09AC BACON ISLAND HARBOR	BTWN 704 & 708 OCEAN BLVD WEST
36	247AA033	✓L-10'X250' HOLDEN BEACH P	BTWN 389 & 391 OCEAN BLVD WEST
37	247AB00402	✓L-5'X250 PUBLIC ACCESSWAY	BTWN 301 & 303 OCEAN BLVD WEST
38	247AB01401	✓L-10' ALLEY B-K-S-3 RH PL	BTWN 329 & 331 OCEAN BLVD WEST
39	247AB02501	✓L-10X250 B-L ACCESS WAY	BTWN 357 & 359 OCEAN BLVD WEST
40	247BA02501	✓L 10X250 B-I ACCESS WAY	BTWN 289 & 291 OCEAN BLVD WEST
41	246AE07202	✓9.75AC	BTWN SAILFISH & SWORDFISH
42	246BC01601	✓TR-P/O 6 45.5 AC PLAT 4/12	MARSH BTWN 762 & 794 OCEAN BLVD WEST
43	245GA13001	✓.12AC PLAT 25/116	AREA BEFORE 1244 OCEAN BLVD WEST(1240 OBW)PS
44	232NK019	✓L-2&14 B-A-S-1 HOLDEN BEACH	111 OCEAN BLVD WEST
45	232NK01701	✓10X250 ALLEY	BTWN 105 & 107 OCEAN BLVD WEST
46	232NK01501	✓10X250 ALLEY	BTWN 101 & 103 OCEAN BLVD WEST
47	232NK009	✓PARCEL A PLAT M/319	114 OCEAN BLVD EAST
48	232NK00902	✓5X250 ALLEY	BTWN 112 & 114 OCEAN BLVD EAST
49	232NK00401	✓10X250 ALLEY	BTWN 122 & 124 OCEAN BLVD EAST
50	232MN00901	✓L-63 PLAT 2.5/158 DEATH	220 OCEAN BLVD EAST
51	231MC00129	✓L-200 1 AC HOLDEN BEACH E	RIGHT CORNER BLVD LOT NEXT TO SCOTCH BONNET
52	231MC00123	✓L-224 ADD TO HOLDEN BEACH	484 OCEAN BLVD WEST
53	246HA03401	✓16 X 230 ACCESS WAY	BTWN 1017 & 1019 OCEAN BLVD WEST
54	246CA006	✓L-300 & 301 HH PLAT 9/87	572 OCEAN BLVD WEST FIREHOUSE
55	246CA005	✓L-298 & 299 HH PLAT 9/87	574 OCEAN BLVD WEST PART OF FIREHOUSE
56	245EB01501	✓L-PT 31&32 S-C PLAT 2.5/1	BTWN 1049 & 1051 OCEAN BLVD WEST
57	232NK01201	✓L-10' ALLEYWAY B-A RH HOLDEN	BTWN SEA OATS VILLAS 104E & 108 OCEAN BLVD EAST
58	232NK00402	✓L-10' ALLEYWAY B-B RH HOLDEN	BTWN 118 & 120 OCEAN BLVD EAST
59	246BC001	✓L-1 0.11 ACRES PLAT 78/39	794 OBW
60	246BC014	✓L-14 0.12 ACRES PLAT 78/39	820 OBW
61	246BC010	✓L-10 0.12 ACRES PLAT 78/39	812 OBW
62	246BC015	✓L-15 0.12 ACRES PLAT 78/39	822 OBW
63	246BC011	✓L-11 0.12 ACRES PLAT 78/39	814 OBW
64	246BC016	✓TR-2 28.43 ACRES PLAT 78/39	MARSH AREA BEHIND 794 -822 OBW
65	246BC013	✓L-13 0.12 ACRES PLAT 78/39	818 OBW
66	246BC01609	✓TR-1 3.17 ACRES PLAT 78/39	824 OBW

67	246BC01604	✓ L-5 0.12 ACRES PLAT 78/39	BEHIND 820 & 822 OBW
68	246BC012	✓ L-12 DREAM HARBOR PLAT H/300	816 OBW
69	246CE00602	✓ TR AC PLAT 88/45	BETWEEN 567 & 569 OBW
70	246AE07320	✓ PARCEL B 1.81 AC	LOT BEHIND 830 OBW
71	246BA05101	✓ PT-41&42 S-C PLAT 3/70	BTWN 917 & 915 OCEAN BLVD WEST
72	246CB002	✓ LOT 2 DREAM HARBOR	796 OBW
OFF ISLAND PROPERTY			
	2150005301	L-8 18.26 ACRES PLAT 57/90 SR 1181	TURKEY TRAP
	2150005314	L-A 13.05 ACRES PLAT 57/90	TURKEY TRAP
	2320001501	1.56AC PLAT 23/109	1044 SABBATH HOME

also - 677.5 0Bw
883.5 0Bw
1085.5 0Bw
1017.5 0Bw

Attachment 10

§ 95.05 STREET RIGHTS-OF-WAY.

(A) The purpose of this regulation is to establish what may be placed in street rights-of-way which are cleared by installation or repair of utilities, streets, or walkways. This regulation is not intended to remove or destroy landscaping or structures which are presently in place. Landscaping in street rights-of-way:

- (1) Must not present a safety hazard;
- (2) Must not impede traffic;
- (3) Is placed at the risk of the individual; and
- (4) Is encouraged.

('85 Code, § 14-2)

(B) The ten feet of rights-of-way nearest the pavement or road bed shall remain clear of all items with the following exceptions:

- (1) Mailboxes, newspaper boxes, post and rope not to exceed 24 inches from grade.
- (2) Grass, an approved pervious product or vegetation not to exceed one foot in height.

(3) The properties located at 1189, 1190, 1191 and 1192 Ocean Boulevard West may install or place a fence within the right-of-way.

('85 Code, § 14-2.1)

(C) The area of the rights-of-way beyond ten feet of the pavement or road bed:

- (1) May be landscaped by the abutting property owner provided § 157.081 of the zoning code is complied with.
- (2) Shall be kept clear of all other manmade structures not used in landscaping with the exception of fences.

('85 Code, § 14-2.2)

(D) The town has no responsibility to protect any items, authorized or unauthorized, which are placed in street rights-of-way. Improvements are made at the owners risk and may be destroyed or damaged during walkway, street, and utility installation or maintenance. Items deemed to be a safety hazard or to impede traffic will be removed by the town.

(E) All existing concrete within the right-of-way that is removed for any reason cannot be replaced.

