BOROUGH OF HARVEY CEDARS

GENERAL ORDINANCES

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AN ORDINANCE ADOPTING A REVISION AND CODIFICATION OF THE ORDINANCES OF THE BOROUGH OF HARVEY CEDARS IN THE COUNTY OF OCEAN, NEW JERSEY

WHEREAS, the Board of Commissioners of the Borough of Harvey Cedars, in the County of Ocean, New Jersey has caused its ordinances of a general and permanent nature to be compiled and revised and embodies in a revision and codification known as "General Ordinances of the Borough of Harvey Cedars, New Jersey."

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COMMISSIONS OF THE BOROUGH OF HARVEY CEDARS IN THE COUNTY OF OCEAN, NEW JERSEY, AS FOLLOWS:

Section 1. The ordinances of the Borough of Harvey Cedars, in the County of Ocean, New Jersey, of a general and permanent nature, as codified, Chapters 1 to XIII are hereby ordained as general ordinances and are adopted as "General Ordinances of the Borough of Harvey Cedars, New Jersey."

Section 2. All the provisions of the "General Ordinances of the Borough of Harvey Cedars, New Jersey" shall be in force and effect on and after the effective date of this ordinance.

Section 3. All ordinances of a general and permanent nature, adopted by the Board of Commissioners (hereafter referred to as the "Commissioners") and in force on March 7, 1975 and not contained in the "General Ordinances of the Borough of Harvey Cedars, New Jersey," are hereby repealed from and after the effective date of this ordinance, except as hereinafter provided in Section 4.

Section 4. The repeal provided for in Section 3 of this ordinance shall not affect:

a. 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 ordinance.

b. Any prosecution, action, suit or other proceeding pending or any judgment rendered on or prior to the effective date of this ordinance;

c. Any right of franchise conferred by the Commissioners;

d. Any right, right-of-way or easement acquired or established in any street, road, highway or other public place within the Borough;

e. Any ordinance of the Borough providing for laying out, opening, altering, widening, relocating, straightening, acceptance or vacation of any street, road, or highway within the Borough;

f. Any ordinance or resolution of the Borough promising or guaranteeing the payment of money by or for the Borough or authorizing the issuing of bonds or other evidence of the Borough's indebtedness, or any contract of or obligation assumed by the Borough;

g. The annual budget appropriation ordinances or resolutions, and all ordinances and resolutions appropriating or transferring funds;

h. The administrative ordinances or resolutions of the Commissioners not in conflict or inconsistent with the provisions of these Revised Ordinances;

i. Any ordinance or resolution of the Commissioners fixing the compensation or salaries of the Borough officials and employees or the pay and compensation of positions and clerical employments which are not provided for in these General Ordinances and which are not in conflict or inconsistent therewith;

j. Any ordinance or resolutions of the Commissioners creating employments, positions or offices and fixing duties therefore which are not provided for in these General Ordinances and which are not in conflict or inconsistent therewith;

k. Concerning the Traffic chapter, any other provision of this ordinance to the contrary notwithstanding, the repeal provided for in Section 3 of this ordinance shall not become effective with respect to any ordinance regulating traffic or parking on the public streets or highways until the traffic and parking chapters of this revision are finally approved by the Commissioner of the New Jersey Department of Transportation, and said chapters shall not take effect until finally approved by the Director as aforesaid.

l. Any ordinance adopted by the Board of Health of the Borough that is not included in this codification;

m. Any ordinance of the Board of Commissioners adopted upon final passage after the 7th day of March, 1975.

Section 5. The effect of proposed changes contained in the revision is listed below:

Chapter I – General. Chapter 1 is new. It contains general definitions and rules of construction that are intended to provide uniform construction and interpretation of general terms used through the revisions, as well as for all other ordinances of the Borough of Harvey Cedars. This chapter also contains a severability clause and the official title of the revision.

Chapter II – Administration. Contained in this chapter is the administrative code of the Borough of Harvey Cedars. This code has been derived in part from existing ordinances of the borough and in part from the general laws of the State of New Jersey. Section 2-1 contains the chapter title; section 2-2 concerns the Board of Commissioners; 2-2.1 covers the organization; 2-2.2 is concerned with powers of the Commissioners. Subsection 2-2.3 deals with meetings and rules of procedure. The powers and duties of the mayor pursuant to law are in section 2-3, and section 2-4 covers appointment of the clerk. This chapter also contains ordinances concerning administrative organizations and personnel policies.

In subsection 2-7.6, the new age requirement for a candidate for the police department is eighteen years of age. In subsection 2-7.7, Compensation, the new material shall read "The compensation to be paid to members of the police department shall be as provided in the annual salary ordinance of the borough. All municipal employees who work on holidays shall be entitled to be paid for such holidays, not exceeding ten, the sum as shall equal a proportionate amount of their regular pay, computed on the basis of a 40 hour week."

Subsection 2-9.4 is changed to read the "Judge" shall have the power in criminal cases. The new subsection 2-9.5 states that the municipal judge shall fix and determine the time when court shall be held.

In subsection 2-12.1, the new phrase is "Any person claiming payments of funds from the borough shall present to the borough clerk a voucher."

The new subsection section 2-13.2, Holiday Compensation, reads:
"All municipal employees who work on holidays shall be entitled to be paid for such holidays, not exceeding ten, the sum as shall be equal a proportionate amount of their regular pay, computed on the basis of a 40 hour week.

The following are new subsections inserted into section 2-15. Fire Department. Subsection 2-15.1, establishing the organization of the fire department; subsection 2-15.2 showing membership in the fire department; subsection 2-15.3, establishing board of fire officers; subsection 2-15.4, providing for retirement from service; subsection 2-15.5, adoption of bylaws and subsection 2-15.9 giving duties of the secretary.

Chapter III – Police Regulations. Section 3-9 contains the general penalty clause applicable to the chapter and the entire revision. In subsection 3-9.1 a maximum penalty of five hundred ($500.00) dollars fine 90 days imprisonment or both is set forth. Subsection 3-9.2 states that each and every day a violation exists is deemed a separate violation. The amount of any particular penalty is at the discretion of the adjudicating authority. Subsection 3-9.3 does not change the law of the

borough, but simply eliminated the need to restate the maximum penalty clause each time a new regulatory ordinance is adopted. Chapter III also contains ordinances controlled by police supervision

Chapter IV – General Licensing. Borough ordinances concerning licensing are organized in this chapter. Subsection 4-1.4 establishes a new fee of twenty-five ($25.00) dollars for hawkers, peddlers and itinerant vendors. Subsection 4-2.2 is changed to read "Such registration shall be issued only to vehicles with four-wheel drive known as "beach buggy" or "jeep."

Chapter V – Alcoholic Beverage Control. The existing borough ordinances on this subject have been rearranged for purposes of topical sequence. Section 5-1 is new and states the purposes of the alcoholic beverage licensing, which is to comply with the law, referencing it to the provisions of Title 33.
Section 5-2 references the definitions of words and phrases to the definitions provided in Title 33 of the Revised Statutes. Subsection 5-3.1 stated that all applications for licenses shall be in accord with state and federal law. The issuing authority, which is the board of commissioners, is established in subsection 5-3.2. Subsection 5-3.3 established the requirements of a license, and in subsection 5-3.4, the license fees are established. Subsection 5-4.3 prohibits selling, serving or delivery of any alcoholic beverage to any habitual drunkard, intoxicated person pr permitting them to remain on the premises. Section 5-6 provides for the suspension or revocation of licenses if any of the provisions of this chapter or the rules of the director of the A.B.C. is violated.

Chapter VI - Licensing of Dogs. Ordinances relating to dog licensing and regulations are in this chapter.

Chapter VII - Sewer and Water. The Plumbing Code of New Jersey, water service, and the joining of the Ocean County Sewerage Authority constitute this chapter. In subsection 7-2.1, Schedule B, the new fee established is up to 19 feet, $3.00 each and over 19 feet, $6.00 each. The new subsection 7-2.5, Curb Boxes, reads "All curb boxes are and shall remain the property of the borough and shall not be tampered with. Any subsection 7-2.1 was changed to include "and shall be collected by the borough clerk."

Chapter IX – Swimming Pools. Requirements for swimming pools are contained in this chapter.

Chapter X – Waterfront Regulations. Regulations to protect the waterfront are included herein.

Chapter XI – C.A.T.V. This chapter contains the C.A.T.V. regulations.

Chapter XII – Building and Housing. This chapter contains the adoption of the BOCA Building Code, supplements to BOCA, unfit dwellings, regulations on exterior design, the Building Board, and the Federal Flood Insurance Program.

Chapter XIII – Zoning. The Zoning Ordinance of the Borough is contained in this chapter.

Throughout the revision there has been re-organization and editing of the source ordinances, not to effect substantive changes but intended to eliminate word duplications and overlapping and to effect uniformity of expression. In some cases provisions of the source ordinances have not been included in the revision either because they have been expressly or impliedly repealed by later ordinances, are obsolete or no longer apply in the Borough of Harvey Cedars.

Section 6. A copy of the "General Ordinances of the Borough of Harvey Cedars, New Jersey" has been filed in the office of the Borough Clerk, and shall remain there for the use and examination of the public until final action is taken on this ordinance.

Section 7. One copy of the "General Ordinances of the Borough of Harvey Cedars, New Jersey" shall be and remain on file in the office of the Borough Clerk and made available to persons desiring to examine same if this ordinance shall be adopted, and while the same shall be in effect.

Section 8. This ordinance shall take effect immediately after final passage and publication thereof according to law.

Introduced: September 5, 1975

Adopted: October 19, 1975

Approved: October 10, 1975

Attest:

I HEREBY CERTIFY that the foregoing ordinance is a true copy of an ordinance given its final reading and adopted by the Mayor and Commissioners of the Borough of Harvey Cedars in the County of Ocean, New Jersey, at a regular meeting of that body held in the Council Chamber, Borough Hall, on the tenth day of October, 1975 and approved by the Mayor on that date.

CHAPTER I

GENERAL

1-1 SHORT TITLE.

The book shall be known and may be cited as “The Revised General Ordinances of the Borough of Harvey Cedars, 1975,” and is herein referred to as the “revision”.

1-2 DEFINITIONS.

For the purpose of this revision, and in the interpretation and application of all other ordinances heretofore or hereafter adopted, except as the context may otherwise require:

"Clerk" or "borough clerk" shall mean the municipal clerk duly appointed pursuant to law.

"Department" shall mean an organizational unit of the government established or designated by ordinance or this revision as a department, together with any agency or instrumentality of the government assigned to such organizational unit by the borough board of commissioners.

"Ordinance" shall mean any act of local legislation heretofore or hereafter adopted, and including this revision, so long as it is adopted by the procedure required for the adoption of an ordinance and so long as it remains in force and effect pursuant to law.

"Person" shall mean any individual, natural persons, partnerships, joint ventures, societies, associations, clubs, trustees, trusts, corporations or unincorporated groups; or any officers, agents, employees, servants, factors or any kind of personal representatives of any thereof in any capacity, acting either for himself or for any other person, under either personal appointment or pursuant to law.

"Borough" shall mean the Borough of Harvey Cedars in the County of Ocean and State of New Jersey.

"Board" or "commissioners" shall mean the governing body of the borough constituted and elected pursuant to law.

"Street" shall include a street, avenue, road, alley, lane, highway, boulevard, concourse, driveway, culvert, sidewalk, and crosswalk, and every class of road, square, place or municipal parking field used by the general public.

"Month" shall mean a calendar month unless otherwise specifically provided.

"Year" shall mean a calendar year unless otherwise specifically provided.

"Licensed" shall mean licensed in accordance with the appropriate section or chapter of this revision.

1-3 CONSTRUCTION.

For the purpose of this revision and any other ordinances heretofore or hereafter adopted, except as the context may otherwise require:

The present tense includes the past and future tenses and the future, the present.

The masculine gender includes the feminine and neuter.

The singular number includes the plural and the plural the singular.

“Shall” is mandatory and “may” is permissive.

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 be a Sunday, a legal holiday, or a day on which the offices of the borough are closed, that day shall be excluded.

“Writing” and “written” shall include printing, typewriting and any other mode of communication using paper or similar material which is in general use, as well as legible handwriting.

Whenever a specific time is used in this revision, it shall mean the prevailing and established time in effect in the State of New Jersey during any day in any year.

Any citation of a statute, law or ordinance contained in this revision shall be deemed to refer to such statute, law or ordinance as amended, whether or not such designation is included in the citation.

“Chapter” shall mean one of the major divisions of the revisions identified by a Roman numeral and divided by subject matter.

“Section” shall mean a major subdivision of a chapter.

“Subsection” shall mean a subdivision of a section, identified by a decimal number.

“Paragraph” shall mean a subdivision under a subsection, identified by an alphabetical letter or Arabic number.

1-4 SEVERABILITY.

If any chapter, section, subsection or paragraph of this revision shall be declared to be unconstitutional, invalid, or inoperative, in whole or in part, by a court of competent jurisdiction, such chapter, section, subsection or paragraph shall, to the extent that it is not unconstitutional, invalid or inoperative, remain in full force and effect, and no such determination shall be deemed to invalidate the remaining chapters, sections, subsections or paragraphs of this revision.

CHAPTER II

ADMINISTRATION*

2-1 OFFICIAL TITLE.

This chapter shall be known and may be cited as the "Administrative Code of the Borough of Harvey Cedars" and is herein referred to as the "code".

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*The form of government under which the borough operates is the Commission Form of Government Law, comprising Chapters 70 to 76 of Title 40 of the Revised Statutes of New Jersey. The administrative code has been drafted in conformity with this law and many of its provisions are based on clauses found in Chapters 72 and 73 of Title 40. Other enabling laws pertaining to the Administrative Chapter are R.S. 40:11-1 et seq., Officer and Employees; R.S. 40:47-1 et seq., Police and Fire Departments; R.S. 2A:8-1, et seq., Municipal Court; R.S. 40:55-36, Zoning Board of Adjustment; R.S. 40:55-1.4, Planning Board.

2-2 BOARD OF COMMISSIONERS.

2-2.1 Organization. The board of commissioners of the Borough of Harvey Cedars shall consist of three commissioners who shall be elected at large by the voters of the borough at a regular municipal election and who shall serve for a term of four years beginning on the first Tuesday following their election.

2-2.2 Powers of Board of Commissioners. All of the executive, administrative, judicial and legislative powers of the Borough of Harvey Cedars shall be vested in the board of commissioners, and they shall have complete control over the affairs of the borough.

2-2.3 Meetings and Procedures.

a. *Regular Meetings.* The board of commissioners shall organize on the first Tuesday following the regular quadrennial municipal election. At that meeting, or as soon thereafter as practical, the board of commissioners shall create all subordinate boards and appoint any officers that it deems necessary for the proper and official conduct of the affairs of the Borough of Harvey Cedars. After the organization meeting the board of commissioners shall meet regularly at least twice a month on dates to be determined by resolution of the board.

b. *Special Meetings.* Special meetings of the board of commissioners may be held on call of the mayor or any two commissioners in accordance with the provisions of R.S. 40:72-13.

2-3 ADMINISTRATIVE ORGANIZATION.

2-3.1 Departments Generally. The administrative functions, powers and duties of the board of commissioners shall be allocated among the following departments:

a. Department of Revenue and Finance.

b. Department of Public Affairs and Public Safety.

c. Department of Parks, Public Property and Public Works.

2-3.2 Commissioners Assigned to Departments. At the first regular meeting after the election of its members, the board of commissioners shall designate by majority vote one commissioner to be director of each department. At such meeting, the board of commissioners shall examine the various departments and divisions within departments and shall by resolution make such reallocation of divisions within departments as they deem desirable. When such reallocation has been duly made by resolution, the divisions so allocated shall be deemed to fall within the departments to which they have been so allocated, notwithstanding any other provision of this code.

2-3.3 Selection of Mayor. At the first meeting after their election, the commissioners shall choose one of their number to preside at all meetings of the board, and he shall be designated mayor.

2-3.4 Powers of Mayor. The mayor shall be president of the board of commissioners and shall preside at all meetings. He shall supervise all departments and report to the board, for its action, all matters requiring the attention of the board or of any department.

2-3.5 Administrator. Pursuant to NJSA 40A:9-136, there is hereby created the position of Municipal Administrator. The term of office of the Municipal Administrator shall be at the pleasure of the governing body and in accordance with NJSA 40A:9-137.

2-3.6 Administrator Duties. The Administrator shall, under direction of the Board of Commissioners, act as administrative officer of the municipality and perform other related duties as fully described in the Personnel Policy Manual. Nothing in this article shall derogate from or authorize the Borough Administrator to exercise the powers and duties of the elected and appointed officials of the borough.

2-3.7 Municipal Clerk. Pursuant to NJSA 40A:9-133, there is hereby created the position of Municipal Clerk for the Borough of Harvey Cedars. The Municipal Clerk shall be appointed by the Board of Commissioners and shall serve terms as provided by NJSA 40A:9-133.

2-3.8 Municipal Clerk Duties. The Municipal Clerk shall serve as the Clerk of the Board and perform such functions as required by law and other related duties as fully described in the Personnel Policy Manual.

2-3.9 Deputy Municipal Clerk. Pursuant to NJSA 40A:9-135, there is hereby created the position of Deputy Municipal Clerk for the Borough of Harvey Cedars. The Deputy Municipal Clerk shall be appointed by the Board of Commissioners and shall serve at the pleasure of the Board. The Deputy Municipal Clerk shall have all the powers and perform all the duties of the Municipal Clerk during such times and for such specific periods as the Municipal Clerk is absent, disabled or otherwise unable to perform her duties. The Deputy Municipal Clerk shall assist the Municipal Clerk in the performance of the duties of the Municipal Clerk's office.

2-3.10 Positions Eligible for the Defined Contribution Retirement Program.

A. Pursuant to N.J.S. 43:15C-2, the following positions are deemed to be eligible for and shall participate in the Defined Contribution Retirement Program:

1) Administrator
2) Municipal Court Judge
3) Commissioner

(Ord. No. 2008-09 § 1)

B. Individuals serving in the following positions are exempt from Defined Contribution Retirement Program membership, pursuant to N.J.S. 43:15C-2:

1) Tax Collector
2) Chief Financial Officer
3) Construction Code Official
4) Qualified Purchasing Agent
5) Tax Assessor
6) Registered Municipal Clerk
7) Licensed Uniform Subcode Inspector
8) Principal Public Works Manager.

(Ord. No. 2008-09 § 2)

C. If an individual is appointed to one of the positions listed in Section A and the individual is not serving in a position as described in Section B above, the Pension Certifying Officer of the municipality may determine that the individual is not required to join the Defined Contribution Retirement Program if that individual:

1) was an active participant in the Public Employee Retirement System on July 1, 2007 and continuously since that time; or
2) has been appointed pursuant to a valid promotional process; or
3) is appointed on a temporary, interim, or "acting" basis to a position requiring State Certification as set forth in Section 2 herein, and is in pursuit of the required certification; or
4) meets such other exceptions that may be approved by the Local Finance Board or the Division of Pensions and Benefits.

(Ord. No. 2008-09 § 3)

2-4 DEPARTMENT OF REVENUE AND FINANCE.

2-4.1 Director. The director of the department of revenue and finance shall supervise the work of the department and its divisions.

2-4.2 Chief Financial Officer. Pursuant NJSA 40A:9-140.10, there is hereby created the office of Chief Financial Officer for the Borough of Harvey Cedars. The Chief Financial Officer shall perform such functions as required by law and other related duties as fully described in the Personnel Policy Manual.

2-4.3 Tax Collector. Pursuant NJSA 40A:9-141, there is hereby created the office of Tax Collector for the Borough of Harvey Cedars. The Tax Collector shall be appointed by the Board of Commissioners and shall serve terms as provided by NJSA 40A:9-142. The Tax Collector shall perform such functions as required by law and other related duties as fully described in the Personnel Policy Manual.

2-4.4 Deputy Chief Financial Officer and Deputy Tax Collector. There is hereby created the position of Deputy Chief Financial Officer and Deputy Tax Collector for the Borough of Harvey Cedars. The Deputy Chief Financial Officer and Deputy Tax Collector shall be appointed by the Board of Commissioners and shall serve at the pleasure of the Board and shall have all the powers and perform all the duties of the Chief Financial Officer and/or Tax Collector during such times and for such specific periods as the Chief Financial Officer and/or Tax Collector is absent, disabled or otherwise unable to perform the duties of their office.

