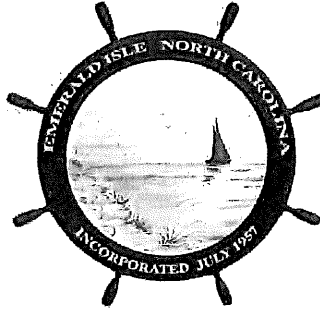


# Town of Emerald Isle 12.11.13/01

*Mayor*  
Arthur B. Schools, Jr.

*Mayor Pro-Tem*  
Floyd Messer, Jr.

*Board of Commissioners*  
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## ORDINANCE AMENDING CHAPTER 1 – GENERAL PROVISIONS - OF THE CODE OF ORDINANCES (COMPREHENSIVE REVIEW)

**Whereas**, the Town of Emerald Isle, a NC municipal corporation, was established in 1957, and

**Whereas**, the Town's Code of Ordinances was codified in 1983, and has been amended numerous times over the years, and

**Whereas**, the Town is now undertaking a comprehensive process to review, clarify, and condense the entire Code of Ordinances, with a goal to review one chapter of the Code each month, and

**Whereas**, the Board of Commissioners recently completed a review of the Town Charter and adopted comprehensive amendments, and Chapter 1 – General Provisions is the first chapter to be reviewed in this comprehensive process,

**NOW THEREFORE BE IT ORDAINED** by the Emerald Isle Board of Commissioners that

1. Chapter 1 – General Provisions – of the Code of Ordinances is hereby amended to read as follows:

### CHAPTER 1. GENERAL PROVISIONS.

#### **Sec. 1-1. - How Code designated and cited.**

The ordinances embraced in this and the following chapters and sections shall constitute and be designated "Code of Ordinances, Town of Emerald Isle, North Carolina," and may be so cited.

#### **Sec. 1-2. - Definitions and rules of construction.**

In the construction of this Code and of all ordinances, the following definitions and rules of construction shall be observed, unless inconsistent with the manifest intent of the board of commissioners or the context clearly requires otherwise:

*Board of commissioners.* The term "board of commissioners" or "commissioners" shall mean the ~~mayer~~ and commissioners, or governing body, of the Town of Emerald Isle, North Carolina.

*Charter.* The word "Charter" shall mean the Charter of the Town of Emerald Isle as printed in ~~Part I~~ of this Code volume.

*Code.* The word "Code" shall mean the Code of Ordinances, Town of Emerald Isle as designated in section 1-1.

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

*County.* The word "county" shall mean the County of Carteret, in the State of North Carolina, except as otherwise provided.

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

*G.S. or General Statutes.* The abbreviation "G.S." or the words "General Statutes" shall mean the latest edition of the General Statutes of North Carolina, as amended.

*Governor.* The words "governor" or "the governor" shall mean the Governor of North Carolina.

~~*Joint authority.* All words giving a joint authority to three (3) or more persons or officers shall be construed as giving such authority to a majority of such persons or officers.~~

*May, shall.* The word "may" is permissive; the word "shall" is mandatory.

*Month.* The word "month" shall mean a calendar month.

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

*Oath.* The word "oath" shall be construed to include an affirmation in all cases in which, by law, an affirmation may be substituted for an oath, and in such cases the words "swear" and "sworn" shall be equivalent to the words "affirm" and "affirmed."

*Official time standard.* "Official time standard" means that whenever certain hours are named in this Code, they shall mean standard time or daylight saving time as may be in current use in this town.

*Owner.* The word "owner," applied to any property, shall include any part owner, joint owner, tenant in common, joint tenant or tenant by the entirety, of the whole or a part of such property.

*Person.* The word "person" shall include a corporation, firm, partnership, association, organization and any other group acting as a unit, as well as an individual.

*Personal property.* The term "personal property" includes every species of property except real property, as herein defined.

*Preceding, following.* The words "preceding" and "following" shall mean next before and next after, respectively.

*Property.* The word "property" shall include real and personal property.

*Real property.* The term "real property" shall include lands, tenements and hereditaments.

*Sidewalk.* The word "sidewalk" shall mean any portion of a street, between the curblin and the adjacent property line intended for the use of pedestrians.

*Signature or subscription.* The word "signature" or "subscription" includes a mark when the person cannot write.

*State.* The words "state" or "this state" shall be construed to mean the State of North Carolina, except as otherwise provided.

*Street.* The word "street" shall mean and include any public way, road, highway, street, avenue, boulevard, parkway, alley, lane, viaduct, bridge, and the approaches thereto within the town and shall mean the entire width of the right-of-way between abutting property lines.