('85 Code, § 14-2.3) (Ord. 5-89, passed 5-1-89; Am. Ord. 90-17, passed 12-3-90; Am. Ord. 94-29, passed 11-7-94; Am. Ord. 95-03, passed 2-6-95; Am. Ord. 02-08, passed 5-27-02; Am. Ord. 06-13, passed 11-14-06; Am. Ord. 12-04, passed 5-8-12; Am. Ord. 18-08, passed 4-17-18) Penalty, see § 95.99

Parking Regulations

13

or parts of streets. These prohibitions shall not apply to the temporary parking of emergency, governmental, public and private utility and private vehicles being used during the provision of emergency or other bona fide governmental or public or private utility service.

<i>Name of Street</i>	<i>Location</i>
All streets that intersect directly with Ocean Boulevard East and West from the centerline of Ocean Boulevard north and or south for 125 feet; unless specifically mentioned otherwise herein.	
✓ Avenue A	No parking within 25 feet of any intersection with any street
✓ Avenue B	No parking within 25 feet of any intersection with any street
Bendigo Street	No parking within 25 feet of any intersection with any street
✓ Brunswick Avenue West	No parking from Rothschild Street, west to a point at the northwestern corner of the Holden Beach Chapel parcel #232OD016. Prohibition applies to the south side of the street only.
✓ Cole Street	From centerline of Ocean Boulevard West northward for 30 feet
✓ Davis Street	From centerline of Ocean Boulevard West northward for 30 feet
✓ Dunescape Drive	No parking within 25 feet of any intersection with any street
✓ Elizabeth Street	No parking within 25 feet of any intersection with any street
✓ Ferry Road	On the south side of Ocean Boulevard East, no parking within 25 feet of any intersection with any street
✓ Holden Street	No parking within 25 feet of any intersection with any street
✓ McCray Street	No parking: <ul style="list-style-type: none"> ✓ 1) On north side of street, from Dunescape Drive to a point 125 feet east from the centerline of Dunescape Drive at McCray Street; and ✓ 2) On south side of street, from the centerline of Dunescape Drive at McCray Street to the eastern terminus; and ✓ 3) Avenue A and the eastern terminus of Ocean Boulevard East; and ✓ 4) Ocean Boulevard East Extension. No parking on south side of street from Avenue A east to Dunescape Drive; and ✓ 5) Rothschild Street Parking, except north of Brunswick Avenue West.
✓ Ocean Boulevard East	Beginning at Jordan Boulevard to its eastern terminus where state maintenance ends
✓ Ocean Boulevard West	Beginning at Jordan Boulevard to its western terminus, excluding the Holden Beach West gated subdivision
✓ Exception:	The southern right-of-way from a point directly across from the western right-of-way of Burlington Street, to a point directly across from the eastern right-of-way of Durham Street

	<i>Name of Street</i>	<i>Location</i>
✓	Ranger Street (extended southward through right-of-way of Hillside Drive)	No parking within 25 feet of any intersection with any street Exception: All parking shall be designated by signs.
✓	Rothschild Street	No parking, except north of Brunswick Avenue West.

2 (C) No person shall park a boat trailer at any time in the municipal parking area under the bridge. This area is described as the area between Jordan Boulevard north from Carolina Avenue, and west from the easternmost point of Jordan Boulevard for a distance of 200 feet on any roadway surface or right-of-way.

('85 Code, Ch. VII, Sched. I) (Ord. 6-86, passed 4-18-86; Am. Ord. 94-08, passed 4-4-94; Am. Ord. 94-16, passed 7-20-94; Am. Ord. 95-08, passed 6-5-95; Am. Ord. 95-17, passed 9-20-95; Am. Ord. 96-04, passed 6-3-96; Am. Ord. 97-15, passed 10-28-97; Am. Ord. 00-07, passed 3-13-00; Am. Ord. 02-05, passed 4-8-02; Am. Ord. 05-07, passed 7-25-05; Am. Ord. 14-09, passed 9-11-14; Am. Ord. 16-10, passed 6-21-16; Am. Ord. 16-13, passed 8-16-16) Penalty, see § 70.99

§ 72.06 HANDICAPPED PARKING.

Parking for handicapped only shall be permitted as indicated by properly installed signs and/or markings in accordance with all current ADA, American Disability Act, federal guidelines and state law.

(Ord. 14-09, passed 9-11-14) Penalty, see § 70.99

§ 72.04 TOW-AWAY ZONES.

Vehicles may be towed at the discretion of any law enforcement officer in accordance with all current North Carolina State Laws covered under Chapter 14, Chapter 20 or other applicable statute of the North Carolina General Statutes.

(Ord. 14-09, passed 9-11-14)

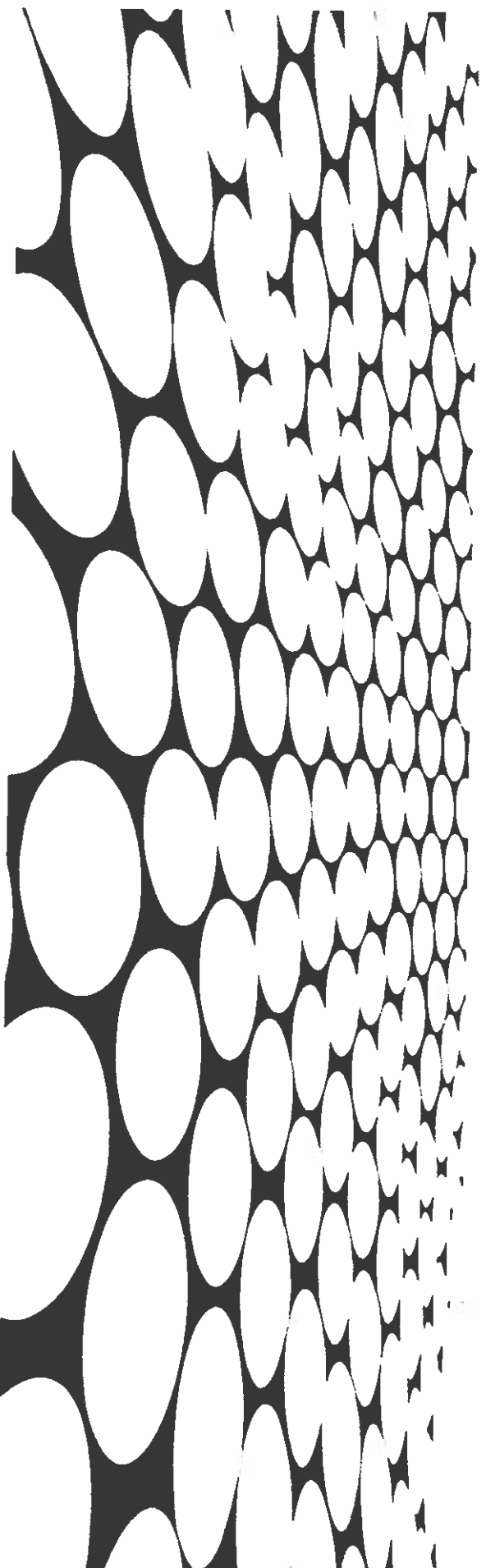
§ 72.05 PARKING FOR CUSTOMERS ONLY.