2-4.5 Tax Assessor. Pursuant to NJSA 40A:9-146, there is hereby created the position of Tax Assessor for the Borough of Harvey Cedars. The Tax Assessor shall be appointed by the Board of Commissioners for terms provided by NJSA 40A:9-148 and NJSA 54:1-35.32 and shall perform such functions as required by law and other related duties as fully described in the Personnel Policy Manual.

2-4.6 Utility Collector. The Municipal Clerk shall be the Utility Collector for the Borough of Harvey Cedars and shall perform such functions as required by law and other related duties as fully described in the Personnel Policy Manual.

2-5 DEPARTMENT OF PUBLIC AFFAIRS AND PUBLIC SAFETY.

2-5.1 Director. In accordance with NJSA 40:72-6 and with Section 2-3.2 of the Revised General Ordinances of the Borough of Harvey Cedars, the director shall supervise the work of the department and its divisions and shall, subject to the approval of the board of commissioners, make rules and regulations for the various divisions assigned to the department. (Ord. No. 2010-04 § 1)

2-5.2 Police Department – Establishment. There is hereby created in and for the Borough of Harvey Cedars a Police Department which shall consist of a Chief of Police, Lieutenants, Sergeants, and patrol officers, to be appointed to these positions by the governing body of the Borough of Harvey Cedars. The decision whether or not to fill the mentioned positions is within the complete and unfettered discretion of Director of Public Affairs and Public Safety. (Ord. No. 2011-06 § 1)

A. Purpose of the Police Department. The Police Department shall preserve the public peace; protect life and property; detect, arrest and prosecute offenders of the laws of New Jersey and the ordinances of the Borough of Harvey Cedars; direct and control traffic; provide attendance and protection during emergencies; make appearances in court; cooperate with all other law enforcement agencies; and provide training for the efficiency of its members and officers.

B. Designation of Appropriate Authority. In accordance with N.J.S.A. 40A:14-118, the Director of Public Affairs and Safety is hereby designated as the appropriate authority and is hereby vested with the powers and duties of an appropriate authority as delegated by law.

C. Chief of Police; powers and duties. The appropriate authority shall appoint a Chief of Police with the consent and approval of the governing body. The Chief shall be directly responsible to the appropriate authority for the efficiency and routine day-to-day operations of the Police Department. The Chief of Police shall pursuant to policies established by the governing body and consistent with Borough ordinances:

1. Administer and enforce the rules and regulations of the Police Department and any special emergency directives for the disposition and discipline of the Department and its officers and personnel.

2. Have, exercise and discharge the functions, powers and duties of the Police Department and the Lifeguard Department.

3. Prescribe the duties and assignments of all subordinates and other personnel.

4. Delegate such of his authority, as he may deem necessary for the efficient operation of the Police Department to be exercised under his direction and supervision.

5. Report at least monthly to the appropriate authority in such form as shall be prescribed by the governing body on the operation of the force during the preceding month, and make such other reports as may be requested by the governing body.

D. Appointment to Police Department – Officers and Personnel. No person shall be appointed to the Police Department who is not qualified as provided in the New Jersey Statutes. The selection criteria for a police officer shall be established in department policy consistent with New Jersey Statutes.

E. Promotions of Police Officers. Promotion of any police officer from within the department to a superior position shall be established in department policy consistent with New Jersey Statutes.

F. Disciplinary Actions. Discipline of police officers will be imposed consistent with N.J.S.A. 40A:14-147. The written charges will be signed by the Chief of Police or designee as provided in the New Jersey Statutes and the Police Department's Rules and Regulations.

G. Rules and Regulations. The appropriate authority shall by resolution of the governing body, from time to time as may be necessary, adopt and amend the rules and regulations for the government and discipline of the Police Department and employees thereof. Said rules and regulations may fix and provide for the enforcement of such rules and regulations and the enforcement of penalties for the violation of such rules and regulations, and all employees of the Police Department shall be subject to such rules and regulations and penalties.

H. Department Policies. The appropriate authority shall by resolution of the governing body, from time to time as may be necessary, adopt and amend police department policies to establish guidelines and procedures for the department and all its employees.

I. Special Law Enforcement Officers.

Authority and Purpose. The Borough of Harvey Cedars hereby establishes Special Police Officers pursuant to and in compliance with the Special Law Enforcement Officers Act (N.J.S.A. 40A:14-146.8 et seq.).

1) Classification. Persons appointed as Special Law Enforcement Officers shall upon appointment be designated as either a Class One or Class Two Special Law Enforcement Officer. The classifications shall be based upon the following standards:

   a. Class One. Officers of this class shall be authorized to perform routine traffic detail, spectator control, and similar duties and shall have the power to issue summonses for disorderly persons or petty disorderly persons offenses, violations of municipal ordinances and violations of Title 39 of the Revised Statutes. The use of a firearm by an officer of this class shall be strictly prohibited, and no Class One officer shall be assigned any duties which may require the carrying or use of a firearm. Class One officers may be authorized to carry and use less lethal weapons subject to department directives.

b. Class Two. Officers of this class shall be authorized to exercise full powers and duties similar to those of a permanent regularly appointed full-time police officer. The use of a firearm by an officer of this class may be authorized only after the officer has been fully certified as successfully completing training as prescribed by the Police Training Commission and maintains proficiency in accordance with department directives and guidelines established by the New Jersey Attorney General.

2) Duty Hours.

a. Special Law Enforcement Officers shall ordinarily not work in excess of twenty (20) hours per week with the following exceptions:

1) There is no such limitation during periods of emergency. (Emergency is defined in N.J.S.A. 40A:14-146.9b.).

2) The appointing authority may designate one (1) Special Police Officer that is exempt from the twenty (20) hour limitation.

3) Duty hours shall not exceed 48 hours per week during any seasonal period as defined in N.J.S.A. 40A:14-146.9g.

b. Special Law Enforcement Officers shall not be utilized to supplant regular Police Officers on Borough assigned extra-duty assignments.

J. Employment of Off-Duty Police Officers.

1) Any person or entity desiring to retain the services of police officers of the Borough of Harvey Cedars for off-duty police related activities shall be required to enter into a contract with the Borough of Harvey Cedars. Said contract shall include, but not be limited to, the nature of duties to be performed, the location of said duties, the date and hours of service, the rate of payment for services of the officers, administrative fees to the Borough of Harvey Cedars and fees for the use of borough owned equipment. Except in the case of public or quasi-public agencies, the payment of 100 percent of the estimated amount is due the borough for the assignment of such off-duty officers from the person or entity requesting such assignment in advance of providing such officer or officers. The borough clerk is hereby empowered to execute a contract for off-duty police related activities on behalf of the borough in accordance with this subsection.

2) The chief of police or his designee shall be responsible for the assignment of all off-duty police related activities.

3) All persons or entities shall pay to the chief financial officer of the Borough of Harvey Cedars such hourly sum of seventy ($70.00) dollars an hour for such service. The borough shall remit to the member of the police department performing such duties fifty-five ($55.00) dollars an hour and the remaining fifteen ($15.00) dollars shall be retained by the borough for administrative expenses and vehicle expenses. (Ord. No. 2005-17 § 1)

4) Any invoice from the Borough of Harvey Cedars for any balance due, or a credit for any refund, if any, shall be issued by the borough's chief financial officer. Payments due shall be made within ten (10) days of receipt of the invoice from the borough.

5) Each person or entity who shall employ off-duty police officers pursuant to this section shall be responsible for maintaining his/her or its own insurance coverage. Said insurance coverage shall include but not be limited to general liability and automobile liability and shall name the Borough of Harvey Cedars as an additional insured. In addition, such policy shall provide for a minimum coverage of one million ($1,000,000.00) dollars for any one claim or two million ($2,000,000.00) dollars for any aggregate claims. Proof of said insurance coverage shall be provided to the Borough of Harvey Cedars prior to the assignment of any off-duty police officers to said person or entity. The person or entity shall provide for the aforementioned for any and all officers, vehicles and/or equipment that are utilized in the off-duty assignment.

6) The chief of police or his/her designee shall have the authority to order any police officer engaged in off-duty assignments within the Borough of Harvey Cedars to respond to an emergency situation within the Borough of Harvey Cedars. The chief of police or his/her designee shall also have the right to order any off-duty assignment to be terminated whenever said assignment creates an unacceptable risk to the health, safety and welfare of the off-duty officer and/or citizens of the Borough of Harvey Cedars.

   In the event that a police officer is assigned to an emergency situation, the chief of police shall make note of said emergency situation, as well as the time said officer was removed from said off-duty assignment. In any situation, said person or entity shall not be responsible for the payment of the officer's hourly rate, administrative fee or any other fees to the Borough of Harvey Cedars until such time as said police officer and/or equipment returns to the assignment with the off-duty employer.

7) Any person or entity requesting the services of off-duty police officers shall agree to indemnify and hold harmless the Borough of Harvey Cedars for any and all claims and damages which may arise from the off-duty police officer's employment by said person or entity.

8) In order to be eligible for off-duty employment, a police officer must be in good standing with the department. Officers who are on medical or other leave due to sickness, temporary disability or an on-duty injury shall not be able to engage in off-duty employment.

9) The chief of police shall not assign any police officer off-duty assignments where such off-duty assignments, in the aggregate, would exceed 20 hours in a given week. The chief of police shall consider other police officer off-duty non-police work in assigning off-duty police related assignments, to ensure officer safety and on-duty job performance.

10) Off-duty police related assignments are not permitted outside the Borough of Harvey Cedars. (Ord. No. 2002-02 § 1)

11) Any off-duty assignment under the terms of this ordinance shall be for a minimum of four (4) hours of pay at the rate set forth above. (Ord. No. 2002-19 § 1)

K. Mutual Assistance of Police.

The board of commissioners of the Borough of Harvey Cedars does hereby authorize the execution of an Interlocal Government Services Agreement with the Township of Lacey, Township of Ocean, Township of Stafford, Borough of Tuckerton, Township of Little Egg Harbor, Borough of Beach Haven, Township of Long Beach, Borough of Ship Bottom, and the Borough of Surf City for mutual police aid in the case of an emergency.

The board of commissioners of the Borough of Harvey Cedars is hereby authorized to execute an agreement with the above municipalities. Said agreement to be in accordance with the provisions of N.J.S.A. 40A:14-156.1, and said agreement to waive the payment of the statutory fees set forth in N.J.S.A. 40A:14-156.

L. Copies of Accident Report.

The chief of police of the borough is authorized, upon request, to supply to any applicant a certified copy of any report, or of any other related information of or pertaining to any **automobile** accident or other casualty on file in the police department. The chief of police, subject to the approval of the director of the department of public affairs and safety, may prescribe rules and regulations governing applications for any such certified copy when, in his judgment, the interest of law enforcement and public safety so require.

(Ord. No. 2010-04 § 2)

2-5.3 Lifeguards.

A. Employment of Off Duty Lifeguards.

1) Any person or entity desiring to retain the services of lifeguards of the Borough of Harvey Cedars for off-duty lifeguard related activities shall be required to enter into a contract with the Borough of Harvey Cedars. Said contract shall include, but not limited to the nature of duties to be performed, the location of said duties, the date and hours of service, the rate of payment for services of the lifeguards, administrative fees to the Borough of Harvey Cedars and fees for the use of Borough owned equipment. Except in the case of public or quasi-public agencies, the payment of one hundred percent (100%) of the estimated amount is due the Borough for the assignment of such off-duty lifeguards from the person or entity requesting such assignment in advance of providing such lifeguard or lifeguards. The Borough Clerk is hereby empowered to execute a contract for off-duty lifeguard related activities on behalf of the Borough in accordance with this section.

2) The Commissioner of Public Safety or his designee shall be responsible for the assignment of all off-duty lifeguard related activities.

3) All persons or entities shall pay to the Chief Financial Officer of the Borough of Harvey Cedars such hourly sum of twenty ($20.00) dollars an hour for such service. The Borough shall remit to the lifeguard performing such duties fifteen ($15.00) dollars an hour and the remaining five ($5.00) dollars shall be retained by the Borough for administrative expenses and vehicle expenses.

4) Any invoice from the Borough of Harvey Cedars for any balance due, or a credit for any refund, if any, shall be issued by the Borough's Chief Financial Officer. Payments due shall be made within ten (10) days of receipt of the invoice from the Borough.

5) Each person or entity who shall employ off-duty lifeguards pursuant to this section shall be responsible for maintaining his/her or its own insurance coverage. Said insurance coverage shall include but not be limited to general liability and automobile liability. Proof of said insurance coverage shall be provided to the Borough of Harvey Cedars prior to the assignment of any off-duty lifeguards to said person or entity. Each person or entity who shall employ off-duty lifeguards shall indemnify and hold harmless the Borough of Harvey Cedars and its employees and agents.

6) The Commissioner of Public Safety or his/her designee shall have the authority to order any lifeguard engaged in off-duty assignments within the Borough of Harvey Cedars to respond to an emergency situation within the Borough of Harvey Cedars. The Commissioner of Public Safety or his/her designee shall also have the right to order any off-duty assignment to be terminated whenever said assignment creates an unacceptable risk to the health, safety and welfare of the off-duty lifeguard and/or the citizens of the Borough of Harvey Cedars.

   In the event that a lifeguard is assigned to an emergency situation, the Commissioner of Public Safety shall make note of said emergency situation, as well as the time said lifeguard was removed from said off-duty assignment. In any situation, said person or entity shall not be responsible for the payment of the lifeguard's hourly rate, administrative fee or any other fees to the Borough of Harvey Cedars until such time as said lifeguard and/or equipment returns to the assignment with the off-duty employer.

7) Any person or entity requesting the services of off-duty lifeguards shall agree to indemnify and hold harmless the Borough of Harvey Cedars for any and all claims and damages which may arise from the off-duty lifeguard's employment by said person or entity.

8) In order to be eligible for "off-duty" employment, a lifeguard must be in good standing with the Borough. Lifeguards who are on medical or other leave due to sickness, temporary disability or an on-duty injury shall not be able to engage in "off-duty" employment.

9) The Commissioner of Public Safety shall not assign any lifeguard off-duty assignments where such off-duty assignments, in the aggregate, would exceed twenty (20) hours in a given week. The Commissioner of Public Safety shall consider other lifeguard off-duty non-lifeguard work in assigning off-duty lifeguard related assignments, to ensure lifeguard safety and on-duty job performance.

10) Off-duty lifeguard related assignments are not permitted outside the Borough of Harvey Cedars. (Ord. No. 2002-16 § 1)

2-5.4 Municipal Court. There is hereby established in the borough a municipal court to be known as the "Municipal Court of the Borough of Harvey Cedars," pursuant to the provisions of Chapter 264 of the Laws of 1948, as amended and supplemented.

A. Seal. The municipal court shall have a seal that shall bear the impress of the name of the court.

B. Judge. There shall be a municipal judge for the municipal court who shall be appointed by the board of commissioners and who shall serve for a term of three years from the date of his appointment and until his successor is appointed and qualified.

The compensation of the judge and clerks or other personnel shall be the annual salaries as may be provided by ordinance, which salary shall be in lieu of all fees, costs and any other allowances whatsoever.

C. Powers. The municipal court and the municipal judge thereof shall have, possess and exercise all the functions, powers, duties and jurisdiction conferred by Chapter 264 of the Laws of 1948, or by any other law.

The judge shall have the power in criminal cases to hold defendants in reasonable bail to appear before the court having jurisdiction thereof by taking recognizances of bail with surety or sureties and forwarding the same to the court having jurisdiction before the time of appearance herein mentioned.

D. Time and Place of Court. The municipal judge shall fix and determine the time when court shall be held.

E. Municipal Public Defender. There is hereby established the position of municipal public defender.

F. Municipal Court Application Fees. Any person applying for representation by the municipal public defender shall pay an application fee for said representation of two hundred ($200.00) dollars. The municipal judge upon considering the application may waive any portion of this application fee, if in his discretion he finds the same to be an unreasonable burden on the person seeking representation.

The funds collected for the services of the public defender shall be placed in a dedicated fund administrated by the municipal chief financial officer. The funds shall be used exclusively to meet costs incurred in providing the services of municipal public defender including, when required, expert and lay investigation and testimony. The final determination as to the necessity for services of the municipal public defender and services required by experts and lay testimony shall be made by the municipal court.

2-5.5 Board of Health. The board of commissioners of the Borough of Harvey Cedars does hereby authorize the execution of an Interlocal Government Services Agreement with the Long Beach Island Health Department for Board of Health services.

2-6 DEPARTMENT OF PARKS, PUBLIC PROPERTY AND PUBLIC WORKS.

2-6.1 Director. The director of the department of parks, public property and public works shall supervise the work of the department.

2-6.2 Superintendent of Public Works/Water/Sewer. The Superintendent shall control and regulate the affairs of the Public Works Department and the Water and Sewer Department under the supervision of the director of parks, public property and public works, and shall perform such functions as required by law and other related duties as fully described in the Personnel Policy Manual.

2-6.3 Employment of Off Duty Public Works Employees

A. Any person or entity desiring to retain the services of Public Works laborers of the Borough of Harvey Cedars for off-duty public works related activities shall be required to enter into a contract with the Borough of Harvey Cedars. Said contract shall include, but not limited to the nature of duties to be performed, the location of said duties, the date and hours of service, the rate of payment for services of the employees, administrative fees to the Borough of Harvey Cedars and fees for the use of Borough owned equipment. Except in the case of public or quasi-public agencies, the payment of one hundred percent (100%) of the estimated amount is due the Borough for the assignment of such off-duty employees from the person or entity requesting such assignment in advance of providing such employee or employees. The Borough Clerk is hereby empowered to execute a contract for off-duty public works employee related activities on behalf of the Borough in accordance with this section.

B. The Commissioner of Public Works or his designee shall be responsible for the assignment of all off-duty employee related activities.

C. All persons or entities shall pay to the Chief Financial Officer of the Borough of Harvey Cedars such hourly sum of $55.00 an hour for such service. The Borough shall remit to the public works employee performing such duties forty five ($45.00) dollars of said hourly rate, and the remaining ten ($10.00) dollars shall be retained by the Borough for administrative expenses and vehicle expenses.

D. Any invoice from the Borough of Harvey Cedars for any balance due, or a credit for any refund, if any, shall be issued by the Borough's Chief Financial Officer. Payments due shall be made within ten (10) days of receipt of the invoice from the Borough.

E. Each person or entity who shall employ off-duty public works employees pursuant to this section shall be responsible for maintaining his/her or its own insurance coverage. Said insurance coverage shall include but not be limited to general liability and automobile liability. Proof of said insurance coverage shall be provided to the Borough of Harvey Cedars prior to the assignment of any off-duty employees to said person or entity. Each person or entity who shall employ off-duty employees shall indemnify and hold harmless the Borough of Harvey Cedars and its employees and agents.

F. The Commissioner of Public Works or his/her designee shall have the authority to order any public works employee engaged in off-duty assignments within the Borough of Harvey Cedars to respond to an emergency situation within the Borough of Harvey Cedars. The Commissioner of Public Works or his/her designee shall also have the right to order any off-duty assignment to be terminated whenever said assignment creates an unacceptable risk to the health, safety and welfare of the off-duty public works employee and/or the citizens of the Borough of Harvey Cedars. In the event that a public works employee is assigned to an emergency situation, the Commissioner of Public Works shall make note of said emergency situation, as well as the time said employee was removed from said off-duty assignment. In any situation, said person or entity shall not be responsible for the payment of the employee's hourly rate, administrative fee or any other fees to the Borough of Harvey Cedars until such time as said employee and/or equipment returns to the assignment with the off-duty employer.

G. Any person or entity requesting the services of off-duty public works employees shall agree to indemnify and hold harmless the Borough of Harvey Cedars for any and all claims and damages which may arise from the off-duty employee's employment by said person or entity.

H. In order to be eligible for "off-duty" employment, a public works employee must be in good standing with the Borough. Public works employees who are on medical or other leave due to sickness, temporary disability or an on-duty injury shall not be able to engage in "off-duty" employment.

I. The Commissioner of Public Works shall not assign any public works employee off-duty assignments where such off-duty assignments, in the aggregate, would exceed twenty (20) hours in a given week. The Commissioner of Public Works shall consider other public works employee's off-duty non-Borough work in assigning off-duty employee related assignments, to ensure safety and on-duty job performance of the employee.

J. Off-duty public works related assignments are not permitted outside the Borough of Harvey Cedars.

(Ord. No. 2012-03 § 1)

2-7 PERSONNEL POLICIES.