*Tenant.* The word "tenant" or "occupant" applied to a building or land shall include any person who occupies the whole or a part of such building or land, whether alone or with others.

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

*Town.* The words "the town" or "this town" shall mean the Town of Emerald Isle, in the County of Carteret, in the State of North Carolina, except as otherwise provided.

*Writing, written.* The words "writing" and "written" shall include printing and any other mode of representing words and letters.

*Year.* The word "year" shall mean a calendar year, unless otherwise specified.

**Sec. 1-3. - Provisions considered as continuations of existing ordinances.**

The provisions appearing in this Code, so far as they are the same as those of ordinances adopted prior to the adoption of this Code and included herein, shall be considered as continuations thereof and not as new enactments.

**Sec. 1-4. - Catchlines of sections; history notes and references.**

- (a) The catchlines of the several sections of this Code are intended as mere catchwords to indicate the contents of the section and shall not be deemed or taken to be titles of such sections nor as any part of the section, nor, unless expressly so provided, shall they be so deemed when any of such sections, including the catchlines, are amended or reenacted.
- (b) The history notes following sections and the references scattered throughout the Code are not part of the Code but are merely for the benefit of the user of the Code.

**Sec. 1-5. - Severability of parts of Code.**

It is hereby declared to be the intention of the board of commissioners that the sections, paragraphs, sentences, clauses and phrases of this Code are severable, and if any phrase, clause, sentence, paragraph or section of this Code shall be declared unconstitutional or otherwise invalid by the judgment or decree of any court of competent jurisdiction, such unconstitutionality or invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this Code, since they would have been enacted by the board of commissioners without the incorporation in this Code of any such unconstitutional or invalid phrase, clause, sentence, paragraph or section.

**Sec. 1-6. - Remedies and penalties for violations of Code ~~General penalty; enforcement of ordinances; continuing violations.~~**

- (a) A violation of any provision of this Code or any other Town ordinance is punishable as follows:

- (1) except as noted herein, a criminal misdemeanor under NCGS 14-4, with a fine of at least \$50 and not more than \$500, as prescribed in the section of the Code defining the offense, or
- (2) a civil citation of at least \$50 and not more than \$500, as prescribed in the section of the Code defining the offense, or
- (3) for violations of a Town ordinance regulating the operation or parking of motor vehicles, an infraction with a penalty of not more than \$50, or
- (4) the alternative remedies prescribed in the section of the Code defining the offense, or those provided by State law under NCGS 160A-175, or
- (5) a remedy ordered by a court of competent jurisdiction, including an injunction, order of abatement, or other remedy.

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

- (b) Except as otherwise specifically provided, each day's continuing violation of any provision of this Code or any other town ordinance shall be a separate and distinct offense.
- (c) A civil citation shall be issued by the appropriate official of the town and either served directly on the violator or his duly designated agent, or registered agent if a corporation, in person or posted in the United States mail service by first class mail addressed to the last known address of the violator as contained in the records of the town, or obtained from the violator at the time of issuance of the warning citation. The violator shall be deemed to have been served upon the mailing of such citation. The citation shall direct the violator to appear before the town within fifteen (15) days of the date of the citation or alternatively to pay the citation by mail. The violation for which the citation is issued must have been corrected by the time the citation is paid; otherwise, further citations shall be issued. Citations may be issued for each day the offense continues until the prohibited activity is ceased or abated. A civil citation, if not paid to the town within fifteen (15) days of the issuance of a citation, may be recovered by the town in a civil action in the nature of debt.
- (d) Any ordinances hereafter adopted by the board of commissioners of the town, the violation of which shall incur a penalty, shall specify whether the enforcement shall be pursuant to the criminal misdemeanor or civil citation provisions of this section.
- (a) ~~Unless otherwise specifically provided, violation of any provision of this Code or any other town ordinance shall subject the offender to the remedies hereinafter provided; except, that where the General Statutes of North Carolina provide specific civil remedies for violations of provisions of this Code adopted pursuant to such statutes, such remedies available to the town for enforcement of this Code shall be in addition to the remedies hereinafter stated; provided, that no criminal penalties shall be applicable unless hereinafter stated in this section as being applicable to specific chapters or provisions of this Code.~~
- (b) ~~Violations of any provision of the following chapters and sections of this Code shall be a misdemeanor and punishable as provided by section 14-4 of the General Statutes: Chapter 12~~