Parking shall be permitted on such streets and at such locations, as are specified in this section for customers of businesses immediately abutting such locations, and shall not impede the flow traffic.

('85 Code, § 7-3-4) (Ord. 14-09, passed 9-11-14)

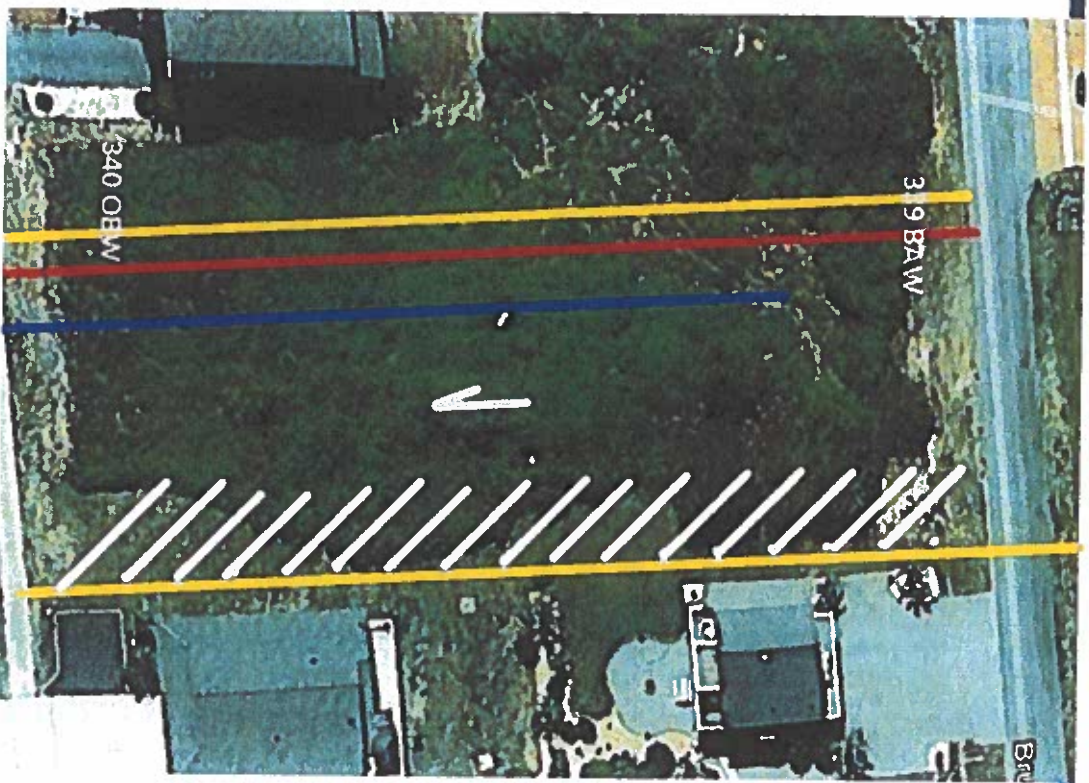
PARKING COST DEVELOPMENT ESTIMATES PARKING COMMITTEE

THESE ARE PRELIMINARY COST ESTIMATES BASED ON STAFF'S BEST ASSUMPTIONS.



PARKING COMMITTEE TASKER

- Develop Cost Estimates and Number of Spaces, including Bulkhead in the Properties in the 800 block
- Develop Cost estimates and number of spaces, for paving through streets between Ocean OBW and BAW
- Develop Cost estimates for angle parking spots on Avenue A
- Investigate the potential for using the space formally known as Hillside Drive,