2-7.1 Policy Manual. The Board of Commissioners does hereby enact the Policy and Procedure Manual for the borough employees of the Borough of Harvey Cedars. All personnel rules and regulations of said manual shall be made a part hereof and are on file at the Borough Clerk's office. These rules and regulations may be amended and supplemented from time to time by the governing body by the adoption of a resolution of the governing body setting forth the changes to be made in said rules and regulations. Each employee of the borough shall be provided a copy of the rules and regulations as enacted, and a copy of said rules and regulations shall be kept on file at the Borough Clerk's office and will be made available to any employee upon request.

2-7.2 Employee Health Benefits.

A. Health benefits shall be offered to every full-time employee as fully described in the Policy and Procedure Manual of the Borough of Harvey Cedars.

B. The term “full-time employee” is intended to mean those employees of the Borough of Harvey Cedars who are steadily employed and work at least 32 hours per week, prior to the adoption of this chapter, and those employees subsequently hired to work a minimum of 32 hours who have served the three month waiting period.

C. The benefits described above will be provided as a shared expense between the Borough Harvey Cedars and the employee in accordance with Federal and State regulations. (Ord. No. 2014-03 § 1)

D. Part-time, temporary or seasonal employees are ineligible to participate or receive any benefits under the borough’s present health insurance and dental plans unless directly approved by the board of commissioners as a term of employment.

E. Any employee of the Borough of Harvey Cedars who receives benefits as a dependant may waive the receipt of health benefits from the Borough, upon the execution of the appropriate written waiver. In accordance with the State, the employee shall receive as additional compensation an annual amount which cannot be more than twenty five percent (25%) of the amount saved by the Borough or $5,000.00, whichever is less. (Ord. No. 2014-03 § 2)

2-8 PAYMENT OF SALARIES.

2-8.1 Authorization. The Chief Finance Officer of the borough is hereby authorized to pay the regular payroll of the borough as established pursuant to the salary ordinance currently in effect, on the dates when payment thereof becomes due.

2-8.2 In accordance with Chapter 28 P.L. 2013, commencing July 1, 2014, all Borough employees and elected public officials who receive compensation from the Borough of Harvey Cedars shall be compensated by direct deposit only. (Ord. No. 2014-10 § 1)

2-9 SUBMISSION OF CLAIMS.

2-9.1 Certified Bill. Any person claiming payment of funds from the borough shall present to the Chief Finance Officer a detailed voucher, certified by the claimant to be correct.

2-9.2 Endorsement Required. The claim shall not be presented by the CFO for approval until there has been endorsed thereon the certificate of an officer or duly designated employee of the borough having knowledge of the fact that the materials have been received by, or the services rendered, to the borough. After having been duly certified CFO shall present all claims to the board of commissioners for formal approval at a regular meeting.

2-9.3 Claims Approved by Commissioners. Claims shall be considered by the board of commissioners, which shall approve the same; except that the commissioners may reject any claim submitted to it, stating the reason for the rejection.

2-9.4 Clerk's Duty. It shall be the duty of the borough clerk to record all claims in the official minutes, indicating that the commissioners have by formal action approved the same, with appropriate record as to any claim rejected or disapproved.

2-10 RETIREMENT OF BOROUGH EMPLOYEES.

The retirement age of employees of the borough is determined to be 65 years; and the board of commissioners hereafter shall have the right by resolution to require the retirement of any employee of the borough from employment on or after the attainment of the age of 65 years by the employee.

2-11 DEFENSE AND INDEMNIFICATION.

2-11.1 Defense in Civil Actions. Subject to the limitations set forth in the subsequent sections of this chapter, whenever any civil action has been or shall be brought against any person (hereinafter referred to as "employee") holding or formerly holding any office, position or employment with the Borough of Harvey Cedars for any action or omission arising out of or in the course of the performance of the duties of such office, position or employment, the borough shall defray all costs of defending such action, including reasonable counsel fees and expenses, together with costs of appeal, if any, and shall save harmless and protect such persons, from any financial loss resulting from the litigation. The Borough Attorney or another attorney selected by the Mayor, with the advice and consent of the Borough Commissioners, shall represent the borough official or employee.

2-11.2 Criminal Actions. The borough shall not defray the costs of defending any criminal action against any municipal employee, except as may be authorized by state statute or other municipal ordinance or resolution of the Borough of Harvey Cedars, and, in those circumstances, the responsibility for defraying the costs of defending such employee shall be applicable only when such criminal proceedings shall have been dismissed or result in a final disposition in favor of the employee. However, should the borough determine that there is good cause to dismiss the employee arising out of the incident or related incidents of the criminal prosecution, the borough will not reimburse the employee or official for legal defense and costs of defending the suit, even though criminal proceedings against the employee may be dismissed or the employee found not guilty.

2-11.3 Exceptions.

a. The obligation of the Borough of Harvey Cedars to defend and indemnify its employees for acts or omissions arising out of or in the course of the performance of the duties of that person shall be limited to those circumstances under which the borough itself would be liable for the acts of its employees under the doctrine of respondeat superior, except that the borough shall defend any such officer or employee sued under the Federal Civil Rights Act, provided that the Mayor and/or Commissioners shall not have concluded that such act or omission was outside the scope of the responsibilities of said officer or employee.

b. Furthermore, the borough shall not defend and save harmless any employee committing an intentional or willful act or willful omission arising out of or in the course of the performance of the duties of such office, position or employment.

c. Also specifically excluded from the provisions of this chapter, is any municipal employee or official providing any form of professional medical services, such as a doctor and nurse, insofar as said civil action arises out of or concerns those professional medical services.

d. The borough shall not be responsible for the defense or indemnification of any official or employee of the borough, when the Borough Commissioners have determined that:

1. The act or omission was not within the scope of employment.

2. The act or failure to act was because of actual fraud, willful misconduct or actual malice.

3. The defense of the action or proceeding would create a conflict of interest between the borough and the public employee.

4. The defense of the action or proceeding is provided for by an insurance policy or policies, whether obtained by the borough or by any other person.

5. The public employee failed to deliver the Borough Clerk, within ten (10) calendar days after the time he is served with any summons, complaint, process, notice, demand or pleading, the original or a copy of the same.

6. The public employee has failed to cooperate fully with the defense.

2-11.4 Borough Control Over Litigation. Whenever the borough provides any defense required of it under this chapter, the borough, through counsel, may assume exclusive control over the representation of the public employee, and such employee shall cooperate fully with the defense.

2-11.5 Indemnification.

a. In any case where the borough is required to provide a defense under this chapter, the borough shall pay or shall reimburse the public employee for:

   1. Any bona fide settlement agreements entered into by the employee.

   2. Any judgments entered against the employee.

   3. If the borough has failed to provide such required defense, all costs of defending the action, including reasonable counsel fees and expenses, together with costs of any appeal.

b. In addition, in any case where the borough would be required to provide a defense under this chapter except for the fact that such defense is provided for by insurance, the borough shall provide indemnification as aforesaid, but only to the extent not covered by insurance.

2-11.6 Limitations. Nothing in this chapter shall authorize the borough to pay for punitive or exemplary damages or damages resulting from the commission of a crime.
(Ord. No. 2002-18 § 1)

2-12 FIRE DEPARTMENT.

2-12.1 Organization of the Fire Department. The fire department shall be known as the "High Point Volunteer Fire Company" and shall consist of a chief, assistant chief, captain, lieutenant and such other officers as the chief may designate together with such firemen as set forth below.

2-12.2 Membership in Fire Department. No person shall hereafter become a member of the fire company unless above the age of 18 and not over the age of 40, a citizen of the United States of good moral character and a resident of the fire district for upwards of one year. No person shall hereafter become a member of the fire company unless said person shall be physically fit to perform the duties of a fireman as evidenced by a certificate to that effect by a practicing physician of the State of New Jersey after physical examination for that purpose.

Every person seeking to join the fire company shall make application to the company. Upon election to membership by vote of a majority of the unit present and voting said person shall become a member in good standing of the fire company after approval of his membership by the chief and confirmation by the board of commissioners of the borough. The name of each member shall be kept by the borough clerk.

2-12.3 Board of Fire Officers. The chief and board of directors of the company shall constitute a board of fire officers, who shall meet monthly or more frequently for the transaction of all business of the department, which board shall have entire and absolute control over and management of the department and its government.

2-12.4 Retirement from Service. Any member of the department who has arrived at the age of 50 may be retired from service by the board of fire officers, and in like manner any member who shall become physically unfit for active service.

2-12.5 Adoption of By-laws. The board of fire officers is hereby authorized and empowered to adopt a code of by-laws and rules for the control, management and government of the department and for the regulating of the proceedings and business for the board, which code of by-laws and rules after adoption shall be forwarded to the Board of Commissioners of the Borough of Harvey Cedars.

2-12.6 Records Required. The board of officers are required to devise forms or methods of keeping records and shall see that records are kept of all alarms of fire, fire losses, methods of extinguishment, drills, hose, apparatus, minor equipment, condition of hydrants and starting of motors.

2-12.7 Duties of Members. It shall be the duty of the company, so often as any fire shall breakout, to repair immediately upon the alarm thereof to the fire house and to convey the company apparatus to the place where the fire shall happen, unless otherwise directed by the chief engineer or other officer who may be in charge and upon such direction they shall return their apparatus, well washed and cleaned, to the firehouse.

2-12.8 Absence of Chief. In all cases of fire, the chief or, in his absence, an assistant shall have full power and absolute control and command, and cause the apparatus to be worked in the most advantageous manner.

Should the chief and the assistant chief be absent from a fire, the person having charge of the apparatus arriving at the fire shall assume the duties of the chief until the arrival of his superior officer.

2-12.9 Duty of the Secretary. It shall be the duty of the secretary of the company to make a quarterly report to the board of commissioners of the borough setting forth the condition of equipment, fire hydrants and water mains. The secretary shall further submit an annual financial report of the company containing all receipts and disbursements.

2-12.10 Attendance at Fires and Drills. Every member of the fire company shall, in each and every year, perform at least 60 percent of duty to be composed of actual attendance and duty at fires and drills and a record shall be kept of such attendance and duty by the chief of the fire company and reported to the board of commissioners annually.

2-12.11 Length of Service Awards Program (LOSAP) for Firefighters.

A. Length of Service Awards Program Created. A Length of Service Awards Program (LOSAP) is herewith created in accordance with Chapter 388 of the Laws of 1997, to reward members of the volunteer firefighters for their loyal, diligent, and devoted services to the residents of the Borough of Harvey Cedars.

B. Contributions to Plan; Administration of Plan. The LOSAP shall provide for fixed annual contributions to a deferred income account for each volunteer member that meets the criteria set forth below; that such contributions shall be made in accordance with a plan that shall be established by the Borough of Harvey Cedars pursuant to P.L. 1997, c. 388; and that such plan shall be administered in accordance with the laws of the State of New Jersey, the U.S. Internal Revenue Code, and this section.

C. Criteria for Contributions, Point Schedule for Volunteer Service. The LOSAP shall provide for annual contributions to each eligible member that meets the criteria as follows:

1) Fifty (50) points are required for a member to be eligible for an annual contribution. (See Schedule A on the following page)

2) Five (5) years of service are required for vesting.

3) The annual contribution shall be six hundred twenty ($620.00) dollars per eligible member.

D. Voter Approval Required. This section shall not take effect unless it is approved by voters as a public question at the next general election.*

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*Editor's Note: This section was approved by the voters of the Borough of Harvey Cedars at the November 6, 2001 general election.

SCHEDULE A
High Point Volunteer Fire Company
Length of Service Awards Program
(Section 2-12.11)

1. Earning 50 points will award an eligible year of service.

2. Each active volunteer member shall be credited with points for volunteer services provided to the volunteer fire company in accordance with the following point system:

   Fire Call Responses
   60% or greater = 20 points
   50% to 59% = 16 points
   40% to 49% = 13 points
   30% to 39% = 10 points
   20% to 29% = 7 points
   Less than 20% = 1 point each call

   Company Drills = 3 points each

   Special Drills and Fire Company Sanctioned Activities = 3 points each

   Regular Fire Company Meetings Per By-Laws = 3 points each

   Training Courses = 1 point every two hours, maximum 20 points
   Travel time not included

   Fund Raising Events = 5 points each

   Elected Officers as Per By-Laws = 20 points each

   Appointed Positions:
   Engineers, Safety Officer, Fire Police = 10 points each
   Officer Assistants = 5 points each
   Committee Chairperson = 5 points each
   Committees = 4 points each

   Life Members = 25 points each

3. Member is vested after five (5) qualifying years.

4. Annual contribution of $620.00 per member who has earned a qualifying year.

5. The estimated cost of the program has been calculated as follows:
   Regular annual services: $26,040.00

2-13 FIRST AID SQUAD.

2-13.1 Length of Service Awards Program (LOSAP) for First Aid Squad.

A. Length of Service Awards Program Created. A Length of Service Awards Program (LOSAP) is hereby created in accordance with Chapter 388 of the Laws of 1997, to reward the members of the Barnegat Light First Aid Squad for their years of loyal, diligent, and devoted service to the residents of the Borough of Harvey Cedars.

B. Contributions to Plan; Administration of Plan. The LOSAP shall provide for fixed annual contributions to a deferred income account for each member of the Barnegat Light First Aid Squad that meets the criteria set forth below. Such contributions shall be made in accordance with a plan that shall be established by the Borough of Harvey Cedars pursuant to P.L. 1997, c. 388; and shall be administered in accordance with the laws of the State of New Jersey, the U.S. Internal Revenue Code, and this section.

C. Criteria for Contributions; Point Schedule for Volunteer Service. The LOSAP shall provide for annual contributions to each eligible member that meets the criteria as follows:

a. Fifty (50) points are required for a member to be eligible for an annual contribution. (See Schedule A on the following page)

b. Five (5) years of service are required for vesting.

c. The annual contribution shall be three hundred ten ($310.00) dollars per eligible member.

D. Voter Approval Required. This section shall not take effect unless it is approved by voters as a public question at the next general election.*

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*Editor's Note: This section was approved by the voters of the Borough of Harvey Cedars at the November 6, 2001 general election.

SCHEDULE A
Barnegat Light First Aid Squad
Length of Service Awards Program
(Section 2-13.1)

1. Earning 50 points will award an eligible year of service.

2. Each active volunteer member shall be credited with points for volunteer services provided to the First Aid Squad in accordance with the following point system:

First Aid Call Response -	1 point for every two (2) calls
Squad Drills -	3 points each
Squad Meetings -	3 points each
Training Courses -	1 point for every two (2) hours
Fund Raising -	1 point per hour (max. 5 points)
Elected Officials –	
per squad by-laws	20 points each
EMT'S OR EMT-D's -	15 points
Life Members -	25 points

<u>Appointed Positions</u>

Committees	4 points each
Committee Chairperson	5 points each
Engineers (Rig Chief)	10 points each

3. Member is vested after five (5) qualifying years.

4. Annual contribution of $310.00 per member who has earned a qualifying year.

2-14 BACKGROUND CHECKS.

2-14.1 Definitions. As used in this section, the following terms shall have the meanings indicated:

CRIMINAL HISTORY RECORD BACKGROUND CHECK – A determination of whether a person has a criminal record by cross-referencing that person's name and fingerprints with those on file with the Federal Bureau of Investigation, Identification Division and/or the New Jersey State Bureau of Identification in the Division of State Police.

NON-SPONSORED YOUTH PROGRAMS – Any youth programs not sponsored by the Borough of Harvey Cedars but that utilize municipal facilities or have affiliation with a Borough-sponsored youth program and having contact with persons under the age of 18 years.

BOROUGH-SPONSORED YOUTH PROGRAMS – Any programs sponsored by the Borough of Harvey Cedars, including any and all leagues, boards and commissions falling within the purview of or acting for or on behalf of the Borough of Harvey Cedars and having contact with persons under the age of 18 years. For purposes used in this section, a program does not include a one-time Borough-sponsored special event.

YOUTH PROGRAMS – Any programs that allow for participation in activities by those persons under 18 years of age. Activities may include, but are not limited to, sporting activities, passive recreation groups, clubs or camps and trips or other activities whereby some control and responsibility for children is assigned to some person acting for or on behalf of the Borough other than a parent or caregiver.

2-14.2 Non-Sponsored Youth Programs.

A. Prior to any club or organization, not defined as a Borough-sponsored youth program, being authorized to use Borough-owned facilities for functions participated in by children, all adults, those persons 18 years of age or older, in any way assisting in the function, including but not limited to coaches, assistant coaches, or similar positions, shall submit sufficient information on forms supplied by the Harvey Cedars Chief of Police or his designee for the purpose of obtaining a criminal history background check with the State Bureau of Identification in the New Jersey State Police. Applications for background checks shall be processed by the Harvey Cedars Police Department.

B. The submission of background check findings must be based upon a check performed within two years of the start of use of the Borough-owned facility. In the case of coaches performing duties as employees of a school district, the policy of background checks adopted by the individual school district shall be used to establish eligibility for use of Borough-owned facilities. In all cases, the background check must comply with the provisions of any applicable laws regarding same, but not less detailed than those performed by the Borough for individuals involved in administering Borough-sponsored youth programs. The cost of background checks for individuals not administering a Borough-sponsored program shall be borne by the individual or program with which they are participating.

2-14.3 Borough-Sponsored Youth Programs.

All adults, those persons 18 years of age or older, including but not limited to coaches, assistant coaches, or similar positions involved in educating, directing or supervising youth, and in any way assisting in a Borough of Harvey Cedars sponsored function participated in by children, shall submit sufficient information on forms supplied by the Harvey Cedars Chief of Police for the purpose of obtaining a criminal history background check with the State Bureau of Identification in the New Jersey State Police. Applications for background checks shall be processed by the Harvey Cedars Police Department. Individuals involved in a Borough-sponsored youth function, and who are required to undergo background checks based upon this section, shall not be responsible for the costs involved with obtaining the criminal background check. The Borough of Harvey Cedars shall bear the costs for the background checks for individuals qualified under this section.

2-14.4 Qualification. Individuals qualified in providing recreation opportunities for, or on behalf of, the Borough of Harvey Cedars shall be issued a permit by the Municipal Clerk with appropriate expiration dates based upon the date of their individual background check.

2-14.5 Disqualification.

A. Upon receipt of a completed background check conducted by the State Bureau of Identification in the New Jersey State Police and/or the Federal Bureau of Investigation, Identification Division, the Police Chief or his designee shall notify the applicant and the president or leader of the recreation program of affirmative or negative results. The determination of the Police Chief is based upon 2-14.5B of this section. Details in the background check that result in a negative determination by the State Police are not afforded to the Police Chief and are only available to the applicant upon making a formal request to the State Bureau of Investigation.

B. In the event the criminal background check reveals any prior convictions for crimes or offenses which negatively impact the health, safety and welfare of children, said person shall not be qualified to participate in any official capacity in any function for persons under the age of 18 years held at any Borough-owned facilities. Such offenses shall include, but not be limited to:
   1) In New Jersey, any crime or disorderly persons offense:
      (a) Involving danger to the person, meaning those crimes and disorderly persons offenses set forth in N.J.S.A. 2C:11-1 et seq., N.J.S.A. 2C:12-1 et seq., N.J.S.A. 2C:13-1 et seq., N.J.S.A. 2C:14-1 et seq. or N.J.S.A 2C:15-1 et seq.;
      (b) Against the family, children or incompetents, meaning those crimes and disorderly persons offenses set forth in N.J.S.A. 2C:24-1 et seq.;
      (c) Involving theft as set forth in Chapter 20 of Title 2C of the New Jersey Statutes;
      (d) Involving any controlled dangerous substance or controlled substance analog as set forth in Chapter 35 of Title 2C of the New Jersey Statutes except paragraph (4) of subsection a. of N.J.S.A. 2C:35-10.
   2) In any other state or jurisdiction, conduct which, if committed in New Jersey, would constitute any of the crimes or disorderly persons offenses described in Subsection B.1 above.

C. The list of crimes and violations contained in this section is for illustrative purposes only and shall not be construed as a limitation on those criminal activities or violations that would be grounds to disqualify a person from assisting with youth-related activities as indicated herein.

D. Refusal by individuals required to submit to background checks will result in an immediate dismissal of the individual from any Borough-sponsored activities requiring background checks. In addition, refusal to comply with this section by any individual falling within the scope of requirements for non-sponsored youth programs will forfeit that individual's ability to participate with the respective program. Refusal of a non-Borough-sponsored youth program to subscribe to the requirements of this section shall forfeit that program's ability to use municipal facilities.

2-14.6 Frequency of Background Checks.

A. All non-sponsored youth programs that have individuals subject to this section shall supply background checks for all of its participants prior to the individual being able to participate at any function at a Borough-owned facility to the extent covered by this section. Thereafter, every two years a new background check shall be submitted to the Police Chief.