- (c) — Violations of the following provisions of this Code shall subject the offender to a civil penalty upon the issuance of a citation for such violation as hereinafter provided. The civil penalty, if not paid to the town treasurer within fifteen (15) days of the issuance of a citation, may be recovered by the town in a civil action in the nature of debt. Unless otherwise provided by a specific provision of this Code, such civil penalties shall be in the amount of fifty dollars (\$50.00) for each violation, and each day any single violation continues shall be a separate violation; except, that for violations of parking ordinances of this Code, the civil penalty provisions and procedures therein shall apply. The provisions of this Code which shall subject the offender to a civil penalty are as follows: All provisions of this Code except Chapter 12
- (d) — In addition to any civil or criminal penalties set out in this section, any provision of this Code or any other town ordinance may be enforced by an appropriate equitable remedy issuing from a court of competent jurisdiction. In such case, the general court of justice shall have jurisdiction to issue such orders as may be appropriate, and it shall not be a defense to the application of the town for equitable relief that there is an adequate remedy at law.
- (e) — In addition to any civil or criminal penalties set out in this section, any provision of this Code or any other town ordinance that makes unlawful a condition existing upon or use made of real property may be enforced by injunction and order of abatement, and the general court of justice shall have jurisdiction to issue such orders. When a violation of such a provision occurs, the town may apply to the appropriate division of the general court of justice for a mandatory or prohibitory injunction and order of abatement commanding the defendant to correct the unlawful condition upon or cease the unlawful use of the property. The action shall be governed in all respects by the laws and rules governing civil proceedings, including the Rules of Civil Procedure in general and Rule 65 in particular.
- (f) — In addition to an injunction, the court may enter an order of abatement as a part of the judgment in the cause. An order of abatement may direct that:
- (1) — Buildings or other structures on the property be closed, demolished or removed;
  - (2) — Fixtures, furniture or other movable property be removed from buildings on the property;
  - (3) — Grass and weeds be cut;
  - (4) — Improvements or repairs be made; or
  - (5) — Any other action be taken that is necessary to bring the property into compliance with this Code or such ordinance.

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

- (g) — The provisions of this Code and any other town ordinances may be enforced by one (1), all or a combination of the remedies authorized and prescribed by this section; except, that any provision the violation of which incurs a civil penalty shall not be enforced by criminal penalties.
- (h) — Except as otherwise specifically provided, each day's continuing violation of any provision of this Code or any other town ordinance shall be a separate and distinct offense.
- (i) — Any ordinances hereafter adopted by the board of commissioners of the town, the violation of which shall incur a penalty, shall specify whether the enforcement shall be pursuant to the civil penalty or criminal penal provisions of this section.
- (j) — Upon determination of a violation of any section of this Code, the penalty for which is a civil penalty, the town shall cause a warning citation to be issued to the violator, setting out the nature of the violation, the section violated, the date of the violation and an order to immediately cease the violation or, if the violation is in the nature of an infraction for which an order of abatement would be appropriate in a civil proceeding, stating a reasonable period of time in which the violation must be abated. The warning citation shall specify that a second citation shall incur a civil penalty.
- (k) — Upon failure of the violator to obey the warning citation, a civil citation shall be issued by the appropriate official of the town and either served directly on the violator or his duly designated agent, or registered agent if a corporation, in person or posted in the United States mail service by first class mail addressed to the last known address of the violator as contained in the records of the town, or obtained from the violator at the time of issuance of the warning citation. The violator shall be deemed to have been served upon the mailing of such citation. The citation shall direct the violator to appear before the town treasurer, located in the town hall, within fifteen (15) days of the date of the citation or alternatively to pay the citation by mail. The violation for which the citation is issued must have been corrected by the time the citation is paid; otherwise, further citations shall be issued. Citations may be issued for each day the offense continues until the prohibited activity is ceased or abated.
- (l) — If the violator fails to respond to a citation within fifteen (15) days of its issuance and pay the penalty prescribed therein, the town may institute a civil action in the nature of debt in the appropriate division of the North Carolina General Court of Justice for the collection of the penalty.

**Sec. 1-7. - Amendments to Code; effect of new ordinances; amendatory language.**

- (a) All ordinances passed subsequent to this Code which amend, repeal or in any way affect this Code may be numbered in accordance with the numbering system hereof and printed for inclusion herein. When subsequent ordinances repeal any chapter, section or subsection or any portion thereof, such repealed portions may be excluded from this Code by omission from reprinted pages. The subsequent ordinances as numbered and printed, or omitted in the case of repeal, shall be prima facie evidence of such subsequent ordinances until such time that this Code and subsequent ordinances numbered or omitted are readopted as a new Code by the board of commissioners city council.
- (b) Amendments to any of the provisions of this Code shall be made by amending such provisions by specific reference to the section number of this Code in the following language: "That section \_\_\_\_\_ of the Code of Ordinances, Town of Emerald Isle, North Carolina, is hereby amended to read as follows: ...." The new provisions shall then be set out in full as desired.
- (c) If a new section not heretofore existing in the Code is to be added, the following language shall be used: "That the Code of Ordinances, Town of Emerald Isle, North Carolina, is hereby amended by

adding a section, to be numbered \_\_\_\_\_, which such section reads as follows: ...." The new section shall then be set out in full as desired.