Reserve 12

15,000 Square Feet

25 Parking Spot

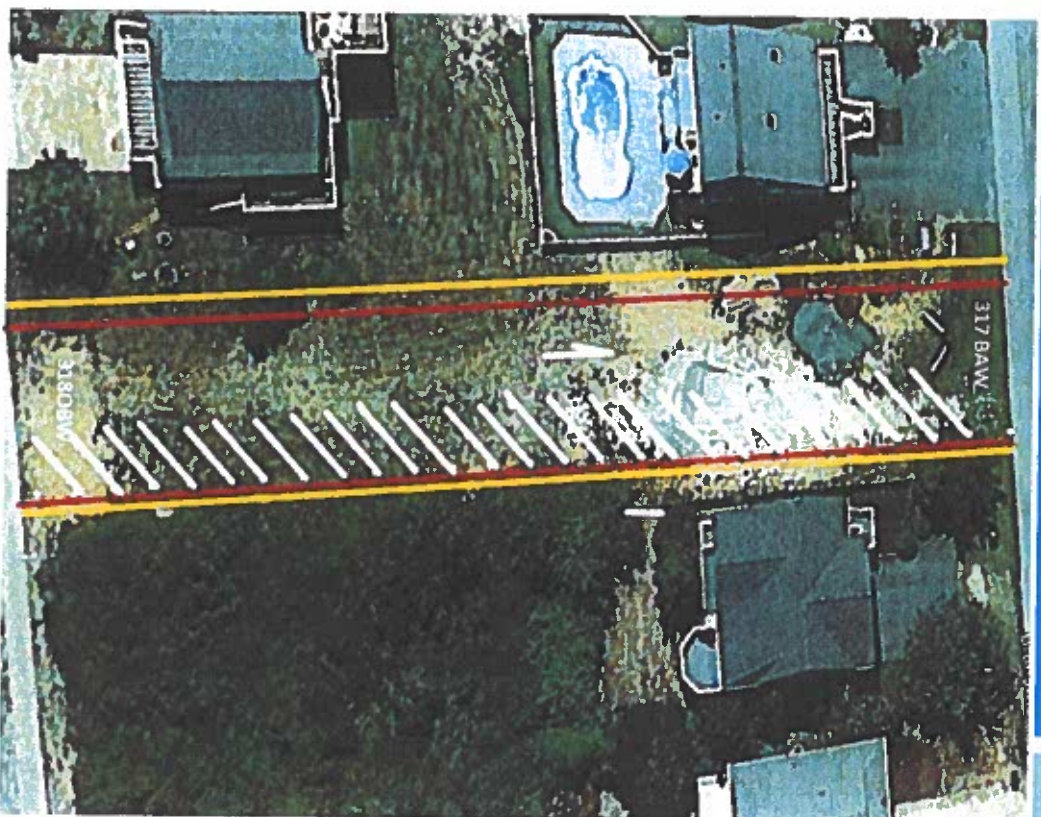
Paving Cost

\$72,000

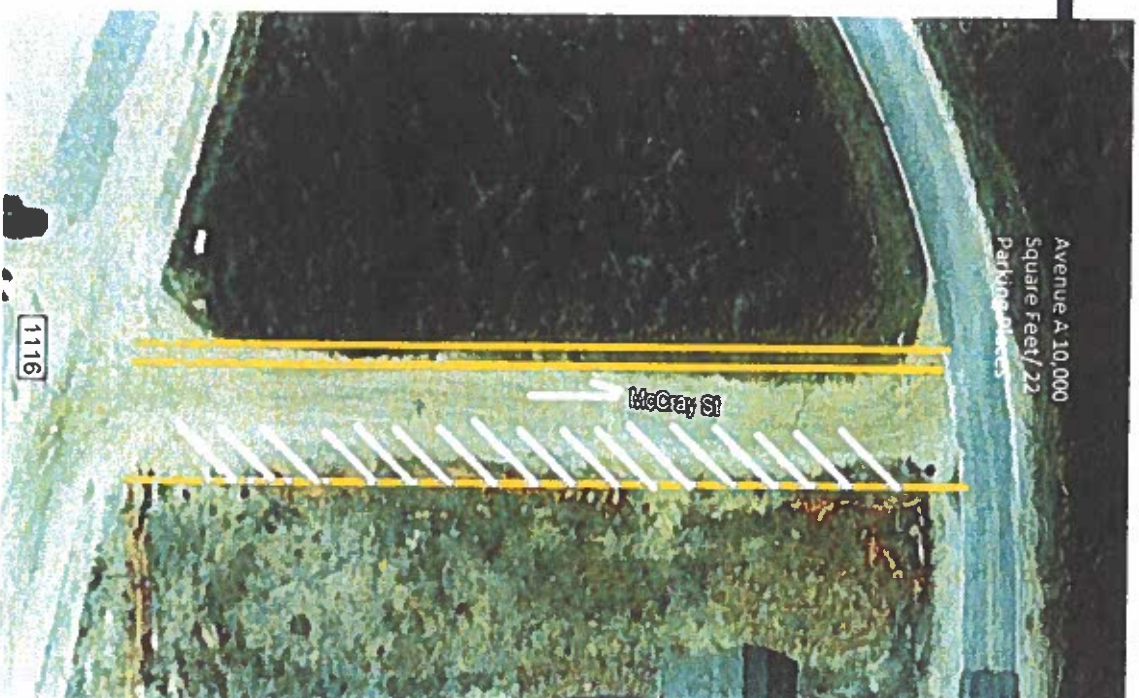
Estimated cost per space

\$2,880.00

DEQ permits N/A



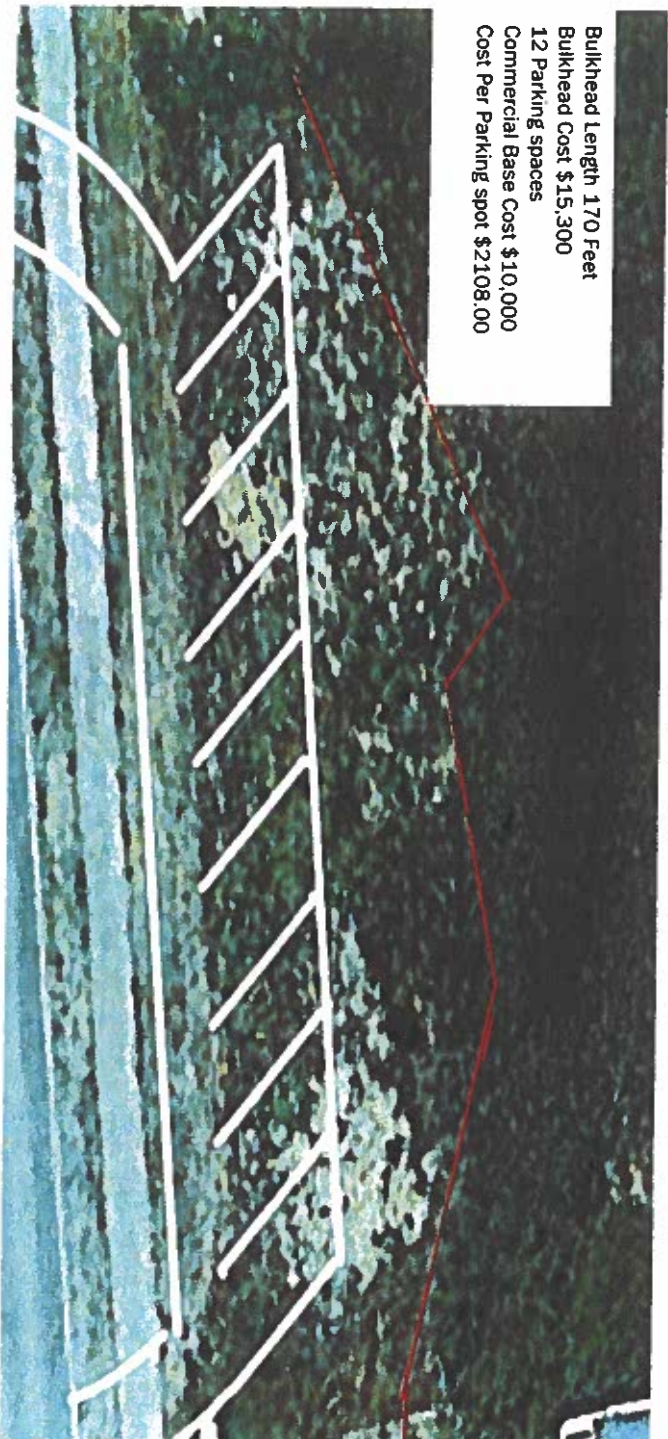
Reserve 11A
15,000 Square Feet
25 Parking Spot
Paving Cost
\$72,000
Estimated cost per
space \$2,880.00
DEQ permits N/A



Avenue A
 10,000 Sqft
 22 Parking Spaces
 Cost for paving \$48,000
 Cost for Commercial Base,
 Rock \$ 25,000

* CAMA may not allow any
 foreign material in this area.