B. All Borough-sponsored youth programs that have individuals subject to this chapter shall direct those individuals to the Police Chief for background checks prior to the individual being able to participate at any function sponsored by the Borough of Harvey Cedars. Thereafter, every two years a new background check shall be submitted to the Police Chief. Individuals involved in Borough-sponsored youth programs who are required to undergo background checks shall be given an interim approval for participation only after submission to the Division of State Police for a background check. Interim approvals shall only be valid for the period of time that it takes to receive background checks results. Such interim approval shall not be valid for a period of time exceeding 2 weeks. Only one interim approval may be granted per individual.

2-14.7 Privacy. Any and all criminal background checks supplied to the Police Chief or his designee shall be filed and maintained in a secure and locked cabinet or room and shall not be available to the public. The Police Chief shall take appropriate steps to safeguard such records. The records shall be exempt from public disclosure under the common law or the New Jersey Right to Know Law. The records shall only be retained for such period of time as is necessary to serve their intended and authorized purpose.

2-14.8 Violations and Penalties. Each person violating any of the provisions of this section shall, upon conviction thereof, be liable to the penalty stated in Chapter III, section 3-9.

(Ord. No. 2011-03 § 1)

CHAPTER III

POLICE REGULATIONS

3-1 LITTER.

3-1.1 Definitions. As used in this section:

a. "Commercial handbill" shall mean printed or written matter, any sample or device, dodger, circular, leaflet, pamphlet, paper, booklet, or any other printed or otherwise reproduced original or copies of any matter of literature.

1. Which advertises for sale any merchandise, product, commodity, or thing; or

2. Which directs attention to any business, mercantile or commercial establishment, or other activity, for the purpose of either directly or indirectly promoting the interest thereof by sales; or

3. Which directs attention to or advertises any meeting, theatrical performance, exhibition, or event of any kind, for which an admission fee is charged for the purpose of private gain or profit; but the terms of this clause shall not apply where an admission fee is charged or a collection is taken up for the purpose of defraying the expenses incident to such meeting, theatrical performance, exhibition, or event of any kind, when either of the same is held in connection with the dissemination of information which is not restricted under the ordinary rules of decency, good morals, public peace, safety and good order provided, that nothing contained in this section shall be deemed to authorize the holding, giving or taking place of any meeting, theatrical performance, exhibition, or event of any kind, without a license where such license is or may be required by any law of this State, or under any ordinance of this borough; or

4. Which, while containing reading matter other than advertising matter, is predominantly and essentially an advertisement, and is distributed or circulated for advertising purposes, or for the private benefit and gain of any person so engaged as advertiser or distributor.

b. "Garbage" shall mean putrescible animal and vegetable wastes resulting from the handling, preparation, cooking and consumption of food.

c. "Litter" shall mean "garbage", "refuse", and "rubbish" as defined herein and all other waste material which, if thrown or deposited as herein prohibited, tends to create a danger to public health, safety and welfare.

d. "Newspaper" shall mean any newspaper of general circulation as defined by general law, any newspaper duly entered with the Post Office Department of the United States, in accordance with Federal Statute or regulations, and any newspaper filed and recorded with any recording officer and shall mean any periodical or current magazine regularly published with not less than four issues per year, and sold to the public.

e. "Non-commercial handbill" shall mean any printed or written matter, any sample, or device, dodger, circular, leaflet, pamphlet, newspaper, magazine, paper, booklet, or any other printed or otherwise reproduced original or copies of any matter of literature not included in the aforesaid definitions of a commercial handbill or newspaper.

f. "Park" shall mean a park, reservation, playground, beach, recreation center or any other public area in the borough, owned or used by the borough and devoted to active or passive recreation.

g. "Private premises" shall mean dwelling, house, building, or other structure, designed or used either wholly or in part for private residential purposes, whether inhabited or temporarily or continuously uninhabited or vacant, and shall include any yard, grounds, walk, driveway, porch, steps, vestibule or mailbox belonging or appurtenant to such dwelling.

h. "Public place" shall mean all streets, sidewalks, boulevards, alleys or other public ways and all public parks, squares, spaces, grounds and buildings.

i. "Refuse" shall mean all putrescible and nonputrescible solid wastes, (except body wastes), including garbage, rubbish, ashes, street cleanings, dead animals, abandoned automobiles, and solid market and industrial wastes.

j. "Rubbish" shall mean nonputrescible solid wastes consisting of both combustible and non-combustible wastes, such as paper, wrappings, cigarettes, cardboard, tin cans, yard clippings, leaves, wood, glass, bedding, crockery and similar material.

k. "Vehicle" shall mean every device, in, upon, or by which any person or property is transported or drawn upon a highway.

3-1.2 Burning of Litter Prohibited. No person shall burn any litter in any open place, whether public, private, or in any outside receptacle, incinerator or outdoor fireplace.

3-1.3 Litter in Public Places. No person shall throw litter in or upon any street, sidewalk or other public place within the borough except in public receptacles or in authorized private receptacles for collection.

Persons placing litter in public receptacles or in authorized private receptacles shall do so in such a manner as to prevent it from being carried or deposited by the elements upon any street, sidewalk or other public place or upon private property.

3-1.4 Sweeping Litter into Gutters Prohibited. No person shall sweep into any gutter, street or other public place within the borough the accumulation of litter from any building or lot or from any public or private sidewalk or driveway. Persons owning or occupying property shall keep the sidewalk in front of their premises free of litter.

3-1.5 Merchant's Duty. No person owning or occupying a place of business shall sweep into any gutter, street or other public place the accumulation of litter from any building or lot or from any public or private sidewalk or driveway. Persons owning or occupying places of business within the borough shall keep the sidewalk in front of their business premises free of litter.

3-1.6 Litter Thrown from Vehicles. No person, while a driver or passenger in a vehicle, shall throw or deposit litter upon any street or other public place within the borough, or upon private property.

No person shall obstruct the free and lawful passage of pedestrians and vehicles on the streets, highways, or sidewalks of the borough, or any part thereof, by placing thereon any vehicle, article of traffic or merchandise or any wares, in a case or otherwise, or any packing boxes, barrels, any sign or like structure, lumber, wood, or other obstruction of any kind. No person shall place or cause to be placed any rubbish, debris, sand, gravel, stone, soil, mulch or other landscaping material on any public street, or portion thereof in any manner so as to obstruct or interfere with the operation of motor vehicles or drainage. (Ord. No. 2004-15 § 1)

If the Police Department determines that material deposited on any street is potentially hazardous to pedestrians or vehicles, then the police may order the material removed. If the individual or company does not promptly remove said material, then the Borough of Harvey Cedars shall remove same and the person or company responsible for same shall reimburse the Municipality for the cost of removal. (Ord. No. 2005-18 § 1)

3-1.7 Trucks Causing Litter. No person shall drive or move any truck or other vehicle within the borough unless such vehicle is so constructed or loaded as to prevent any load, contents or litter from being blown or deposited upon any street, alley or other public place. Nor shall any person drive any vehicle or truck, on wheels or tires of which carry onto or deposit in any street, mud, dirt, sticky substances, litter or foreign matter of any kind.

3-1.8 Litter in Parks. No person shall throw or deposit litter in any park within the borough except in public receptacles and in such a manner that the litter will be prevented from being carried or deposited by the elements upon any part of the park or upon any street or other public place. Where public receptacles are not provided, all such litter shall be carried away from the park by the person responsible for its presence and properly disposed of elsewhere.

3-1.9 Litter in Lakes and Fountains. No person shall throw litter in any fountain, pond, lake, stream, lagoon, bay or any other body of water in a park or elsewhere within the borough.

3-1.10 Commercial Handbills. No person shall throw any commercial or non-commercial handbill upon any sidewalk, street, or other public place within the borough. Nor shall any person hand out or distribute or sell any commercial handbill in any public place. Provided, however, that it shall not be unlawful on any sidewalk, street, or other public place within the borough for any person to hand out or distribute, without charge to the receiver thereof, any non-commercial handbill to any person willing to accept it.

3-1.11 Handbills on Vehicles. No person shall throw or deposit any commercial handbill upon any vehicle. It shall not be unlawful in any public place for a person to hand out or distribute without charge to the receiver thereof, a non-commercial handbill to any occupant of a vehicle who is willing to accept it.

3-1.12 Handbills on Vacant Premises. No person shall throw any commercial or non-commercial handbill upon any private premises which are temporarily or continuously uninhabited or vacant.

3-1.13 Distribution of Handbills Where Posted. No person shall throw or distribute any commercial or non-commercial handbill upon any private premises, if requested by anyone thereon not to do so, or if there is placed on the premises in a conspicuous position near the entrance, a sign bearing the words: "No Trespassing", "No Peddlers or Agents", "No Advertisement", or any similar notice, indicating that the occupants of the premises do not desire to be molested or have the right of privacy disturbed, or to have any such handbills left upon such premises.

3-1.14 Distributing Handbills at Inhabited Premises. No person shall throw, deposit or distribute any commercial or non-commercial handbill upon private premises which are inhabited, except by handing the handbill directly to the owner, occupant, or other person then present in the premises. In case of inhabited private premises which are not posted, the person, unless requested by anyone upon the premises not to do so, may place any handbill in or upon the inhabited private premises if the handbill is placed as to secure or prevent the handbill from being blown about the premises or sidewalks, streets, or other public places, mailboxes may not be used when prohibited by Federal postal law or regulations.

3-1.15 Mail and Newspapers. The provisions of this subsection shall not apply to the distribution of mail by the United States, nor to newspapers as defined herein, except that newspapers shall be placed on private property in such a manner as to prevent their being carried or deposited by the elements upon any street, sidewalk, or other public place or upon private property.

3-1.16 Posting Notices Prohibited. No person shall post or affix any notice, poster or device calculated to attract the attention of the public, to any lamp post, public utility pole or shade tree, or upon any public structure or building, except as may be authorized or required by law.

3-1.17 Litter on Occupied Private Property. No person shall throw or deposit litter on any occupied private property within the borough whether owned by the person or not, except that the owner or person in control of private property may maintain authorized private receptacles for collection in such a manner that litter will be prevented from being carried or deposited by the elements upon any street, sidewalk or other public place or upon any private property.

3-1.18 Maintain Premises Free of Litter. The owner or person in control of any private property shall at all times maintain the premises free of litter. This subsection shall not prohibit the storage of litter in authorized private receptacles for collection.

3-1.19 Litter on Vacant Lots. No person shall throw or deposit litter on any open or vacant private property within the borough whether owned by the person or not.

a. *Notice to Remove.* The chief of police is hereby authorized and empowered to notify the owner of any open or private property within the borough or the agent of the owner to properly dispose of litter located on the owner's property which is dangerous to public health, safety or welfare. Such notice shall be by certified mail, addressed to the owner at his last known address.

b. *Action Upon Non-Compliance.* Upon the failure, neglect or refusal of any owner or agent so notified, to properly dispose of litter dangerous to the public health, safety or welfare within ten days after receipt of written notice provided for in paragraph (a) above, or within ten days after the date of such notice in the event the same is returned to the borough by the post office because of its inability to make delivery thereof, provided the same was properly addressed to the last known address of the owner, the chief of police is hereby authorized and empowered to order its disposal by the borough.

c. *Charge Included in Tax Bill.* When the borough has effected the removal of such dangerous litter or has paid for its removal, the actual cost thereof, plus accrued interest at the rate of six percent per annum from the date of the completion of the work, if not paid by such owner prior thereto, shall be charged to the owner by the borough and the charge shall be due and payable by the owner at the time of payment of the bill.

d. *Recorded Statement Constitutes Lien.* Where the full amount due the borough is not paid by such owner within 30 days after the disposal of such litter, as provided for in paragraphs (a) and (b) above, then the commissioner of public safety shall cause to be recorded in the office of the collector of taxes a sworn statement showing the cost and expense incurred for the work, the date the work was done and the location of the property on which said work was done. The recordation of such sworn statement shall constitute a lien on the property, and shall remain in full force and effect for the amount due in principal and interest, plus costs of court, if any, for collection, until final payment has been made. The costs and expenses shall be collected in the manner fixed by law for the collection of taxes and further, shall be subject to a delinquent penalty of eight percent in the event same is not paid in full on or before the date the tax bill upon which the charge appears becomes delinquent. Sworn statements recorded in accordance with the provisions hereof shall be prima facie evidence that all legal formalities have been complied with and that the work has been done properly and satisfactorily, and shall be full notice to every person concerned that the amount of the statement, plus interest, constitutes a charge against the property designated or described in the statement and that the same is due and collectible as provided by law.

3-1.20 Litter Containers and Litter Removal.

a. All litter or recyclables for collection by the borough or its agent(s) shall be placed in metal or plastic containers with covers and handles and stored on the owner's property. Each container shall not exceed 32 gallons and shall not weigh more than 50 pounds each. Containers shall be covered at all times when not empty.

b. No household or commercial trash shall be placed in public containers or dumpsters.

c. Any business, commercial, industrial or construction location shall place its litter or trash in a dumpster or container of appropriate size to prevent spill over. Any dumpster or container used for trash or litter shall be covered so as to prevent the blowing of any trash or litter from the container or dumpster. Construction site dumpsters shall remain covered at all times when unattended.

d. Residential properties shall be allowed not more than eight (8) litter receptacles and two (2) bulk items per regular trash collection. No bulk items shall be collected in July and August.

e. Commercial or professional establishments shall be allowed not more than four (4) trash containers and/or recyclable receptacles to be placed for collection at the curb line on regular collection days.

f. Homeowner generated construction debris including wallpaper, carpet, plaster and building materials must be properly contained or tied securely in bundles not more than four (4) feet in length, which bundles shall weigh not more than 50 pounds when placed at the curb line for collection and removal. Not more than four (4) containers of construction debris shall be collected at one time.

g. Contracted generated debris shall be removed by the contracted business or person.

h. The Recycling and Trash Schedule of the Borough of Harvey Cedars shall be generated annually by the Superintendent of Public Works which shall establish collection dates and more specifically list rules and regulations for recycling and trash collection. Said schedule is made a part hereof and on file at the Borough Clerk's office.

i. Refer to section 9-12 regarding stormwater pollution regulations.

(Ord. No. 2013-02 § 1)

3-2 DISORDERLY PERSONS.

3-2.1 Purpose. Because the acts of one or more persons as hereafter described do and may injure the rights of others, the following requirements are hereby imposed and declared necessary for the general protection of the public.

3-2.2 Disrobing. It is unlawful to dress, undress, change clothing or sleep in any type of motor vehicle or other type of vehicle.

3-2.3 Playing in Streets. The playing of baseball, football, hockey, the use of skateboards and/or roller skates, or the playing of any type of game on the public streets running northeast and southwest within the territorial limits of the Borough of Harvey Cedars is hereby prohibited.

3-2.4 Burning of Trash Prohibited. The burning of rubbish, trash or disposable material is hereby prohibited. Permits for fires for beach parties may be granted in writing by the police department when it appears that life, health or public safety will not be endangered; such permits being good only for the date specified.

3-2.5 Loitering. It is unlawful to loiter, assemble, band or crowd together on the public streets or any other public area in such a manner as to interfere with the rights of others to use the public streets or public area.

3-2.6 Alcoholic Beverages in Public Places. It shall be unlawful at any time to consume any kind of alcoholic beverage upon any street, highway, alley, sidewalk, approach, step, beach, in any automobile or other vehicle parked upon any street, highway or alley, or in any public building or any public place, except in a licensed establishment.

3-2.7 Noise Prohibited. To revel, disport, or behave in a noisy and boisterous manner, emitting loud cries and other noises, so as to inconvenience others, or otherwise disrupt and disturb the public peace and dignity is prohibited.

3-2.8 Obscene Behavior Prohibited. To act in a loud, indecent, obscene, offensive or lascivious manner on the public streets or public areas, is prohibited.

3-2.9 Prohibited Bicycles. It shall be unlawful for any person, other than those persons in the employ of the Government of the United States of America, to operate a bicycle having more than two wheels on the public streets running northeast and southwest with the territorial limits of the Borough of Harvey Cedars.

3-2.10 Disrobing. The act of disrobing, changing clothes, dressing or undressing is hereby prohibited in all public places. (Ord. No. 2003-08 § 1)

3-3 RENTING TO MINORS.

3-3.1 Regulations. No room, rooms, apartment, cottage or house in this municipality shall be rented to, by or for any group of minors unless and until the following regulations have been complied with.

a. Every group of minors, when occupying a room, apartment, cottage or house shall be under the direct, immediate and personal supervision of a parent or guardian of one of the minors in the group or a competent adult person having charge of and being responsible for the proper conduct of the minors.

b. Before any room, apartment, cottage or house shall be occupied by a group of minors, the parent, guardian or adult person, as the case may be, referred to in the preceding paragraph, shall report to the police department of this municipality and register with the police department the name and address of the parent, guardian or adult person having charge of such group of minors.

3-3.2 Landlord's Responsibility. No landlord, real estate broker or owner of any room, apartment, cottage or house shall permit same to be occupied by any group of minors until the provisions of paragraphs b and c of subsection 3-3.1 have been complied with.

No landlord, real estate broker or owner of any room, apartment, cottage or house shall permit same to be occupied by or used for any group of minors unless and until the lease is signed by a parent or guardian of one of the minors in the group or by a competent adult person having charge of the group of minors and being responsible for their proper conduct.

No lease shall be sublet or assigned for use by another group of minors unless and until the same provisions are made and carried out as to the subletting or assignment as provided above for the original lease.

3-3.3 Requirements for Guardian. No parent, guardian or adult person shall have charge of a group of minors for the purpose stated herein who shall have a criminal record.

3-3.4 Definition. "Group of minors" as used in this section shall mean a unit of two or more individual persons each under the age of 18 years.

3-4 BEACH AND BAY REGULATIONS.

3-4.1 Definitions. As used in this section:

"Beach and bay areas" shall mean all of those areas of land along the ocean front and bay front owned by the Borough of Harvey Cedars, and those wherein the borough has control of the use by easement deed, and all other areas set apart by consent of owners where protected bathing areas are established; public street ends on the bay front or ocean front.

3-4.2 Violations Prohibited. It shall be unlawful and an offensive course of conduct to violate or participate in the violation of any rule or regulation hereinafter set forth, which rules and regulations are hereby adopted for and shall apply to the government, supervision, use and policing of the aforesaid areas, viz: those areas supervised by the borough guards and designated as protected bathing areas.

3-4.3 Prohibited Activities.

a. To throw, bat or catch a baseball, football, basketball, soft ball, or engage in the playing of any game endangering the health and safety of others in protected beach areas where bathing is supervised. This subsection shall not apply to the playing of beach tennis or reasonable playing "at catch" with a soft rubber or beach ball.

b. To swim or bathe beyond a safe depth in the ocean, as indicated, determined or regulated by the borough lifeguards.

c. To use any inflatable raft, innertube, waterwings, surfboard, boat or any floating or inflated object of any kind or description on ocean beaches of the borough except as indicated, determined, or regulated by the borough lifeguards.

d. To throw, place, deposit, or leave any bottles, glass, crockery, sharp or pointed article or thing, paper, refuse or debris of any kind, in the areas except in the proper receptacles provided at the street ends. No trash cans are to be taken from the streets and placed on the beach by unauthorized persons.

e. All orders, direction whistles or other signals used by the borough lifeguards and police shall immediately be obeyed.

f. To sleep on the beach within the areas defined during any time between midnight and 6:00 a.m.

g. Changing clothes, dressing, or undressing or otherwise to disrobe, except outer wraps.

h. "Picnicking" - meaning the carrying of or otherwise transporting any box, basket, bag, tub or other receptacle in which there is contained food or beverages, or both, within the areas described.

3-5 REMOVAL OF WEEDS, GRASS AND RUBBISH.

3-5.1 Fire Hazards Prohibited. It shall be unlawful for the owner or occupant of any lot, tract or parcel of land within the borough to allow, or permit any weeds, grass, bushes, hedges or rubbish to grow, accumulate, or remain upon such land, to the extent that the same, when dry, would become inflammable and constitute a fire hazard dangerous to life or property within the borough.

3-5.2 Notice to Remove. Whenever it shall come to the notice of the board of commissioners of the borough, that a condition violative of subsection 3-5.1 of this chapter exists, upon any lot, tract or parcel of land within the borough, the board may instruct and cause the borough clerk, or such other officer of the borough as the board may designate, to serve notice in writing upon the owner or occupant of the parcel of real estate to remove the weeds, grass, bushes, hedges or rubbish within 14 days after the service of such notice.