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

**Sec. 1-8. - Supplementation of Code.**

- (a) By contract or by town personnel, supplements to this Code shall be prepared on at least an annual basis. A supplement to the Code shall include all substantive, permanent and general parts of ordinances passed by the board of commissioners ~~town council~~ during the period covered by the supplement and all changes made thereby in the Code. The pages of a supplement shall be so numbered that they will fit properly into the Code and will, where necessary, replace pages which have become obsolete or partially obsolete, and the new pages shall be so prepared that, when they have been inserted, the Code will be current through the date of the adoption of the latest ordinance included in the supplement.
- (b) In preparing a supplement to this Code, all portions of the Code which have been repealed shall be excluded from the Code by the omission thereof from reprinted pages.
- (c) When preparing a supplement to this Code, the codifier (meaning the person, agency or organization authorized to prepare the supplement) may make formal, nonsubstantive changes in ordinances and parts of ordinances included in the supplement, insofar as it is necessary to do so to embody them into a unified Code. For example, the codifier may:
  - (1) Organize the ordinance material into appropriate subdivisions.
  - (2) Provide appropriate catchlines, headings and titles for sections and other subdivisions of the Code printed in the supplement, and make changes in such catchlines, headings and titles.
  - (3) Assign appropriate numbers to sections and other subdivisions to be inserted in the Code and, where necessary to accommodate new material, change existing section or other subdivision numbers.
  - (4) Change the words "this ordinance" or words of the same meaning to "this chapter," "this article," "this division," etc., as the case may be, or to "sections \_\_\_\_\_ to \_\_\_\_\_" (inserting section numbers to indicate the sections of the Code which embody the substantive sections of the ordinance incorporated into the Code).
  - (5) Make other nonsubstantive changes necessary to preserve the original meanings of ordinance sections inserted into the Code; but in no case shall the codifier make any change in the meaning or effect of ordinance material included in the supplement or already embodied in the Code.

**Sec. 1-9. - Ordinances not affected by Code.**

Nothing in this Code or the ordinance adopting this Code shall be construed to repeal or otherwise affect the validity of any of the following:

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

- (2) Any ordinance or resolution promising or guaranteeing the payment of money for the town or authorizing the issuance of any bonds of the town or any evidence of the town's indebtedness;
- (3) Any contract or obligation assumed by the town;
- (4) Any ordinance fixing the salary of any town officer or employee;
- (5) Any right or franchise granted by the town;
- (6) Any ordinance dedicating, naming, establishing, locating, relocating, opening, widening, paving, etc., any street or public way in the town;
- (7) Any appropriation ordinance;
- (8) Any ordinance which, by its own terms, is effective for a stated or limited term;
- (9) Any ordinance providing for local improvements and assessing taxes therefor;
- (10) Any zoning ordinance;
- (11) Any ordinance dedicating or accepting any subdivision plat;
- (12) Any ordinance describing or altering the boundaries of the town;
- (13) The administrative ordinances or resolutions of the town not in conflict or inconsistent with the provisions of this Code;
- (14) Any ordinance levying or imposing taxes not included herein;
- (15) Any ordinance establishing or prescribing street grades in the town;
- (16) Any personnel ordinance;

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

**Sec. 1-10. - Damaging ordinances prohibited.**

It shall be unlawful for any person to tear or deface any town ordinances.

2. The Town Clerk is authorized to amend the sections as set forth above.
3. This ordinance shall become effective immediately upon its adoption. If any section, sentence, clause or phrase of this ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance.



Adopted this the 13<sup>th</sup> day of November, 2012, by a vote of

Commissioner(s) Heaven, Hoover, Messer, Wooten, Wright voting for,

Commissioner(s) \_\_\_\_\_ voting against, and

Commissioner(s) \_\_\_\_\_ absent.

Arthur B. Schools, Jr.  
Arthur B. Schools, Jr., Mayor

ATTEST:

Rhonda Ferebee  
Rhonda Ferebee, CMC, Town Clerk