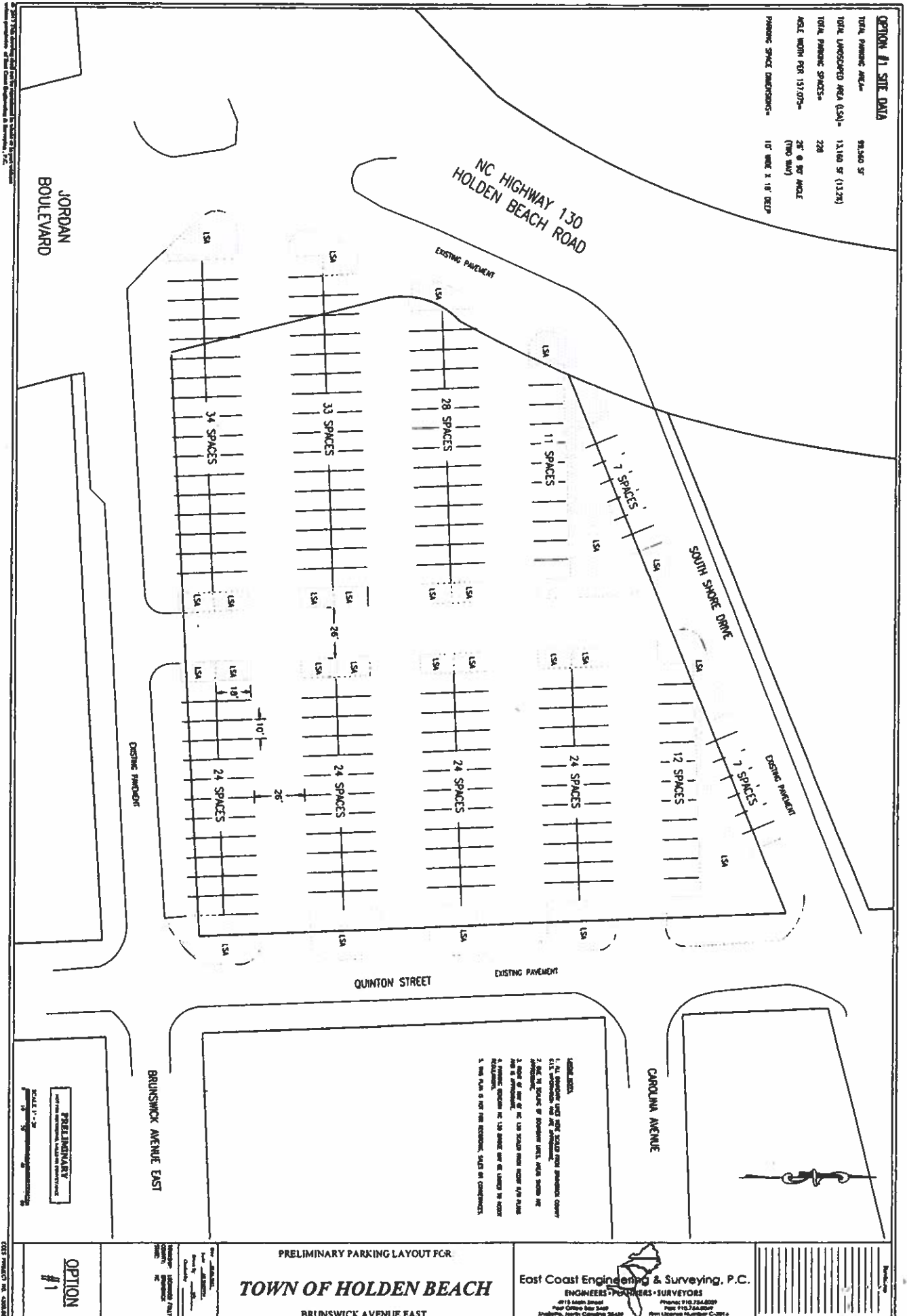
Bulkhead Length 170 Feet
Bulkhead Cost \$15,300
12 Parking spaces
Commercial Base Cost \$10,000
Cost Per Parking spot \$2108.00



764 OBW,

COST ESTIMATES

- 810-822, cost = Commercial Base \$12,674 Square FT = \$32,000
- 810-822 cost of Bulkhead 342 Linear feet = \$30,780
- Reserve 11B cost of paving = 15,000Sqft = \$72,500
- Reserve 12 cost of Paving = 15,000Sqft = 72,500
- 764 OBW cost = Commercial Base \$10,000
- 764 Bulkhead 170 linear Feet = \$15,300
- Avenue A Cost of Paving 10,000Sqft = \$48,000
- Avenue A cost for Commercial Base Only = \$25,000
- Total Paving Cost \$145,000 + \$48,000 if Avenue A is paved
- Total Bulkhead Cost \$46,080
- Total Commercial Base \$67,000-25,000 if Avenue A is Paved



This Consulting Agreement ("Agreement") formalizes the relationship between Otto Connect, Inc. ("Consultant") and The Town of Holden Beach ("Client"), and the terms and conditions both sides agree are reasonable for the conduct of the relationship.

1. Services to Be Performed

The Consultant agrees to perform as a Consulting Advisor and provide consultative services ("Services") related to Client's Request for Proposal for paid parking. The Consultant agrees to use commercially reasonable efforts in providing the work product to CLIENT. The Consultant will also serve as an advisor to and perform tasks as directed by CLIENT related to improving CLIENT's business performance for a parking solution. The Consultant is an independent contractor and is not acting as an agent for CLIENT for any purpose in their capacity as a consultant. The Consultant will not make any commitments on CLIENT's behalf or attempt to bind the Client in any way. The Consultant has no other outstanding agreement or obligation that is in conflict with any of the provisions of this Consulting Agreement or that would preclude Consultant from complying with the provisions of this Consulting Agreement.

2. CLIENT Responsibilities

Consultant's ability to satisfactorily perform the Services is conditioned on CLIENT's cooperation as CLIENT in all matters relating thereto, including access to the project premises and CLIENT's prompt response to requests for information and such other inputs as Consultant believes are required in order to perform the Services. CLIENT represents all information CLIENT makes available to Consultant will be accurate and complete in all material respects and that Consultant can rely on the accuracy and completeness of such information without independent verification. CLIENT agrees to notify Consultant promptly of any material change in any information previously made available to Consultant by CLIENT.