3-5.3 Failure to Comply. Upon the failure of the owner or occupant to comply with the requirements of the notice, the borough will cause the work to be done, in which event the cost thereof shall be charged against the owner or occupant of the lands.

In the event the owner or occupant of the land shall fail, neglect or refuse to comply with the requirements of the aforesaid notice, within the time required by the notice, then the board of commissioners may cause such weeds, grass, bushes, hedges or rubbish to be removed from the lands, whenever the same shall constitute a fire hazard, dangerous to life and property within this borough.

3-5.4 Cost to be Lien Against Property. Whenever the borough shall cause the work mentioned in subsection 3-5.3 hereof to be done, the cost of the work shall be certified to the board and, if and when the cost thereof shall have been approved by the board, the collector of taxes shall enter the cost of the work as a charge and lien against the lands upon which the work was done, and the same shall constitute a lien against the lands and shall be collected, and the payment thereof enforced, in the same manner as other taxes and assessments against the lands are collected and enforced.

In lieu of the procedure set forth in subsection 3-5.4 hereof, the borough may recover the cost of such work against the owner or occupant of such land by an action of law, in accordance with the statute in such case made and provided.

3-6 WILDLIFE FEEDING.

3-6.1 Definitions.

Feed – to give, place, expose, deposit, distribute or scatter any edible material with the intention of feeding, attracting or enticing wildlife. Feeding does not include baiting in the legal taking of fish and/or game.

Person – any individual, corporation, company, partnership, firm, association, or political subdivision of this State subject to municipal jurisdiction.

Wildlife – all animals that are neither human nor domesticated.

3-6.2 Prohibited. No person shall feed, in any public park or on any other property owned or operated by the Borough of Harvey Cedars any wildlife, excluding confined wildlife (for example, wildlife confined in zoos, parks or rehabilitation centers, or unconfined wildlife at environmental education centers).

Any person to be in violation of this ordinance shall be ordered to cease the feeding immediately.

(Ord. No. 2006-02 § 1)

3-7 ISSUANCE OF WORTHLESS CHECKS.

3-7.1 Issuance Prohibited. It shall be unlawful for any person, either for himself or as agent or representative of another person, or as an officer or agent for any corporation, or as a member of a partnership, with intent to defraud, to make, draw, utter or deliver any check, draft or order for the payment of money in a sum not in excess of two hundred ($200.00) dollars, upon any bank or other depository for the payment in full of such instrument upon its presentation although no express representation is made in reference thereto.

3-7.2 Presumption. The making, drawing, uttering or delivering of a check, draft or order as stated in the foregoing subsection shall be prima facie evidence of intent to defraud, and the certificate of protest of nonpayment of same shall be presumptive evidence that there were no funds or insufficient funds in or credit with such bank or other depository and that the person making, drawing, uttering or delivering the instrument knew that there were no funds or insufficient funds in or credit with such bank or other depository.

3-8 BELOW GRADE LOTS.

3-8.1 Prohibited. It shall be unlawful for the owner of any land in the borough to allow the land to be below grade or to permit the presence thereon of any stagnant water or refuse or other obnoxious materials, all of which provide breeding areas for mosquitoes, flies and other insects injurious to the public health.

3-8.2 Notice to Owners. Upon complaint of any resident or property owner, or upon his own motion, the commissioner of public affairs and safety, or his designated agent, shall investigate the condition complained of. If a violation of this section is found to exist, the commissioner of public affairs and safety shall give notice to the owner either personally or by certified mail addressed to him at his address as shown on the last tax duplicate of the borough, requiring him to eliminate the violation and fill the land with clean fill to a street grade height of eight inches, within ten days after giving of the notice.

3-8.3 Cost to be Lien Against Premises. If the owner of the land shall refuse or neglect to comply with the notice within the ten day period, the borough shall be empowered to have the necessary work done. In such event the cost thereof shall be certified to the board of commissioners, which board shall examine the certificate, and if the same be found correct shall cause the cost as shown thereon to be charged against the lands in question. The amount so charged shall forthwith become a lien on the land, to bear interest at the same rate as taxes, and to be collected and enforced by the same officers and in the same manner as taxes.

3-8.4 - 3-8.5 Reserved.

3-9 PENALTY.

3-9.1 Maximum Penalty. For violation of any provisions of this chapter, any other chapter of this revision, or any other ordinance of the borough where no specific penalty is provided regarding the section violated, the maximum penalty upon conviction, shall be a fine not exceeding one thousand ($1,000.00) dollars, or imprisonment for a period not exceeding 90 days, or both. (N.J.S.A. 40:49-5)

3-9.2 Separate Violations. Except as otherwise provided every day in which a violation of any provision of this chapter or any other ordinance of the borough exists shall constitute a separate violation.

3-9.3 Application. The maximum penalty stated in this section is not intended to state an appropriate penalty for every violation. Any lesser penalty, including a nominal penalty or no penalty at all, may be appropriate for a particular case or violation.

3-9.4 Minimum Penalty. The governing body may prescribe that, for the violation of any particular code provision or ordinance, at least a minimum penalty shall be imposed which shall consist of a fine which may be fixed at an amount not exceeding one hundred ($100.00) dollars. (N.J.S.A. 40:49-5)

3-10 MASSAGE PARLORS.

3-10.1 Definitions. As used in this section:

a. "Massage" shall mean the administration by any person or method of exerting or applying pressure, friction, moisture, heat or cold to the human body with a rubbing, stroking, kneading, pounding, or tapping of the human body by any physical or mechanical means for any form of consideration.

b. "Massage parlor" shall mean any establishment or operation wherein a massage is administered or is permitted to be administered when such massage is administered for any form of consideration.

c. "Massager" shall mean any person, male or female, who administers a massage for any form of consideration.

3-10.2 Massage Parlor Prohibited. No person shall operate any establishment or utilize any premises in the Borough of Harvey Cedars as or for a massage parlor.

3-10.3 Employment as Massager Prohibited. No person shall render or perform services as a massager or engage in the business of or be employed as a massager.

3-10.4 Exemptions. The provisions of this section shall not apply to massage or physical therapy treatment given by a registered massager, R.M.T. or A.M.T.A. in:

a. The office of a licensed physician, chiropractor, or physical therapist;

b. In a regular established medical center, hospital, or sanitarium having a staff which includes licensed physicians, chiropractors and/or physical therapists;

c. By any licensed physician, chiropractor or physical therapist in the residence of his patient;

d. By any presently existing massage establishment operated or maintained by a corporation organized under Title 15 of the Revised Statutes of the State of New Jersey.

3-11 ADULT BOOK STORES.

3-11.1 Definitions. As used in this section, the following terms shall have the meanings indicated.

a. "Adult bookstore" shall mean an establishment having as a substantial or significant portion of its stock in trade books, magazines, and other periodicals and films and other viewing materials which are distinguished or characterized by their emphasis on matter depicting, describing, or relating to special sexual activities, sexual conduct, or specified anatomical areas, or an establishment with a segment or section devoted to the sale or display of such material.

b. "Adult motion picture theater" shall mean an enclosed building used for presenting material distinguished or characterized by an emphasis on matter depicting, describing, or relating to specified sexual activities, sexual conduct or specified anatomical areas for observation by patrons therein.

c. "Motion picture" shall mean film or films in which any person is shown, depicted or revealed in any act of sexual conduct or sadomasochistic abuse.

d. "Sadomasochistic abuse" shall mean flagellation or torture by or upon a human being who is nude, clad in undergarments or the condition of one who is nude or so clothed and is being fettered, bound, or otherwise physically restrained.

e. "Sexual conduct" shall mean human masturbation or sexual intercourse between members of the same or opposite sex or between humans and animals, in an act of apparent sexual stimulation or gratification.

f. "Special anatomical area"

    1. Less than completely and opaquely covered human genitals, pubic region, buttock, or female breast below a point immediately above the top of the areola.

    2. Human genitals in a discernibly turgid state, even if covered.

g. "Specified sexual activities"

    1. Human genitals in a state of sexual stimulation or arousal.

    2. Any act of human masturbation, sexual intercourse or sodomy.

    3. Fondling or other erotic touching of human genitals, pubic region, buttocks, or female breasts.

3-11.2 Adult Bookstore or Motion Picture Theater Prohibited. No person shall operate any establishment or utilize any premises in the Borough of Harvey Cedars as or for an adult bookstore or an adult motion picture theater.

3-12 HOURS OF OPERATION OF RETAIL ESTABLISHMENTS.

3-12.1 Findings. It is hereby found and declared that operation of a retail and/or service establishment between the hours of 12:00 midnight and 5:00 a.m. constitutes a detriment to the public health, comfort, safety and welfare of the residents of the borough.

The necessity in the public interest for the provisions, regulations and prohibitions contained in this section, is declared as a matter of legislative determination and public safety; and it is further declared that the provisions, regulations and prohibitions hereinafter contained are in the pursuance of and for the purpose of securing and promoting the public health, safety and welfare, and the peace and quiet of the borough and its inhabitants.

3-12.2 Definitions.

a. As used in this section a "retail establishment" is defined as a commercial enterprise that sells or provides goods and/or services to the general public.

b. *Exceptions*. An establishment that sells alcoholic beverages, which is regulated by the ordinances as set forth in Chapter V of the Revised General Ordinances of the Borough of Harvey Cedars.

c. It is not the intention of this section to alter or amend any of the provisions of said Chapter V.

3-12.3 Hours Regulated. Any retail and/or service establishment may not open for business before 5:00 a.m., nor remain open for business past midnight. No customers may remain on the premises after said establishment is closed.

3-12.4 Violation; Penalty. A violation of this section is punishable by a fine not exceeding five hundred ($500.00) dollars per occurrence.

3-13 PARKS AND RECREATION AREAS.

3-13.1 Activities Prohibited.

a. It shall be unlawful for any person in a public park or recreation area to:

1. Willfully mark, deface, disfigure, injure, tamper with or displace or remove any buildings, bridges, tables, benches, fireplaces, railings, pavings or paving materials, water lines or other public utilities or parts or appurtenances thereof, signs, notices or placards, whether temporary or permanent, monuments, stakes, posts or other boundary markers, or other structures or equipment, facilities or park property or appurtenances whatsoever, either real or personal.

2. Fail to cooperate in maintaining rest rooms and wash rooms in a neat and sanitary condition.

3. Dig or remove any soil, rock, sand, stones, trees, shrubs or plants or other wood or materials, or make any excavation by tool, equipment, blasting or other means or agency.

4. Construct or erect any building or structure of whatever kind, whether permanent or temporary, or run or string any public service utility into, upon or across such lands, except on special written permit issued hereunder.

5. Damage, cut, carve, transplant or remove any tree or plant or injure the bark, or pick flowers or seed of any tree or plant, dig in or otherwise disturb grassed areas, or in any other way injure the natural beauty or usefulness of any area.

6. Climb any tree or walk, stand or sit upon monuments, vases, planters, fountains, railings, fences or upon any other property not designated or customarily used for such purposes.

7. Tie or hitch an animal to any tree or plant.

8. No person shall hunt, molest, kill, wound, trap, abuse, shoot, pursue, or throw missiles at, remove, or have in his possession any animals, reptiles, or birds found within a borough park, nor disturb its habitat within a borough park, or knowingly buy, receive, have in his possession, sell or give away any such animal, reptile, bird or eggs so taken, except as may be specifically provided for, and being in accordance with State/Federal Fish and Game Laws.

9. Throw, discharge, or otherwise place or cause to be placed in the waters of any fountain, pond, lake, stream, or other body of water in any park or tributary stream, storm sewer, or drain flowing into such water, any substance, matter or thing, liquid or solid, which will or may result in the pollution of said waters.

10. Have brought in or shall dump in, deposit or leave any bottles, broken glass, ashes, paper, boxes, cans, dirt, rubbish, waste, garbage, or refuse, or other trash. No such refuse or trash shall be placed in any waters in any park, or left anywhere on the grounds thereof, but shall be placed in the proper receptacles where these are provided; where receptacles are not provided, all such rubbish or waste shall be carried away from the park by the person responsible for its presence, and properly disposed of elsewhere.

11. Drive or park any vehicle on any area except the paved park roads or parking areas, or such areas as may on occasion be specifically designated as temporary areas by the Governing Body. (Ord. No. 2013-05 § 1)

12. Leave a vehicle standing or parked at night in established parking areas or elsewhere in the park areas. No motor vehicle shall be parked in said park areas from one-half hour after sunset until sunrise, except as otherwise permitted.

13. Ride a bicycle without reasonable regard to the safety of others.

14. Leave a bicycle lying on the ground or paving or set against trees, or in any place or position where a person may trip over or be injured by it.

15. Swim, bathe, or wade in any waters or waterways in any park, except in such waters, and at such places as are provided therefor, and in compliance with such regulations as are herein set forth, or may be hereinafter adopted, nor shall any person frequent any waters or places customarily designated for the purpose of swimming or bathing, or congregate thereat when such activities are prohibited by the Governing Body upon a finding that such use of water would be dangerous or otherwise inadvisable. (Ord. No. 2013-05 § 1)

16. Erect, maintain, use or occupy on or in any beach or bathing area any tent, shelter, or structure of any kind, nor shall any guy wire, rope, or extension, brace, or support, be connected or fastened from any such structure to any other structure, stake, rock or other object outside thereof.

17. Bring into or operate any boat, raft, or other water raft, whether motor powered or not, upon any waters, except at places designated for boating by the Governing Body. Such activity shall be in accordance with applicable regulations as are now or will hereafter be adopted. (Ord. No. 2013-05 § 1)

18. Navigate, direct, or handle any boat in such a manner as to unjustifiably or unnecessarily annoy or frighten or endanger the occupant of any other boat.

19. Fish in any area where bathing is permitted.

20. Shooting into park areas from beyond park boundaries is forbidden. No person shall carry or possess firearms of any description, or air-rifles, spring-guns, bow and arrows, slings or any other forms of weapons potentially inimical to wildlife and dangerous to human safety, or any instrument that can be loaded with and fire blank cartridges, or any kind of trapping device, except as may be specifically provided for, and being in accordance with State/Federal Fish and Game Laws.

21. Picnic or lunch in a place other than those designated for that purpose. Attendants shall have the authority to regulate activities in such areas when necessary to prevent congestion and to secure the maximum use for the comfort and convenience of all. Visitors shall comply with any directions given to achieve this end.

22. Violate the regulation that use of individual fireplaces, together with tables and benches follows the generally accepted rule of "First Come, First Served."

23. Use any portion of the picnic area or any of the buildings or structures therein for the purpose of holding picnics to the exclusion of other persons, nor shall any person use such areas and facilities for an unreasonable time, if the facilities are crowded.

24. Leave a picnic area before the fire is completely extinguished and before all trash is placed in the disposal receptacles where provided. If no such trash receptacles are available, then trash shall be carried away from the park area by the picnicker to be properly disposed of elsewhere.

25. Set up tents, shacks, or any other temporary shelter for the purpose of overnight camping, nor shall any person leave in a park, after closing hours, any movable structure or special vehicle to be used, or that could be used for such purpose, such as a house-trailer, camp-trailer, camp-wagon, or the like, except in those areas designated by the Governing Body for those purposes. (Ord. No. 2013-05 § 1)

26. Take part in or abet the playing of any games involving thrown or otherwise propelled objects such as balls, stones, arrows, javelins, horseshoes, quoits, or model airplanes, except in those areas set apart for such forms of recreation. The playing of rough or comparatively dangerous games such as football, baseball and lacrosse is prohibited, except on the fields and courts or areas provided therefor. Roller skating shall be confined to those areas specifically designed for such pastime.

27. Ride a horse, except on designated bridle trails, where permitted. Horses shall be thoroughly broken and properly restrained, and ridden with due care, and shall not be allowed to graze or go unattended, nor shall they be hitched to any rock, tree or shrub.

3-13.2 Conduct in Parks.

a. While in a public park or recreation area, all persons shall conduct themselves in a proper and orderly manner, and in particular, no person shall:

    1. Bring alcoholic beverages, drink same at any time, nor shall any person be under the influence of intoxicating liquor in a park.

2. Have in his possession, or set, or otherwise cause to explode or discharge or burn, any firecrackers, torpedo rockets, or other fireworks, firecrackers, or explosives of inflammable material, or discharge them or throw them into any such areas from lands or highways adjacent thereto. This prohibition includes any substance, compound, mixture, or article that in conjunction with any other substance or compound would be dangerous from any of the foregoing standpoints. At the discretion of the Governing Body, permits may be given for conducting properly supervised fireworks in designated park areas. (Ord. No. 2013-05 § 1)

3. Be responsible for the entry of a dog or other domestic animal into areas clearly marked by the park and recreation commission by signs bearing the words "Domestic Animals Prohibited in this Area." Nothing herein shall be construed as permitting the running of dogs at large. All dogs in those areas, where such animals are permitted, shall be restrained at all times on adequate leashes not greater than six feet in length.

4. Solicit alms or contributions for any purpose, whether public or private.

5. Build or attempt to build a fire except in such areas and under such regulations as may be designated by the Governing Body. No person shall drop, throw, or otherwise scatter lighted matches, burning cigarettes or cigars, tobacco, paper or other inflammable material within any park or on any highways, roads, or streets abutting or contiguous thereto. (Ord. No. 2013-05 § 1)

6. Enter an area posted as "Closed to the Public" nor shall any person use, or abet in the use of any area in violation of posted notices.

7. Gamble or participate in or abet any game of chance, except in such areas, and under such regulations, as may be designated by the Governing Body.
(Ord. No. 2013-05 § 1)

8. Go onto the ice on any of the waters, except such areas as are designated as skating fields, and provided a safety signal is displayed.

9. Upon request to fail to produce and exhibit a permit from the Governing Body he claims to have to any authorized person who shall desire to inspect the same for the purpose of enforcing compliance with an ordinance or rule. (Ord. No. 2013-05 § 1)

10. Disturb or interfere unreasonably with any person or party occupying any area, or participating in any activity under the authority of a permit.

11. Expose or offer for sale any article or thing, nor shall he station or place any stand, cart or vehicle for the transportation, sale or display or any such article or thing. Exception is hereby made as to any regularly licensed concessionaire acting by and under the authority and regulation of the Governing Body. (Ord. No. 2013-05 § 1)

12. Paste, glue, tack or otherwise post any sign, placard, advertisement, or inscription whatever, nor shall any person erect or cause to be erected any sign whatever on any park lands or highways or roads in any park.

3-13.3 Public Use and Availability of Park and Recreation Areas.

a. Except for unusual and unforeseen emergencies, parks shall be open to the public every day of the year during designated hours. The opening and closing hours for each individual park shall be posted therein for public information and shall be determined from time to time by resolution of the Governing Body. (Ord. No. 2013-05 § 1)

b. No person shall, on the grounds of race, color, national origin, religion, age, sex, or handicap be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination in any park facility, program or activity.

c. Discrimination on the basis of residence, including preferential reservation, membership or annual permit systems, is prohibited except to the extent that reasonable differences in admission and other fees may be maintained on the basis of residence in any park.

3-13.4 Permits. Permits for special events in parks shall be obtained by application to the Governing Body in accordance with Section 4-9 entitled Municipal Property Usage Permits and Fees. (Ord. No. 2013-05 § 1 & 2)

3-13.5 Enforcement.

a. The Governing Body and park attendants shall, in connection with their duties imposed by law, diligently enforce the provisions of this section. (Ord. No. 2013-05 § 1)

b. The Governing Body and any park attendant shall have the authority to eject from the park area any person or persons acting in violation of this section. (Ord. No. 2013-05 § 1)

c. The Governing Body and any park attendant shall have the authority to seize and confiscate any property, thing or device in the park, or used, in violation of this section. (Ord. No. 2013-05 § 1)

d. This section shall also be enforced by the Harvey Cedars Police Department.

3-13.6 Reserved. (Ord. No. 2013-05 § 3)

3-13.7 Violations and Penalties. Any person violating any of the provisions of this section or any rule or regulation promulgated hereto, shall upon conviction be subject to the replacement, repair or restoration of any damaged park property, and shall be subject to a fine not exceeding five hundred ($500.00) dollars.

3-13.8 Effect on Other Regulations. This section is in addition to and not in derogation of any other ordinance involving or effecting any of the subject matters contained within the section.

3-14 SMOKING PROHIBITED.

3-14.1 Findings. It is not the policy of the board of commissioners of the Borough of Harvey Cedars to deny anyone the right to smoke. However, the board of commissioners finds that in the areas affected by this section, the right of the nonsmoker to breathe clean air should supersede the right of the smoker to smoke. (Ord. No. 2006-07 § 2)

3-14.2 Definitions.