3. Term

This agreement is effective for 3 months commencing on Oct. 1st, 2021. Extensions may be may under the same terms and will be in writing and signed by both parties.

4. Payment

CLIENT will be invoiced by the Consultant at a not to exceed value of \$5,000.00 at a rate of \$100 per hour per person at the end of the Term and shall be payable within 30 days. All consultation fees will be waived upon execution of a definitive agreement whereby Consultant will provide paid parking services to CLIENT so long as said agreement is executed prior to the termination of this Consultation Agreement"

5. Responsibility for Taxes and Benefits

- a) **State and Federal Taxes:** The Consultant will be solely responsible for complying with all federal, state, local, and other tax laws and regulations applicable to payments received from CLIENT. CLIENT will not withhold employment taxes, including, without limitation, FICA (Social Security and Medicare taxes) from the Consultant's payments or make tax payments on the Consultant's behalf, make state or federal unemployment compensation contributions on the Consultant's behalf, or withhold state or federal income tax from the Consultant's payments.
- b) **Fringe Benefits.** Notwithstanding paragraph 4, Consultant understands that he is not eligible to participate in any employee pension, employee benefit (welfare or otherwise), or other CLIENT fringe benefit plan.

6. Indemnification

The Consultant shall indemnify and hold CLIENT free and harmless from any obligations, costs, claims, judgments, attorneys' fees, and attachments arising from (i) any grossly negligent, reckless or intentionally wrongful act of Consultant, and (ii) a determination by a court or agency that the Consultant is not an independent contractor. CLIENT shall indemnify and hold Consultant free and harmless from any obligations, costs, claims, judgments, attorneys' fees, and attachments arising from any grossly negligent reckless or intentionally wrongful act of CLIENT.

7. Disclaimer

All recommendations, suggestions, and information provided by Consultant are provided "as is" without representation or warranty of any kind. Consultant expressly disclaims any and all representations and warranties with respect to the Services, this Agreement and the recommendations, suggestions, and information provided by Consultant hereunder, whether oral or in writing, statutory, express, or implied, including, but not limited to, warranties of merchantability or fitness for a particular purpose or use. In no event will Consultant's total cumulative liability to CLIENT or any other party for claims, losses, or damages of any kind arising out of or related to this engagement letter exceed the fees actually paid by CLIENT hereunder. In no event will Consultant be liable for any special, remote, punitive, indirect, incidental, consequential, lost profits or exemplary damages of any kind arising under this Agreement, even if Consultant was advised in advance of the possibility of such damages.

8. Confidentiality and Nondisclosure

CLIENT will hold as confidential, not use except as otherwise authorized herein, and protect from disclosure to unauthorized third parties Consultant's confidential information except as required by law. For purposes hereof, "confidential information" means any confidential or proprietary information disclosed, made available or otherwise provided by or on behalf of Consultant to Client that relates to Consultant's business affairs, internal operations, financial matters, technology, research and development, product plans or offerings, markets, customers, or know-how, and that is labeled as "confidential" or with like marking or that reasonably should be known to be confidential or proprietary to Consultant in light of the nature of the information disclosed or the circumstances of disclosure. Confidential information will not include information that: (i) was publicly available at the time of disclosure, or that subsequently becomes publicly available, except by wrongful disclosure hereunder by CLIENT; (ii) was received from a third party who was not known by CLIENT to be under any obligation of confidentiality with respect to such information or to have violated any applicable law; or (iii) is approved in writing for release by Consultant. This Agreement does not grant CLIENT any license or other rights with respect to any confidential information or any invention, patent application, patent, claims of patent, know-how, trade secrets, or intellectual property rights relating thereto.

9. Publicity

No information concerning this Agreement, or the services provided for in it will be released by the Consultant for publication, advertising, or for any other purpose without the prior written approval of CLIENT.

10. Stop Work Order

CLIENT may at any time by written order to Consultant, direct Consultant to stop all or any part of the work authorized for such period of time as CLIENT may specify.

11. Permits and Licenses

The Consultant certifies that he has complied with all federal, state and local laws requiring business permits, certificates and licenses required to carry out the services to be performed under this Agreement.

12. Agreement Modification or Termination

Either party may terminate this Agreement at will any time for any reason.

13. Dispute Resolution

Both parties will attempt in good faith to resolve disputes arising under this Agreement, if necessary with the help of a mutually agreed-upon mediator. Pending resolution of any dispute, the Consultant agrees to proceed diligently with the performance of this Agreement. The Agreement will be governed by the laws of the North Carolina, without regard to its conflicts of law principles.

14. Entirety of Agreement

This Agreement constitutes the entire Agreement between the parties.

15. Notices

All notices and other communications in connection with this Agreement shall be in writing and shall be considered given: 1) when delivered personally to the recipient's address as stated in this Agreement, or 2) when sent by fax or electronic mail. Such notice is effective upon receipt, provided that a duplicate copy of the notice is promptly sent by first class mail, or the recipient delivers a written confirmation of receipt, or the recipient provides confirmation via email.

16. Assignment

This Consulting Agreement may not be assigned without the written agreement of CLIENT and the Consultant.

Otto Connect, Inc.:

By: _____

(Signature with Authority)

Name: Jim Varner

Title: President and CEO

Date: _____

CLIENT:

By: _____

(Signature with Authority)

Name: _____

Title: _____

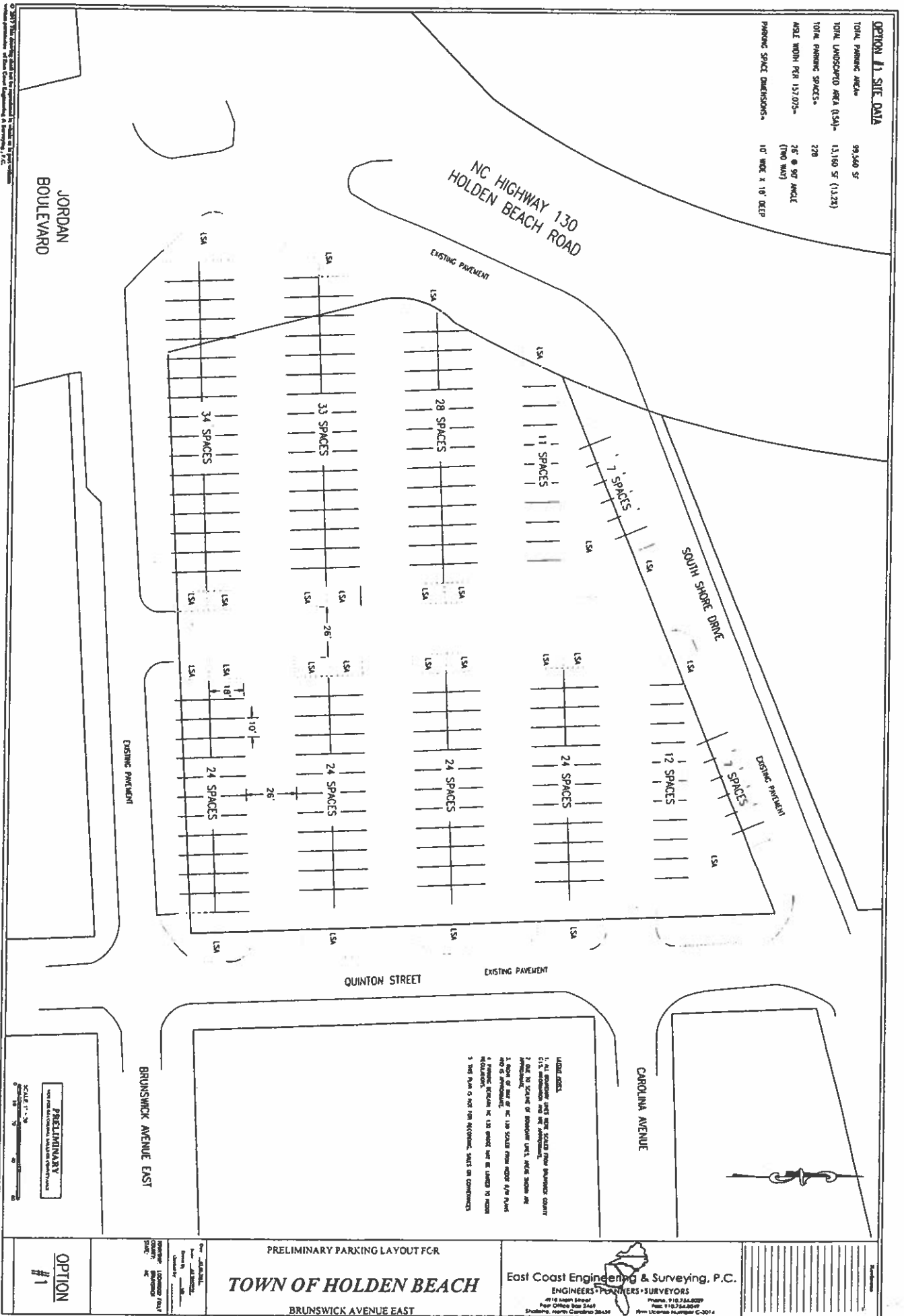
Date: _____

Exhibit A

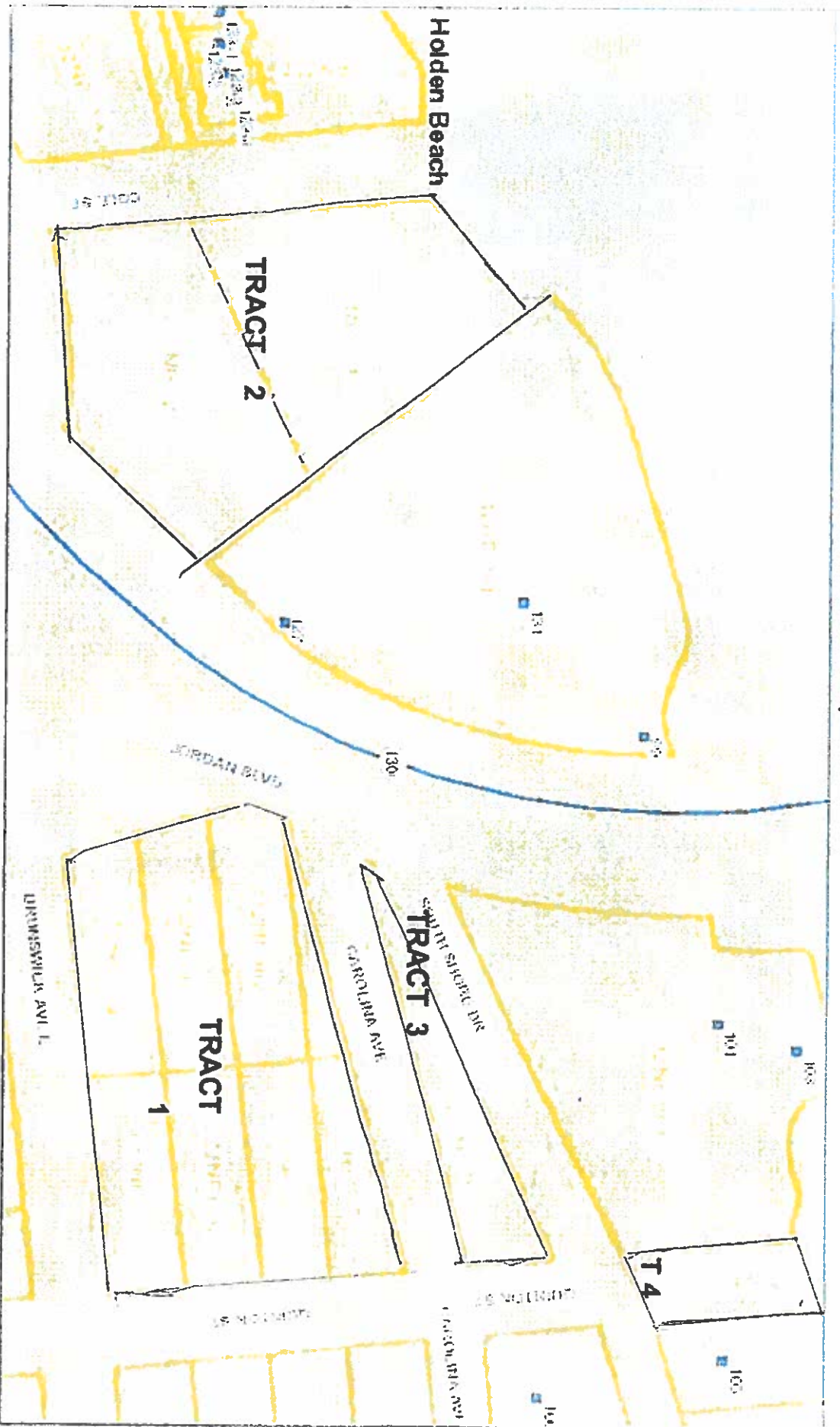
Consultant had previously evaluated and proposed via formal RFP response an end-to-end paid parking solution for the Town of Holden Beach. As a Consultant, we will be available to answer questions either via phone or in person (as jointly agreed), evaluate all current and proposed parking areas, on-street vs. off-street parking, and town ordinances needed to implement paid parking. Specific areas of assessment include but are not limited to:

- Enforcement policies
- Dates and hours of operation
- On-street and off-street parking options
- Parking rate structure, competitive to the coastal environment or for different parking areas
- Golf Cart rules and regulations for parking
- Business Parking
- Ordinance Assessment to support paid parking and parking in general
- Audit-ability requirements
- Projected revenue – based on fees, weather assumptions, and visitor trends
- Signs and Communication plans for paid parking awareness

TOTAL FINISHING AREA=	59,540 SF
TOTAL UNOCCUPIED AREA (USA)=	13,160 SF (13.2%)
TOTAL FINISHING SPACES=	228
AVERAGE WIDTH PER PERSON=	26' @ 90° ANGLE (TWO WAY)
FINISHING SPACE DIMENSIONS=	10' WIDE x 16' DEEP



Brunswick County GIS Data Viewer



11/10/2020 12:30:01 PM



County Boundary



Precinct



Voting Precincts



Atlanta City



Atlanta City



Atlanta City



Atlanta City



Atlanta City

Run/Headwaters

Run/Headwaters

Run/Headwaters

Run/Headwaters

Run/Headwaters

Run/Headwaters

Run/Headwaters

Discussion and Possible Action on Amending Chapter 94.05, Digging of Holes on Beach Strand, To Include a Section on Metal Detecting on the Beach Strand – Commissioner Smith

I would like to discuss with other commissioners the possibility of amending Ordinance 94.05 to include a section on Metal detecting on the beach strand.

Metal detecting/treasure hunting on the beach strand

- 1) it will be illegal to dig a hole more than 1 ft deep on the beach strand and must be completely covered and packed to its original condition.
- 2) Metal shovels are not permitted for metal detecting.
- 3) Plastic sand scoops are allowed for metal detecting.
- 4) Metal detecting holes must be filled and packed to return the beach strand to its original condition to prevent injury to beach strand walkers before leaving the area.

Other islands have such requirements and the outer banks and state parks do not allow any metal detectors. I have been approached by several residents about this issue.

Holden Beach Code of Ordinances

§ 94.05 DIGGING OF HOLES ON BEACH STRAND.

(A) To help prevent personal injury and damage to property, it shall be unlawful for any person, firm or corporation within the corporate limits of the town to dig into the sand on any part of the beach strand greater than 12 inches deep, without having a responsible person attending the area to prevent any person or persons from walking into any existing hole and risking personal injury and to allow public safety vehicles the ability to respond to emergencies without the risk of damage to equipment or personal property.

(B) Prior to leaving the area, any hole greater than 12 inches deep shall be filled to be level with the surrounding area, leaving the area in the same general condition in which it was found.

(C) The violation of this section shall be punishable by a \$50 fine.

(Ord. 06-12, passed 10-24-06)

OUTSIDE LIGHTS

§ 92.30 DEFINITIONS.

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

DECORATIVE LIGHTS. Lights used to enhance the appearance of an area rather than to provide illumination. These include Christmas lights and low voltage (less than sixty (60) volts) driveway and landscaping lights.

DOORWAY LIGHTS. Lights attached to structures or walkways used to illuminate doors and immediate areas leading to entrances; to include those installed beneath houses.

FLOOD/SPOT LIGHTS. Bare lights attached to buildings and used to illuminate a specific area (yards, driveways, walkways, and the like) normally for a limited time period. These may also be used as security lights.

SAFETY LIGHT. A light used to warn boats or vehicles of possible obstacles.

SECURITY LIGHT. A light (either automatic or manual) which remains on overnight for the protection of people or property.

YARD LIGHT. A light whose fixture is not attached to a building, ramp, or deck and is over four feet above ground level.

('85 Code, § 3-11a.) (Ord. 92-10, passed 7-22-92)

§ 92.31 PURPOSE.

It is the intent of this subchapter to permit sufficient outside lighting to provide for the safety and security of citizens while preventing undue distraction to residents or guests.

('85 Code, § 3-11) (Ord. 92-10, passed 7-22-92)

Holden Beach Code of Ordinances

§ 92.32 UNLAWFUL LIGHTS.

It shall be unlawful for any outside light to be installed or directed:

(A) So as to interfere with the vision of the operator of any motor vehicle on any street or waterway; or

(B) That is not in compliance with the provisions of this subchapter.

('85 Code, § 3-11b.) (Ord. 92-10, passed 7-22-92; Am. Ord. 94-24, passed 10-3-94)
Penalty, see § 92.99

§ 92.33 LIGHTS PERMITTED IN R-1 AND R-2 DISTRICTS.

(A) Decorative lights.

(B) Flood or spot lights provided they are directed onto the owner's property.

(C) Doorway lights of 100 watts or less per light.

(D) Safety lights.

(E) Security lights, attached to a building, and so shielded that no direct lighting is outside the owners property.

(F) Security lights, presently on poles, which do not meet the restrictions of division (G) of this section are permitted for a period of one year following enactment of this subchapter provided they are so shielded that there is no direct lighting outside the owner's property.

(G) One yard light per living unit provided:

(1) It does not exceed ten feet in height (measured from mean lot level) and does not draw in excess of 100 watts.

(2) It is of the same design and wattage as the approved town street lights and does not exceed 20 feet in height.

('85 Code, § 3-11c.) (Ord. 92-10, passed 7-22-92; Am. Ord. 94-24, passed 10-3-94; Am. Ord. 94-28, passed 12-5-94)

Holden Beach Code of Ordinances

§ 92.34 LIGHTS PERMITTED IN C-1 COMMERCIAL DISTRICTS.

- (A) Any lights permitted in R-1 or R-2 Districts are permitted.
 - (B) Security lights not attached in buildings and lights used to illuminate entertainment facilities provided:
 - (1) The light is so shielded that no direct lighting is outside the owner's property.
 - (2) Any pole is a minimum of ten feet from the road right-of-way.
- ('85 Code, § 3-11e.) (Ord. 92-10, passed 7-22-92) Penalty, see § 92.99

§ 92.35 COMPLAINTS.

Permitted lights which may be in violation of § 92.32 of this chapter will be reported in writing to the Town Manager who will make the final determination if a violation exists. The Town Manager will notify the complainant and the alleged violator of his/her findings in writing.

('85 Code, § 3-11f.) (Ord. 92-10, passed 7-22-92)