"Bay beach" shall mean the bathing area located at the west end of West 75th Street and Barnegat Bay, which includes the fenced swimming area, the sandy beach area and the pavilion. (Ord. No. 2006-07 § 3)

"Borough offices" shall mean all Borough owned buildings and interior spaces that are open to the general public, including, but not limited to, the post office, police department and the office of the Superintendent of Public Works. (Ord. No. 2006-07 § 3)

"Municipal building" shall mean the entire building commonly known and designated as the Reynold Thomas Borough Hall located at 7606 Long Beach Blvd., Harvey Cedars, New Jersey. (Ord. No. 2006-07 § 3)

"Ocean beach" means the area of beach bordering the Atlantic Ocean extending the entire length of the borough of Harvey Cedars from William Street to 86th Street and extending eastwardly of the bulkhead line to 100 feet seaward of the mean high water line. (Ord. No. 2013-09 § 1)

"Smoke" shall mean the burning of a lighted cigar, cigarette, pipe or any other matter or substance which contains tobacco.

"Smoking" shall mean the burning of a lighted cigar, cigarette, pipe or any other matter or substance which contains tobacco. (Ord. No. 2006-07 § 3)

"Sunset Park" shall mean the entire recreational area located at West Salem Avenue. (Ord. No. 2013-09 § 1)

3-14.3 Restricted Areas. The carrying or smoking of lighted tobacco products is prohibited in the following areas:

a. The municipal building and borough offices.
b. The bay beach excluding the designated parking areas.
c. Sunset Park excluding the designated parking areas.
d. The ocean beach between the swimming flags of designated swimming areas during the times when lifeguards are on duty.

(Ord. No. 2013-09 § 2)

3-14.4 Enforcement and Penalty. Enforcement shall be through police or citizen complaint. Anyone violating this section shall be subject to the issuance of a summons returnable in the Municipal Court of the Borough of Harvey Cedars, and subject to a minimum fine of fifty ($50.00) dollars. (Ord. No. 2013-09 § 3)

3-15 TOWING.

a. Towing and storage of motor vehicles or vessels which are stolen, abandoned, involved in a crime, involved in a fatal accident or accidents which in the judgment of the police may become fatal, shall be considered police impounds. Said vehicle or vessel shall be towed to the designated police impound property.

b. The cost of the said towing shall be borne by the owner of the vehicle or vessel who shall reimburse the towing contractor for his charges.

c. The Borough of Harvey Cedars shall charge at the rate of ten ($10.00) dollars per day, storage fees for vehicles or vessels stored in its unsecured lot owned and operated by the Borough of Harvey Cedars.

3-16 ALARM SYSTEMS.

3-16.1 Definitions. For the purpose of this section, the following terms, phrases, words and their derivations shall have the meanings given herein:

"Alarm system" shall mean any device designed, when actuated, to produce or emit a sound or transmit a signal or message for the purpose of alerting others to the existence of an emergency situation requiring immediate investigation by alarm, police, fire or other agent.

"False alarm" shall mean the activation of an alarm system by causes other than those to which the alarm system was designed or intended to respond.

"Fire department" shall mean the volunteer fire company or companies located within the Borough of Harvey Cedars.

"Borough chief of police." The borough chief of police or representative shall be responsible for the enforcement of this section and any administrative duties regarding the regulation and control of alarm business, agents and systems in the borough.

3-16.2 Required Inspection and Information.

a. The borough chief of police and/or representative is authorized, at reasonable times and upon oral notice, to enter any premises in the Borough of Harvey Cedars to inspect the installation and/or operation of any alarm device as official business.

b. All business having fire alarms must submit the names, addresses and emergency numbers of persons to contact, if the alarm is activated, to the chief of police and shall update and/or amend this list annually. This list is confidential and shall be used by the police and/or fire department when necessary to make contact due to official business.

3-16.3 False Alarm.

a. The borough chief of police shall keep a written record (the police event/dispatch card) of all false alarms which summon the police department or fire department to investigate.

b. After two false alarms in any new calendar year, the borough chief of police shall charge the owner or lessee of such alarm an administrative inspection fee, as outlined in subsection 3-16.4.

c. The owner, lessee or alarm business, after consulting with the borough chief of police, may appeal said chief of police's decisions under subsections 3-16.2 and 3-16.3 to the township council.

3-16.4 False Alarm Penalty Fees.

a. The following chief of police inspection fees shall be applicable as a result of excessive false alarms:

   1. Zero to two; no fee.

2. Third false alarm; one hundred ($100.00) dollars.
3. Fourth false alarm; one hundred fifty ($150.00) dollars.
4. Fifth false alarm; two hundred ($200.00) dollars.
5. Sixth false alarm; two hundred fifty ($250.00) dollars.
6. Seventh false alarm; three hundred ($300.00) dollars.
7. Eight or more false alarms; three hundred fifty ($350.00) dollars.

b. The reconnection fee as outlined subsection 3-16.3e shall be twenty-five ($25.00) dollars.

3-17 CURFEW.

3-17.1 Established Hours. It shall be unlawful for any minor under the age of 18 years to loiter or remain in or upon any public street, highway, sidewalk, road, playground, alley, park, vacant lot, bathing beach, public building, place of amusement or places of business conducted for profit to which the public is invited or unsupervised places, either on foot or in or upon any vehicle within the Borough of Harvey Cedars between the hours of 12:00 midnight, prevailing time, and 6:00 a.m., prevailing time, on the following day; provided, however, that the provisions of this section shall not apply to any such minor when accompanied by his parent or parents, guardian or other adult person having custody, care or control of such minor.

3-17.2 Responsibility of Parent. It shall be unlawful for any parent, guardian or other adult person having custody, care or control of a minor child under the age of 18 years to knowingly permit such minor to loiter or remain unaccompanied by such parent, guardian or other adult person, upon any public street, highway, sidewalk, road, playground, alley, park, vacant lot, bathing beach, public building, place of amusement or places of business conducted for profit to which the public is invited or unsupervised places, either on foot or in or upon any vehicle within the borough, between the hours of 12:00 midnight, prevailing time, and 6:00 a.m., prevailing time, on the following day.

3-17.3 Exceptions. The provisions of this section shall not apply to any minor under the age of 18 years during the time necessarily required for such minor to travel to his or her residence from:

a. A place of employment at which such minor may be gainfully employed;

b. A school or place of instruction at which such minor may be in bona fide attendance.

c. A place at which a function may be held which shall be or has been sponsored by a school, religious or civic organization, or which shall be or has been a properly supervised event or program, or

d. A place at which a bona fide, supervised social meeting, gathering or assemblage had taken place.

3-17.4 Emergencies. Should any emergency arise necessitating a minor child under the age of 18 years to be dispatched on an errand requiring his presence on a street or in an automobile, or in any public or quasi-public place, as aforesaid, during the curfew hours established, he shall have in his possession a note signed by the parent, guardian or other person having custody, care or control of such minor child under the age of 18 years, stating the nature of the errand, the necessity therefor, the place to which the child is to go, the time and date note was issued and the time required for the errand. Failure to comply with the provisions of this paragraph shall constitute a violation of this section.

3-17.5 Presumption of Violation. If it shall be established that a minor under the age of 18 years loitered or remained in or upon any of the public or quasi-public places in the borough, as above set forth, in violation of this section, then it shall be presumed, in the absence of proof to the contrary, that the parent or other adult person having the care, control or custody of the minor knowingly permitted such conduct on the part of the minor.

3-18 CUTTING OF PAVERS, BRICK AND CONCRETE.

Any person engaged in cutting any stone or masonry products including without limitation, brick pavers, bricks, concrete blocks and stone shall perform such cutting only by using water dampened cutting disks or water dampened cutting saws to control as much as may be practical the dispersion of dust generated by such cutting. (Ord. No. 2005-20 § 1)

3-19 OVERSIZED VEHICLES.

3-19.1 Purpose. The Board of Commissioners of the Borough of Harvey Cedars has found and determined that the operation of oversized vehicles on municipal roadways can create public safety problems to other vehicles, property and persons, together with impeding access to emergencies by emergency vehicles including police, fire and first aid.

3-19.2 Approval for Oversized Vehicles. Before anyone can operate an oversized vehicle on municipal roads, that individual or company must receive prior approval from the Chief of Police or his designee.

The Chief of Police or his designee may deny permission in his discretion, until he deems it safe to operate said oversized vehicle.

3-19.3 Penalty. Failure to obtain said approval shall subject the violator to the penalties set forth in Section 3-9.1

(Ord. No. 2006-19 § 1)

CHAPTER IV

GENERAL LICENSING

4-1 HAWKERS, PEDDLERS AND ITINERANT VENDORS.

4-1.1 License Required. It shall be unlawful for any person or persons to engage in, carry on or conduct the business of hawker, huckster, peddler or itinerant vendor within the limits of the borough without having first obtained a license from the borough clerk so to do, and having paid the license fees therefor as hereinafter fixed. (Ord. No. 2013-04 § 1)

4-1.2 Clerk Authorized to Issue License. The borough clerk is hereby authorized to issue any such license upon payment by the applicant of the proper fee therefor, as hereinafter provided upon the approval of the Police Chief. (Ord. No. 2013-04 § 2)

4-1.3 Validity. Every such license shall remain in force and be valid only for the time therein expressed and all licenses issued within any calendar year shall expire by limitation on December 31 of the year in which issued, and shall apply only to the person to whom granted and shall not be transferable.

4-1.4 Exhibition of License Required. Any person to whom such license is granted as herein provided shall be required to exhibit the license whenever called upon to do so.

4-1.5 Fees. The license fees are hereby fixed at five hundred ($500.00) dollars per annum, provided that no rebate from the amount of such fee shall be allowed for a portion of the year. (Ord. No. 2009-08 § 1)

Each licensee shall furnish a certificate of liability insurance to the municipal clerk as a condition precedent to obtaining said license providing for liability coverage in the minimum amount of one hundred thousand ($100,000.00) dollars each person, three hundred thousand ($300,000.00) dollars each accident and property damage insurance in the amount of fifty thousand ($50,000.00) dollars.

4-1.6 Disposition of Fees. The license fees herein mentioned and imposed are for the purpose of revenue, and all monies received for license fees or fines under this section shall be paid forthwith to the borough treasurer for the use of the borough.

4-1.7 Prohibition. Notwithstanding any other provisions of this section, it shall be unlawful for any person to peddle, sell or otherwise market cooked foods, or food requiring any handling or preparation of any kind, and which are for immediate consumption by the public, such as but not limited to hamburgers and hot dogs. It shall be unlawful for any person to peddle, sell or otherwise market non-individually wrapped, sealed, or otherwise packaged food items of any type.

4-2 LICENSING OF BEACH VEHICLES.

4-2.1 Rules and Regulations. The following rules and regulations shall be observed with respect to the licensing and operation of motor vehicles on the strand or ocean beach of this borough.

4-2.2 Registration Required. Every person desiring to operate a motor vehicle on the strand or ocean beach of this borough must first register the same with the Chief of Police.

The person registering any such vehicle shall be issued a special plate or other identifying insignia serially numbered for identification purposes and to be displayed in a conspicuous place on the vehicle while being operated on the strand or beach. Such registration shall be issued only to vehicles with four-wheel drive known as "beach buggy" or "jeep."

The applicant shall pay a registration fee of fifty ($50.00) dollars. (Ord. No. 2004-17 § 1)

Said registration shall be valid only in the calendar year the registration is issued.
(Ord. No. 2012-06 § 1)

4-2.3 Fishing Tournaments. Every person desiring to operate a motor vehicle on the strand of ocean beach of this borough for the purpose of competing in the annual Long Beach Island Fishing Club Tournament shall pay a registration fee of five ($5.00) dollars per vehicle to be valid only during the tournament.

4-2.4 Reserved.

4-2.5 Time Prohibited. No vehicle shall be operated on the strand or beach front during the months of June, July and August.

4-2.6 Speed Limit. No vehicle shall be operated on the strand or beach front at a speed in excess of fifteen miles per hour.

4-2.7 Driving on Sand. No vehicle shall be operated on the sand dunes and all vehicles shall obtain access to the beach front from the public streets only at places specifically designated by the police department.

All such vehicles shall be required to maintain a reasonable distance from congested bathing beaches or other areas where bathers, surf fisherman or others using the beach are present.

4-2.8 Littering Prohibited. No rubbish, debris or litter of any sort shall be discarded from any vehicle while being operated on the beach front.

4-2.9 Driving at Night. No vehicle shall be operated on the beach front at night without adequate lights.

4-2.10 Safety. Every vehicle being operated on the beach shall be operated in a safe, reasonable and careful manner at all times so as not to endanger the lives and safety of other persons using the beach front.

4-3 BEACH FEES.

4-3.1 Resort Facilities Established. Places of resort are hereby established in the borough for the public health, recreation and entertainment, including beaches, bathing and recreational facilities, safeguards and equipment. Such places of resort shall be located at the ocean front at areas to be designated by the board of commissioners by resolution or by order as safety and attending circumstances require.

4-3.2 Fees for Use of Beaches. In order to provide the necessary funds to improve, maintain and police the places of resort in this borough, including the employment of lifeguards and the purchase of necessary equipment for the protection of bathers, the following fees shall be charged for the registration of persons using the facilities.

a. No fee shall be charged for any child under the age of 12 years. Any senior citizen over the age of 65 years shall be charged a seasonal rate of nine ($9.00) dollars. Any senior citizen shall furnish proof of age by means of a birth certificate, driver's license, passport, or any other officially valid document containing the date of birth.

b. No fees shall be charged to or collected from any individual while attired in street clothing upon the beach.

c. Thirty ($30.00) dollars per person per season provided that application is made to the proper authorities on or before June 15 of the bathing season. (Ord. No. 2011-04 § 1)

d. Forty ($40.00) dollars per person per season in the event that application is made to the proper authority subsequent to June 15 of the bathing season.
(Ord. No. 2011-04 § 1)

e. Twenty ($20.00) dollars per person per week for any week or fractional part thereof of the bathing season. (Ord. No. 2007-04 § 1)

f. Six ($6.00) dollars per person per day, or any fractional part thereof, for the bathing season. (Ord. No. 2011-04 § 1)

4-3.3 Badge Required. No person of the age of 12 years or over shall bathe at or otherwise use the lands, facilities or privileges of any of the municipal bathing beaches without having first acquired and then having conspicuously displayed upon his or her person a proper and effective badge, license or permit to use the beaches.

4-3.4 Badge Fees Waived for Military Personnel. Free daily beach admission shall be provided to active members of the United States Armed Services and their dependents upon the presentation of a valid military status identification card to any badge-checker or Borough personnel. (Ord. No. 2012-06 § 2)

4-4 SCRAP METAL, PRECIOUS METAL AND OTHER SECONDHAND GOODS

4-4.1 Purpose and Intent. The purpose and intent of this chapter is to assist law enforcement officials and victims of crime in recovering scrap metal, stolen precious metals and other secondhand goods by requiring minimum identification, reporting, maintenance, and distribution criteria for licensed dealers in these goods.

No person shall use, exercise, or carry on the business, trade, or occupation of the buying, selling, or pawning of scrap metal, precious metals or other secondhand goods without complying with the requirements of this chapter in the exact manner described herein.

4-4.2 Definitions

"ACCEPTABLE IDENTIFICATION" means a current valid New Jersey Driver's License or Identification Card, a current valid photo driver's license issued by another US state, a valid United States Passport, or other verifiable US Government issued identification, which will be recorded on the receipt retained by the dealer and subsequently forwarded to the local police department on request.

"DEALER" means any person, partnership, limited liability company, corporation, or other entity who, either wholly or in part, engages in or operates any of the following trades or businesses: a scrap metal business involving the buying and/or selling of scrap metal as defined herein, including itinerant businesses and transient buyers as defined herein; the buying for purposes of resale of precious metals, jewelry, or other secondhand goods as defined herein; pawnbrokers as defined herein; itinerant businesses as defined herein. For the purposes of this ordinance, transient buyers, as defined herein, are subject to the same licensing and reporting requirements as any other dealers.

"ITINERANT BUSINESS" means a dealer who conducts business intermittently within the municipality or at varying locations.

"MUNICIPAL CLERK" means the statutory officer whose duties are defined in N.J.S.A. 40A:9-133 and may refer to the duly appointed clerk of the "city," "town," "township," "village," or "borough."

"PAWNBROKER" means any person, partnership, association or corporation: lending money on deposit or pledge of personal property, other than choses in action, securities, or printed evidences of indebtedness; purchasing personal property on condition of selling it back at a stipulated price; or doing business as furniture storage warehousemen and lending money on goods, wares or merchandise pledged or deposited as collateral security.

"PRECIOUS METALS" means gold, silver, platinum, palladium, and their alloys as defined in N.J.S.A. 51:5-1 et seq. and N.J.S.A. 51:6-1 et seq.

"PUBLIC" means individuals and retail sellers, not to include wholesale transactions or transactions between other merchants.

"REPORTABLE TRANSACTION" means every transaction conducted between a dealer and a member of the public in which precious metals, jewelry, or any other secondhand goods as defined herein are purchased or pawned.

"SCRAP METAL" means used, discarded, or previously owned items that consist predominantly of ferrous metals, aluminum, brass, copper, lead, chromium, tin, nickel, or alloys.

"SCRAP METAL BUSINESS" means a commercial establishment, which, as one of its principal business purposes, purchases scrap metal for purposes of resale or processing including transient buyers of scrap metal and itinerant businesses, as defined herein.

"SECONDHAND GOODS" means used goods such as antiques, gold, silver, platinum, or other precious metals, jewelry, coins, gemstones, gift cards, any tools, telephones, typewriters, word processors, GPS devices, computers, computer hardware and software, television sets, radios, record or stereo sets, electronic devices, musical instruments, sporting goods, automotive equipment, collectibles, game cartridges, DVDs, CDs, and other electronically recorded material, firearms, cameras and camera equipment, video equipment, furniture, clothing, and other valuable articles. For the purposes of this ordinance, secondhand goods shall not include goods transacted in the following manner: i) judicial sales or sales by executors or administrators; ii) occasional or auction sales of household goods sold from private homes; iii) auctions of real estate; iv) the occasional sale, purchase, or exchange of coins or stamps by a person at his permanent residence or in any municipally owned building who is engaged in the hobby of collecting coins or stamps and who does not solicit the sale, purchase, or exchange of such coins or stamps to or from the general public by billboard, sign, handbill, newspaper, magazine, radio, television, or other form of printed or electronic advertising.

"SELLER" means a member of the public who sells scrap metal to a dealer or who sells or pawns used goods such as precious metal, jewelry, or other secondhand goods to a dealer.

"TRANSIENT BUYER" means a dealer or an operator of a scrap metal business, as defined herein, who has not been in a registered retail business or scrap metal business continuously for at least six (6) months at any address in the municipality where the dealer is required to register or who intends to close out or discontinue all retail business within six (6) months.

4-4.3 License Requirement for dealers. No person, partnership, limited liability company, corporation, or other entity shall engage in the scrap metal business or in the business of buying, selling, or pawning of precious metals or other secondhand goods, as defined above, within the jurisdiction of the municipality, without having first obtained a license therefore from the Municipal Clerk, which license shall bear a number issued by the Municipal Clerk. The application for a license to the Municipal Clerk shall set forth the name, date of birth, and address of the dealer, whether or not he or she is a citizen of the United States, and whether or not he or she has ever been convicted of any crime(s), disorderly persons offense(s), or municipal ordinance violation(s), and the date(s) thereof. Advertising in any print or electronic media or by sign that any of those articles or secondhand goods referred to in 4-4.2 above are being bought in any location within the municipality shall constitute engaging in business as a dealer of secondhand goods for purposes of this chapter.

Advertising in any print or electronic media or by sign regarding the purchase of scrap metal at any location within the municipality shall constitute engaging in business as a dealer of scrap metal within the jurisdiction of the municipality for purposes of this chapter.

No person, partnership, limited liability company, corporation or other entity shall place or cause to be placed any advertisement for purchase of such items, articles or goods without stating in the advertising the license number issued to a person or entity by the municipality. In any print advertisement, the license number shall appear in type no smaller than eight point in the lower-right-hand corner of the advertisement. In any advertisement in electronic media, the license number shall be visually or audibly stated. Failure to state or indicate the license number shall be a violation of this chapter and shall be subject to the penalties established in 4-4.9.

4-4.4 Application process for dealers; approval or denial

a. Upon receipt of an application completed pursuant to this chapter, the Municipal Clerk shall refer such application to the Chief of Police, who shall make an investigation of the prospective licensee, pursuant to this chapter for the purpose of determining the suitability of the applicant for licensing. The investigation shall include, but shall not be limited to the following:

    1. The experience of the applicant in the business of purchase and sale of scrap metal and those articles or goods referred to in 4-4.2 above, although nothing in this section shall be construed to warrant denial of a license solely on the basis of lack of experience;
    2. The reputation of the applicant for fair dealing in the community, which shall be made among credible sources, which sources shall be disclosed to the applicant in the event of a denial of any license;
    3. Any criminal record of the applicant including any past convictions for any crime(s), disorderly persons offense(s), or municipal ordinance violation(s) within this or any other jurisdiction. The Chief of Police may, as part of the application process, require a fingerprint criminal background check through the Federal Bureau of Investigation, Criminal Justice Information Services Division, which may require an additional fee from the applicant.
    4. The type of operation contemplated to be conducted by the applicant, particularly whether the business is to be operated from a fixed location, whether it is to be conducted from a location primarily devoted to the purchase and sale of scrap metal and precious metal or other secondhand goods, and other factors bearing on whether the licensed business will be of a fixed and permanent nature. This section shall not be construed to require denial of any license solely on the grounds that the business is not from a fixed location or that the applicant is a transient buyer or itinerant business, however applicants who fall under the category of a transient buyer or itinerant business must state with specificity on the license application the business address where transaction records required by 4-4.6(D) of this chapter will be stored as well as the location where scrap metal and purchased goods will be retained during the mandatory inspection period required under 4-4.6(A).

b. The Chief of Police shall complete any investigation pursuant to this chapter within thirty (30) days of the submission of the application to the Municipal Clerk, fully completed by the applicant. If a criminal record check has been requested within the thirty-day period and has not been received by the Chief of Police within that period, the Chief of Police may, if all other factors are satisfactory, recommend a conditional issuance of the license subject to the finding regarding criminal record.

c. The Chief of Police shall, upon completion of the investigation, recommend "grant" or "denial" of the license to the Municipal Clerk, who shall grant or deny the license. Any recommendation of the Chief of Police shall be in writing and, in the case of a recommendation of denial, shall state fully and specifically the reasons for said recommendation. If the Municipal Clerk accepts the recommendation of the Chief of Police to deny any license, the applicant shall be notified in writing within ten (10) days of such denial and the Clerk shall forward to the applicant a statement of the reason or reasons for such denial.

d. Grounds for recommending denial of license may include reliable information indicating that the applicant has in the past engaged in fraudulent or deceptive business practices in a business identical to or similar to a scrap metal business or a dealer in secondhand goods. A license may be denied if the investigation reveals a conviction of the applicant or any of its principal officers or employees of any crime(s), disorderly persons offense(s) in which deceit or misrepresentation is an element; or any conviction of any crime(s), disorderly persons offense involving theft or the receiving of stolen goods, regardless of whether the applicant was a principal, accessory before the fact, after the fact, or a co-conspirator; or any prior municipal ordinance violation(s) by the applicant or any of its principal officers or employees in this or any other jurisdiction. A license may be denied if the applicant fails to demonstrate an ability to satisfactorily comply with the electronic reporting requirements specified in 4-4.5, the retention and inspection requirements of 4-4.6, or any other portion of this chapter. Upon receipt of the recommendation of the Chief of Police, the Municipal Clerk shall issue or deny the license accordingly, contingent upon the receipt of a bond as required by 4-4.8 of this chapter.

e. Whenever any application for a permit is denied, the applicant shall be entitled to a hearing before a three-person panel appointed by the Chief of Police, at which time the applicant shall be permitted to introduce such evidence as may be deemed relevant to such denial. Any applicant exercising the right to appeal must file a written notice of appeal within ten (10) days of receiving written notice of denial of a license to act as a scrap metal business or a dealer of secondhand goods.

f. No license shall be assignable by the dealer.

4-4.5 Identification of seller; recordkeeping requirements for dealers

For every reportable transaction between a dealer and the public, the dealer shall be required to do as follows:

a. Require of each member of the public selling scrap metal and each person selling or pawning precious metals or other secondhand goods acceptable identification as defined above in 4-4.2.

b. Require each seller to execute a "Declaration of Ownership," which shall contain the following certification: "*My signature confirms that I am the sole legal owner of and am legally authorized to sell the goods being sold. By signing below I certify that I did not obtain and do not possess the identified goods through unlawful means. I am the full age of eighteen years and the identification presented is valid and correct*."

c. Record and issue to each person selling or pawning such goods on a sequentially numbered receipt:

1. the name, address, and telephone number of the purchaser, including the clerk or employee of the licensee making the purchase;
2. the name, address, date of birth, and telephone number of the seller or sellers;
3. a photographed recording of the seller in a format acceptable to the Chief of Police, along with a physical description of the seller, including height and weight (approximate), hair color, eye color, facial hair, if any, etc.;
4. a photographed recording of the seller's presented acceptable identification, as set forth in 4-4.2, in a format acceptable by the Chief of Police;
5. a photographed recording of all items sold in a format acceptable by the Chief of Police. When photographing, all items must be positioned in a manner that makes them readily and easily identifiable. Items should not be grouped together when photographing or imaging. Each item should have its own photograph;
6. the receipt number;
7. for precious metals or other secondhand goods a detailed, legible description of the item(s) and the manufacturer and model of the item(s) if known; in the case of jewelry, the descriptions must include style, length, color, design, and stones, if any; any identifying marks, including numbers, dates, sizes, shapes, initials, names, monograms, social security numbers engraved thereon, serial numbers, series numbers, or any other information, which sets apart the particular object from others of like kind;
8. for scrap metal, a full description of the item(s) purchased, including but not limited to the manufacturer, type, amount, form, model, any identifying marks, numbers, dates, sizes, shapes, initials, monograms, and serial numbers;
9. the price paid for the purchase or pawn of the item(s);
10. if precious metals, the net weight in terms of pounds Troy, pennyweight (Troy) or kilograms/grams; fineness in terms of karats for gold, and sterling or coin for silver, in accordance with N.J.S.A. 51:5-1, N.J.S.A. 51:6-1 et seq.;
11. for scrap metal, the make, model and license plate of the motor vehicle delivering the scrap metal;
12. the time and date of the transaction.

d. The information outlined in subsection (C) above, must additionally be electronically documented through the use of an electronic database system authorized by the Chief of Police. Installation and training in this software will be made mandatory as of the effective date of this chapter and licensing will be conditional upon compliance with proper use of the system as described herein. These records shall be subject to the inspection of any authorized police officer or any sworn law enforcement officer acting in the performance of their duty as set forth in subsection (F) below. Through the use of applicably required computer equipment, and using the electronic format approved by the Chief of Police, every dealer shall enter all reportable transactions into the electronic database by the end of the close of business on the same date as the purchase or receipt of property for pawn or consignment. The information entered must contain all pertinent information outlined in subsection (C) above.

e. In the event of a database failure, or dealer's computer equipment malfunction, all transaction information is required to be submitted on paper forms approved by the Chief of Police within twenty-four (24) hours from the date of purchase. In the event that paper forms are used, the dealer is responsible to enter all transaction information set forth in subsection (C) above into the database as soon as possible upon the dealer's equipment being repaired or replaced, or the database coming back into service. Failure by the dealer to properly maintain computer equipment in a reasonable fashion, or failure by the dealer to replace faulty computer equipment, may result in the dealer being cited for a violation of this chapter and subsequently being subject to the penalties for doing so including revocation of the dealer's license as described in 4-4.6.

f. It shall be the requisite duty of every dealer, and of every person in the dealer's employ, to admit to the premises during business hours any member of the police department to examine any database, book, ledger, or any other record on the premises relating to the reportable transactions of scrap metal, precious metals or other secondhand goods, as well as the articles purchased or received and, where necessary, relinquish custody of those articles as provided in 4-4.6. Itinerant businesses and transient buyers will be responsible for notifying the Chief of Police of the address where these records and articles will be stored.

g. For all reportable transactions between a dealer and a member of the public, the dealer may only accept delivery of scrap metal for purchase by motor vehicle and the license plate of the motor vehicle must be recorded as provided in subsection (C) above.

h. No scrap metal business shall, except as provided in subsection (I) below, purchase:

1. any metal marked with identification of a telephone, cable, electric, water, other public utility, or other government entity;
2. any utility access or water meter cover;
3. any street light pole or fixture;
4. any road or bridge guard rail;
5. any highway or street sign, traffic directional or control sign, or light signal;
6. any metal beer keg that is clearly marked as being the property of the beer manufacturer;

7. any historical marker, grave marker, or burial vase;
8. any central air conditioner evaporator coils or condensers or catalytic converters that are not attached to a vehicle; or
9. any metal bleachers or benches.

i. The provisions of subsection (H) shall not apply to purchases of scrap metal from entities who manage such metal in the ordinary course of business. These entities include manufacturing, industrial, government, contractor, individual, or other commercial vendors or scrap metal businesses that generate or purchase or process scrap metal in the ordinary course of business.

4-4.6 Retention; suspension and revocation; other restrictions

a. All scrap metal purchased by a dealer in a reportable transaction and all precious metals and other secondhand goods purchased, received for pawn, or received for consignment as described above, are to be made available for inspection by the Chief of Police or designee thereof at the designated business address for a period of at least fifteen (15) calendar days from the date the transaction information is actually reported to the Chief of Police in the approved manner described above in 4-4.5. All scrap metal, precious metal or other secondhand goods subject to inspection must remain in the same condition as when purchased or received for pawn and shall not be sold, disposed of, changed, modified, or melted by the dealer until the fifteen-day retention period has expired. Itinerant businesses and transient buyers will be responsible for notifying the Chief of Police of the location where the purchased item(s) are being held.

b. Upon probable cause that goods held by a dealer are stolen, and providing that the seller signed the mandatory statement required by 4-4.5(B) upon the sale of those goods, a law enforcement officer with jurisdiction should charge the seller with theft by deception under N.J.S.A. 2C:20-4 on behalf of the dealer, who shall be considered the "victim" of the offense for the purposes of N.J.S.A. 2C:43-3. The officer shall seize the goods, provide the dealer with a receipt, and issue a criminal complaint against the seller for theft by deception and any other criminal charges for which the officer has probable cause that the seller has committed. If convicted of theft by deception and if so found by an order of a court of valid jurisdiction, the seller will be responsible for providing restitution to the dealer under N.J.S.A. 2C:44-2 for the amount paid by the dealer to the seller for the stolen goods.

c. If market conditions would create a hardship on the dealer by holding scrap metal, precious metals or other secondhand goods for such period, the dealer may present the property to the Chief of Police in order that it may be photographed and, if deemed necessary by the Chief of Police, an investigation may be implemented. The Chief of Police shall have the authority to grant the dealer a waiver of the requirement under this section.

d. In addition to all other reporting requirements, every dealer shall maintain for at least five years, a written record of all purchases of scrap metal, precious metals and other secondhand goods in the form prescribed in 4-4.5(C).

e. No dealer shall purchase any item covered by this chapter from any person under the age of 18 or in the absence of providing prior notification of such purchase to the Chief of Police or business designee identifying the individual from whom such purchase is to be made and the item to be purchased.

f. Suspension. The Chief of Police or a designee thereof is hereby empowered to temporarily suspend for cause any dealer's license and rights to operate there under. This penalty shall be in addition to any fines and penalties the dealer may incur pursuant to 4-4.9 of this chapter.

   1. Grounds for suspension. The following shall constitute grounds for suspension: violation of any provisions of this chapter, including failure to comply with any training or fees associated with the electronic database software system in use by the municipality; violation of any other statute, regulation, or local ordinance; or any other illegal, improper, or fraudulent activity.
   2. Procedure for suspension. Upon determination that appropriate grounds exist and that a suspension is warranted, the Chief of Police or a designee thereof shall issue a written notice of suspension of license to the offending dealer and to the Municipal Clerk, which shall set forth the grounds for the suspension and notify the dealer of his or her right to appeal pursuant to subsection (H). A temporary suspension shall issue immediately, pending the outcome of any appeal taken. Suspended dealers must immediately cease all purchasing and/or selling of scrap metal and the engaging in the business of purchasing for resale, receiving for pawn, and/or selling of precious metals and/or other secondhand goods in the municipality until reinstatement.
   3. Reinstatement. Suspended dealers may be reinstated only when the grounds leading to the suspension have, in the determination of the Chief of Police or the Chief's designee, been cured, corrected, or appropriately rectified; or if reinstatement is deemed appropriate by the three-person panel appointed by the Chief of Police, upon the timely filing of an appeal as provided in subsection (H).

g. Revocation. A license issued under this chapter may be revoked by the Municipal Clerk upon written recommendation from the Chief of Police or the Chief's designee that the dealer is no longer qualified, capable or competent to comply with the requirements of this chapter. This penalty shall be in addition to any fines and penalties the dealer may incur under 4-4.9.

   1. Grounds for revocation. The following shall constitute grounds for revocation: a third violation under this chapter; a second violation under this chapter less than one year after an earlier violation under this chapter; conviction for a criminal offense within this or any jurisdiction; or multiple violations of any other regulations or local ordinances within this or any jurisdiction.
   2. Procedure for revocation. Upon a determination that appropriate grounds exist and that a revocation is warranted, the Chief of Police of the Chief's designee shall so report to the Municipal Clerk in writing. A temporary suspension will immediately and automatically issue, if one is not already in effect, pending the outcome of the charge. A three-person panel, appointed by the Chief of Police, shall review the stated grounds for revocation and the panel shall issue an appropriate disposition of either

suspension, revocation, or reinstatement. If the panel determines that revocation is the appropriate disposition, it shall set forth the grounds for the same in writing in the form of a notice of revocation, which shall be provided to the dealer. The notice shall advise the dealer of the right to appeal. If the panel determines that suspension is the appropriate disposition, it shall provide the dealer with a notice of suspension that shall advise the dealer of the right to appeal. Following revocation, the dealer must relinquish his or her license and must immediately and indefinitely cease operating a scrap metal business or as a dealer of precious metals or other secondhand goods within the municipality.

h. Appeal. Any applicant wishing to appeal an issuance of a suspension or revocation shall be entitled to a hearing before a three-person panel, appointed by the Chief of Police, at which time the applicant shall be permitted to introduce such evidence as may be deemed relevant to such suspension or revocation. Any applicant exercising the right to appeal must file a written notice of appeal within ten (10) days of receiving written notice of revocation or suspension of license.

i. A dealer shall have the right to change the location of the licensed business, provided that he or she notifies the Municipal Clerk, in writing, of the street address of said new location.

4-4.7 Bond

Each dealer covered under this chapter shall deliver a bond to the Municipal Clerk executed by the applicant as principal and executed by a surety company authorized to do business under the laws of the State of New Jersey as surety. The bond shall be subject to review and approval by the Municipal Attorney, as defined in N.J.S.A. 40A: 9-139, and shall be in the penal sum of $10,000, conditioned for the due and proper observance of and compliance with the provisions and requirements of all ordinances of the municipality in force or which may be adopted respecting the conduct of this business and conditioned also that the bond shall be and remain for the benefit of any person or persons who shall have received judgment against the dealer licensed under this chapter, which damage shall be established by a judgment of a court of proper jurisdiction. Said bond shall contain the following language: “The obligation of this bond shall, in addition to the [party municipality], be and remain for the benefit of any person who shall obtain a judgment against obligor as a result of damage sustained in operation pursuant to any license granted under this chapter.” Said bond shall be kept for a minimum of one year from the date of issuance of license and must be renewed annually along with the license.

4-4.8 Fees; period of license validity

A nonrefundable fee for initial application and license for an operator of a scrap metal business or for a pawnbroker or a dealer in precious metals or other secondhand goods, as covered under this chapter, is $300. The annual renewal fee for a license is $250. These fees are separate from and in addition to any fees the dealer must pay in relation to the mandatory electronic database system designated by the Chief of Police, as provided by 4-4.5(D) of this chapter. Payments are to be made in the manner directed by the Municipal Clerk. A license is valid for a one-year period from the date of its issuance.

4-4.9 Violations and penalties

Violation of any provision of this chapter by any dealer shall, upon conviction thereof, be punished by a fine not in excess of the limitations of N.J.S.A. 40:49-5 or by a term of imprisonment or a period of community service not exceeding ninety (90) days in addition to a suspension or revocation of operating license as provided in 4-4.6(F) and 4-4.6(G) above. Each and every violation shall be considered a separate violation. Each violation shall result in an additional suspension period. Any person who is found guilty of violating the provisions of this chapter within one year of the date of a previous violation and who was fined for the previous violation may be sentenced by the court to an additional fine as a repeat offender and, in addition, may be subject to revocation proceedings as provided in 4-4.6(G). The additional fine imposed as a repeat offender shall not be less than the minimum or exceed the maximum fine provided herein, and same shall be calculated separately from the fine imposed for the violation of this chapter.

4-4.10 Time limit for conformance; repealer; severability

Any person, partnership, limited liability company, corporation, or other entity engaging in the scrap metal business or in the business of a pawnbroker, or a dealer in precious metals or other secondhand goods shall conform to the provisions of this chapter within ninety (90) days following the effective date of this chapter.
(Ord. No. 2014-17 § 2)

4-5 GARAGE SALES, LAWN SALES, ATTIC SALES, RUMMAGE SALES, FLEA MARKET SALES OR OTHER CASUAL SALES.

4-5.1 Definitions. Words and phrases defined. The following words and phrases as used in this section shall have the following meanings and definitions:

a. "Garage sales" shall mean and include all sales entitled "garage sale", "lawn sale", "attic sale", "rummage sale", or "flea market sale", or any similar casual sale of tangible personal property which is advertised by any means whereby the public at large is or can be made aware of such sale.

b. "Goods" is meant to include any goods, warehouse merchandise or other property capable of being the object of a sale regulated hereunder.

c. "Person" shall mean and include individuals, partnerships, voluntary associations, and corporations.

4-5.2 License Required; Fee; Maximum Number; Display.

a. It shall be unlawful for any person to conduct a garage sale in the Borough of Harvey Cedars without first filing with the borough clerk the information hereinafter specified and obtaining from such clerk a license so to do, to be known as a "garage sale license". The fee for such license shall be and the same is hereby fixed at five ($5.00) dollars. Such filing shall be made at least one week prior to the requested sale date.
b. Such license shall be issued to any one person a maximum of two (2) times within a calendar year and no such license shall be issued for more than two consecutive calendar days. Charitable and religious and civic organizations may be allowed more than two licenses with the approval of the Borough Board of Commissioners.
(Ord. No. 2009-03 § 1)
c. Each license issued under this section must be prominently displayed on the premises upon which the garage sale is conducted throughout the entire period of the licensed sale.

4-5.3 Information to be Filed with Clerk. The information to be filed with the borough clerk pursuant to this section shall be as follows:

a. Name of person, firm, group, corporation, association or organization conducting the sale;

b. Name of owner of the property on which sale is to be conducted and consent of owner if applicant is other than owner;

c. Location at which sale is to be conducted;

d. Number of days of sale;

e. Date, nature of any past sale;

f. Relationship or connection applicant may have with any other person, firm, group, organization, association or corporation conducting such sale and the date or dates of such sale;

g. Whether or not applicant has been issued any other vendor's license by any local, State or Federal agency;

h. Sworn statement or affirmation by the person signing that the information therein given is full and true and known by him to be so.

4-5.4 Hours of Sale. All garage sales must be conducted between the hours of 7:00 a.m. and 6:00 p.m. only. (Ord. No. 2009-03 § 2)

4-5.5 Sign Regulations. No sign for the advertisement of the sale shall be posted or erected any earlier than one week prior to sale and all signs shall be removed within 24 hours after the completion of the sale. (Ord. No. 2009-03 § 3)

4-5.6 Exceptions. The provisions of this section shall not apply to or affect the following persons or sales:

a. Persons selling goods, pursuant to an order or process of a court of competent jurisdiction;

b. Persons acting in accordance with their powers and duties as public officials;

c. Any person selling or advertising for sale an item or items of personal property which are specifically named or described in the advertisement and which separate items do not exceed five in number.

d. Any publisher of a newspaper, magazine or other publication or other communication media who publishes or broadcasts in good faith without knowledge of its false, deceptive or misleading character or without knowledge that the provisions of this section have not been complied with;

e. Any sale conducted by any merchant or mercantile or other business establishment from or at a place of business wherein such sale would be permitted by the zoning regulations of the Borough of Harvey Cedars or under the protection of the nonconforming use section thereof or any other sale conducted by a manufacturer, dealer or vendor and which sale would be conducted from properly zoned premises and not otherwise prohibited by the revised ordinances.

4-5.7 Regulations for Bedding and Refrigerators.

a. It shall be unlawful for any person to offer for sale mattresses, bedsprings, cots, lounges and sofas in any garage sales authorized under this section without first complying with the appropriate section of N.J.S.A. 26:10-1 through 26:10-18 with respect to the labeling, sterilizing and disinfecting of the mattresses, bedsprings, cots, lounges and sofas.

b. No refrigerator or icebox having a capacity of one and one-half cubic feet or more, with an attached lid or door which may be opened and fastened shut by means of an attached latch, lock or other similar device, shall be displayed, offered for sale or sold at a garage sale unless the attached lid or door shall first be removed and detached therefrom.

4-5.8 Waive Requirements for Certain Organizations. Upon application by any bona fide charitable, eleemosynary, educational, cultural or governmental institution or organization, the mayor and board of commissioners may waive any or all of the requirements of this section; provided, however, that the burden of establishing eligibility for waiver shall be on the organization or institution applying for such waiver.

4-5.9 Enforcement: Maintain Good Order and Decorum. This section shall be enforced by the police department. It shall be the duty of members of the police department to investigate any violations of this section coming to their attention, whether by complaint or arising from their own personal knowledge, and if a violation is found to exist, they shall prosecute a complaint before the local municipal court pursuant to the provisions of this section. It shall be the duty of the police department of the Borough of Harvey Cedars to bring to the attention of the mayor and board of commissioners for further investigation and violations of this section of which the police department becomes aware during the course of its normal duties.

The person to whom such license is issued and the owner or tenant of the premises on which such sale or activity is conducted shall be jointly and severally responsible for the maintenance of good order and decorum on the premises during all hours of such sale or activity. No such person shall permit any loud or boisterous conduct on such premises nor permit vehicles to impede the passage of such traffic on any roads or streets in the area of such premises. All such persons shall obey the reasonable orders of any member of the police or fire departments of the Borough of Harvey Cedars in order to maintain the public health, safety and welfare.

4-5.10 Violation and Penalty. Any person, association or corporation conducting any such sale or similar activity without being properly licensed therefor or who shall violate any of the other terms and regulations of this section shall upon conviction be subject to a fine of not more than five hundred ($500.00) dollars or to imprisonment for not more than 30 days or to both such fine or imprisonment. Each day that such sale shall continue without being duly licensed shall be considered a separate violation.

4-6 LICENSING OF VESSELS ON MUNICIPALLY OWNED BAYFRONT PROPERTIES.

4-6.1 Rules and Regulations. The following rules and regulations shall be observed with respect to the licensing of vessels beached on municipally owned bayfront properties.

4-6.2 Registration Required. Every person desiring to beach a vessel on any municipally owned bayfront property shall first apply for a permit from the Chief of Police.

The person applying for such permit shall be issued a special identification insignia serially numbered for identification purposes, which shall be displayed on a conspicuous place on the vessel while said vessel is beached. Such permit shall be issued to non-motorized vessels only. (Ord. No. 2013-04 § 3)

4-6.3 Permit Information. An individual applying for said permit shall provide the Chief of Police with his or her address and telephone number, whether it be local or otherwise, and shall keep the Chief of Police informed of any changes therein during the permit period. (Ord. No. 2013-04 § 3)

4-6.4 Damage to Property. Any such vessel as previously described shall be properly secured at all times so as to prevent damage to municipal property and/or private property. Any damage caused by a beached vessel shall be the responsibility of the owner and permittee of said vessel.

Any person applying for said permit agrees to hold the borough harmless for any damages or injuries to himself or his vessel. The permitee also agrees to hold harmless and indemnify the borough for any injuries or damages to third parties.

4-6.5 Fees. The applicant shall pay a registration fee of $0 to $500 as determined and adopted annually by resolution of the Governing Body. Said permit and fee shall be valid from May 15 through October 1. (Ord. No. 2013-04 § 4)

4-6.6 Time Prohibited. No vessel shall be beached or stored on municipal property from October 2 through May 14.

4-6.7 Fines. Any person violating any subsection of this section shall be subject to a fine not exceeding five hundred ($500.00) dollars.

4-6.8 Removal of Vessels. The borough retains the right to direct the removal of any vessel so permitted from its lands upon 24 hours notice for a period of time not to exceed ten days.

4-7 ACTIVITY COMMITTEE FEES.

The following activity committee fees shall constitute the range of fees for the activities specified below:

Event space rental	$ 35.00	to	$250.00****
Table/chair rentals	$ 5.00	to	$ 15.00
Decals	$ 1.00	to	$ 10.00
Neon Necklaces	$ 1.00	to	$ 10.00
Books	$ 5.00	to	$ 25.00******
Posters	$ 1.00	to	$ 10.00
Advertising	$200.00	to	$400.00*
Plants	$ 5.00	to	$ 25.00
Event Admission Ticket	$ 1.00	to	$ 25.00****
Event Entry Fee	$ 1.00	to	$ 5.00****
Shirts, tank tops	$ 3.00	to	$ 35.00****
Hats	$ 5.00	to	$ 20.00
Pony Rides	$ 1.00	to	$ 10.00
Magnets	$ 1.00	to	$ 10.00*
Flags	$ 1.00	to	$ 20.00*
Bags / totes	$ 7.00	to	$ 15.00**
Towels	$ 10.00	to	$ 25.00**
Patches	$ 2.00	to	$ 10.00**
Refreshments	$ 0.25	to	$ 10.00***
Keychains	$ 1.00	to	$ 10.00****
Pins	$ 1.00	to	$ 10.00*****
Memorial Benches	$ 0.00	to	$900.00******

(Ord. No. 2004-12 § 1 & 2)
*(Ord. No. 2006-16 § 1)
**(Ord. No. 2007-12 § 1)
***(Ord. No. 2010-15 § 1)
****(Ord. No. 2011-10 § 1)
*****(Ord. No. 2014-09 § 1)
******(Ord. No. 2015-07 § 1)

4-8 FEES.

4-8.1 Fees Established. The following fees shall be charged:

a.	Zoning ordinance book	$15.00
b.	Certified list of property owners	$10.00 per lot
c.	Returned check fee	$20.00
d.	Stop payment on check fee	$20.00
e.	Bid specification fees (Ord. No. 2009-03 § 4)	$10.00 - $100.00
f.	Duplicate tax bill fee	$1.00

g. Copies.

1. There is hereby established a fee for furnishing photocopies of any record or other document kept in the normal course of business and except as hereinafter provided at the following rates:

   i. The fee for letter size page or smaller shall be $0.05 per page.

   ii. The fee for legal size page or larger shall be $0.07 per page. If the page exceeds the legal size page then the Borough may charge its actual costs exceeding the $0.07 per page. If that be the case the actual cost for duplicating the record shall be the cost of materials and supplies used to make a copy of the record but shall not include the cost of labor or other overhead expenses associated with making said copy except as provided in subsection b of this Ordinance.

2. A special service charge may be imposed if the printed matter cannot be copied by ordinary document copying equipment in ordinary business size or involves an extraordinary expenditure of time and effort to accommodate the request. The Borough shall charge a special service charge in addition to the actual duplicating of the record which shall be reasonable and shall be based upon the actual direct costs of providing the copy or copies. The Borough shall establish rates for duplication of particular records when the actual cost of copying exceeds the foregoing rates which shall be established in advance by Ordinance. The requester shall have the opportunity to review the rates with the Clerk and object to the charge prior to being incurred.

3. Requesters shall have the right to copy documents in mediums other than those used by the Borough of Harvey Cedars to maintain the records. If a request involves a request for a record involving the following, the agency may charge a special charge that is reasonable and based on the cost of extensive use of information technology,

or for labor cost of personnel providing the service that is actually incurred by the agency or attributable to the agency for programming, clerical, and supervisory assistance, or both, provided:

i. A request for a medium not routinely used by the Borough.

ii. A request that is not routinely developed or maintained by the Borough.

iii. A request that requires a substantial amount of manipulation or programming of information technology.

4. Individuals requesting duplicate cassettes of Borough recorded information shall pay a fee of $195 dollars per hour for cassette conversion.

5. Access to electronic records in non-printed material shall be provided free of charge, but the Borough shall charge for the actual costs of any needed supplies for said purposes. Computer discs shall be charged at the rate of $3 dollars per disc.

(Ord. No. 2010-15 § 2)

h.	Duplicate tax sale certificate fee	$100.00
i.	Street openings	$150.00
j.	Certified copy	$5.00
k.	Flood map determination fee	$3.00
l.	Tennis court fee	$10.00 per hour
m.	Zoning map copy	$2.00 - $5.00
n.	Public property obstruction removal fee	$20.00 - $50.00
o.	Set of property address labels	$35.00
p.	Facsimile machine usage (Ord. No. 2010-15 § 2)	$4.00 for the first page $1.00 per page for all additional pages
q.	Lifeguard in Training Program Fee (Ord. No. 2014-09 § 2)	$50.00 - $200.00 per session
r.	Re-Entry Placard (Ord. No. 2010-15 § 2)	$50.00 per placard upon proof of residency

s. Public property clean-up deposit

$50.00 - $200.00

Upon approval of a facility use request, a refundable deposit may be required at the discretion of the Board of Commissioners for clean-up purposes. Said deposit shall be refunded upon inspection of the facility. Deposits shall be dependent on the size and nature of the event.

(Ord. No. 2010-15 § 2)

t. Copies other than public records

$.50 per page for first 10 pages
$.25 per page for all additional pages

(Ord. No. 2010-21 § 1)

u. Motor Vehicle Accident Reports.

Every citizen shall have the right, during regular business hours and under supervision, to inspect and copy accident reports and shall also have the right in person to purchase copies of the accident report for the fee as set forth in subsection g. above.

If copies of reports are requested other than in person, an additional fee of $5.00 shall be added to the copy fees as set forth in subsection g. above.

(Ord. No. 2012-01 § 1)

4-9 MUNICIPAL PROPERTY USAGE PERMITS AND FEES.

4-9.1 Permit Required. No person or group shall be permitted to conduct any private, commercial, or non-profit event or conduct any type of business upon municipal owned property without first obtaining a permit. Permits shall be obtained by applying to the Governing Body in accordance with the application form and instructions on file in the office of the Borough Clerk. The application shall contain no less than the following information:

a. The name and address of the applicant.
b. The name and address of the person, persons, corporation or associations sponsoring the activity, if any.
c. The day and hours for which the permit is desired.
d. The specific location of municipal property or portion thereof for which such permit is desired.
e. Any other information which the Governing Body shall find reasonably necessary for a fair determination as to whether a permit should be issued.

4-9.2 Permit Provisions.

a. The permittee shall be bound by all applicable ordinances fully as though the same were inserted in said permits.
b. The person or persons to whom the permit is issued shall be liable for all loss, damage, or injury sustained by any person whatever by reason of the negligence of the person or persons to whom such permit shall have been issued. The Governing Body shall have the right to require any permittee to submit evidence of liability insurance covering injuries to members of the general public arising out of such permitted activities in such amounts as may be from time to time determined by the commission prior to the commencement of any activity or issuance of any permit.
c. The Governing Body or Chief of Police shall have the authority to revoke a permit upon a finding of violation of any rule or ordinance, or upon good cause shown.

4-9.3 Fee for Permit. All approved permits shall be charged a fee of $0 to $500 as more specifically established and adopted annually by resolution of the Governing Body and available in the office of the Borough Clerk. In addition to any fee, any permits issued are subject to refundable deposits.

4-9.4 Fines. Any person or persons violating any subsection of this section shall be subject to a fine not exceeding five hundred ($500.00) dollars.

(Ord. No. 2013-04 § 5)

CHAPTER V

ALCOHOLIC BEVERAGE CONTROL

5-1 PURPOSE.

This chapter is enacted to regulate the sale and transportation of alcoholic beverages in the Borough of Harvey Cedars in accordance with the provisions of an act of the Legislature of the State of New Jersey entitled An Act Concerning Alcoholic Beverages comprising Chapter 436 of the Laws of 1933, its supplements and amendments, and also comprising N.J.R.S. 33:1-1 et seq., and in accordance with the rules and regulations of the State Director of Alcoholic Beverage Control.

5-2 DEFINITIONS.

For the purpose of this chapter, words and phrases herein shall have the same meanings as in R.S. 33:1-1 et seq., and the rules and regulations of the Director of the Division of Alcoholic Beverage Control.

5-3 LICENSES.

5-3.1 Laws Applicable. All applications for licenses, all licenses issued and all proceedings under this chapter shall be in accordance with the act, rules and regulations referred to in section 5-1 and all other applicable laws of the State of New Jersey or the United States.

5-3.2 Issuing Authority. All licenses required by this chapter shall be issued by the mayor and borough council, which shall also administer the provisions of this chapter.

5-3.3 License Required. No person shall sell or distribute alcoholic beverages within the borough without obtaining a license in accordance with the act referred to in section 5-1 and the provisions of this chapter.

5-3.4 License Fees; Maximum Number. The annual fees and maximum number of licenses for the sale or distribution of alcoholic beverages in the borough shall be as follows:

Class of License	Annual License	Number of Licenses
Plenary Retail Consumption License (Ord. No. 2007-02 § 1)	$2,500.00	1
Plenary Retail Distribution License (Ord. No. 2008-01 § 1)	$2,150.00	1
Club License (Ord. No. 2005-09 § 1)	$188.00	1

Fees shall be due and payable to the Borough by June 10th of every year.
(Ord. No. 2004-03 § 1)

The provisions of this subsection with respect to the limitation on the number of licenses shall not apply to the renewal or transfer of licenses presently issued.

5-4 REGULATIONS OF LICENSES

5-4.1 Hours of Sale. No alcoholic beverages shall be sold, served or delivered to or consumed in any licensed premises on any day between the hours of 2:00 a.m. and 7:00 a.m. except New Year's Day each year as hereinbefore provided.

5-4.2 New Year's Day. Provisions of subsection 5-4.1 shall not apply on January 1. On that day alcoholic beverages may not be sold, served, delivered to or consumed in the licensed premises between the hours of 4:00 a.m. and 7:00 a.m.

5-4.3 Sales to Certain Persons. No licensee or employee of a licensee shall sell, serve or deliver, directly or indirectly, any alcoholic beverages to any habitual drunkard, intoxicated person or minor, nor permit the consumption of alcoholic beverages on any licensed premises by any of the above named classes or persons, or permit any such persons to congregate in or about the licensed premises.

5-5 MINORS.

No licensee shall sell or serve any alcoholic beverage to any person under the age of 21 years, except as provided by State Statute.

5-6 REVOCATION OF LICENSES.

Any license issued under this chapter may be suspended or revoked for violation of any of the provisions of this chapter or any provision of any applicable statute or any of the rules or regulations of the State Director of Alcoholic Beverage Control.

Proceedings for suspension of revocation shall be in accordance with the provisions of R.S. 33:1-3 by service of a five day notice of charges preferred against the licensee and affording a reasonable opportunity for hearing.

Suspension or revocation of a license shall be in addition to any other penalty which may be imposed for a violation of this chapter.

CHAPTER VI

LICENSING OF DOGS

6-1 RUNNING AT LARGE.

6-1.1 Prohibited. No person owning, keeping or harboring any dog shall suffer or permit it to run at large upon the public streets, or in any other public park, or in any public building or in any other public place within the borough.

6-1.2 Running Dogs on Beach. No person owning, keeping or harboring any dog shall permit it on leash, or otherwise, to run upon the beach bordering the Atlantic Ocean between May 30 and September 15 of each year.

6-1.3 Dogcatcher Appointed. The board of commissioners shall have power to appoint one or more persons to be dogcatchers, who may seize and impound dogs running at large in violation of the provisions of this chapter.

6-1.4 Destruction of Dogs. When any dog so seized has been detained for seven days after notice, when notice can be given as set forth, or has been detained for seven days after seizure, when notice has not been and cannot be given as above set forth, and if the owner or person keeping or harboring that dog has not claimed the dog and paid all expenses incurred by reason of its detention, including maintenance fee to be charged by the pound holding the dog, the pound master may cause the dog to be destroyed in a manor causing as little pain as possible. Additionally, prior to release of the dog, said possessor shall reimburse Harvey Cedars for all costs incurred by the borough for animal control services in seizing and delivering the dog to the pound. The owner or harborer shall provide proof of payment prior to the release of the dog.

No person shall hinder, molest or interfere with anyone authorized to perform any duty under this chapter, and anyone so authorized may go on any premises in pursuit of any dog running at large, except upon the premises of the owner of a dog if the owner is present and forbids same.

6-2 LICENSING.

6-2.1 Fee. All dogs kept or maintained by their owners in the borough shall be licensed and registered if over seven months of age.

Dog licenses shall be issued by the borough clerk upon payment of the following fees for each dog:

Municipal License Fee	$6.80	
NJ Registration Fee	$1.00	
NJ Pilot Clinic Fund	$ .20	
NJ Pet Population Control	$3.00	(non-spayed/non-neutered only)

(Ord. No. 2005-06 § 1)

6-2.2 Seeing Eye Dogs; Exception. The provisions of this section shall not apply to "seeing-eye" dogs properly trained to assist blind persons when such dogs are actually being used by blind persons for the purpose of aiding them in going from place to place.

6-2.3 Expiration of License. The license and registration tag provided for in subsection 6-2.1 hereof expires on January 31 in each year. The fee for the renewals thereof shall be the same as for the original license and tag.

6-2.4 Dogs from Out-Of-State. Any person who shall bring or cause to be brought into the borough any dog licensed in another state for the current year and bearing a registration tag, and who shall keep the same or permit the same to be kept within this borough for a period of ninety days shall immediately apply for a license and registration tag for each such dog in accordance with subsection 6-2.1 hereof.

6-2.5 Newly Acquired Dogs. Any person who shall bring or cause to be brought into this borough any unlicensed dog and shall keep the same or permit the same to be kept within this borough for a period of more than ten days shall immediately apply for a license and registration tag for each such dog in accordance with subsection 6-2.1 hereof.

6-3 CONTROL OF DOGS

6-3.1 Defecation on Property of Others, or Public Property.

a. No person owning, harboring, keeping, walking, or in charge of any dog shall cause, permit or allow such dog to soil, defile, defecate on or commit any nuisance on any common thoroughfare, street, sidewalk, passageway, road, play area, park, or any place where people congregate or walk, or upon any beaches or beach fronts, or upon any private property without the permission of the owner of private property.

b. It shall be a complete defense to violations of paragraph a. of this subsection that a person shall have immediately removed such defecation and disposed of it in a sanitary manner.

c. Disposition in a sanitary manner shall include taking the feces home for disposition, or wrapping the feces in a waterproof wrapping and placing it in a trash can. It shall not include burial or placement in a storm sewer.

d. No persons shall permit the accumulation of animal feces upon his property or property occupied by him to the extent that the odor may be noticeable to any adjoining property owner.

e. The provisions of this section shall not apply to blind persons who may use dogs as guides.

6-3.2 Violation; Penalty.

a. For violation of any provision of this section, the penalty upon conviction, shall be a fine of ten ($10.00) dollars, for the violation and twenty-five ($25.00) dollars for each and every subsequent violation.

b. Except as otherwise provided, every day in which a violation of any provision of this section exists shall constitute a separate violation.

CHAPTER VII

SEWER AND WATER

7-1 ESTABLISHMENT AND DEFINITIONS.

There is hereby established a Water and Sewer Utility Department within the Borough of Harvey Cedars for the operation of water and sewer services and the charging of rates and establishing rules and regulations governing the providing of water and sewer service in the Borough of Harvey Cedars.

7-1.1 Definitions.

Commercial user shall include, but not be limited to, the following: motel, hotel, rooming house, lodging house, restaurant, tavern, soda fountain, governmental unit or agency, professional office, marina, boat yard, school, house of worship, or other nonprofit organization, hospital, nursing home, rest or convalescent home, and Laundromat.

Family or dwelling unit is hereby defined as a detached residence designed for or occupied by one (1) family only, or in the case of a commercial structure, designed for or occupied by one (1) commercial establishment. In the event a structure contains more than one single housekeeping unit or commercial establishment, the rates herein provided shall be determined by multiplying the number of such units by the minimum or base rate.

Major renovation shall mean any repair, reconstruction, rehabilitation addition, or other improvement of a structure, the cost of which equals or exceeds fifty percent (50%) of the assessed value of the structure either before the improvement is started or if the structure has been damaged and is being restored before the damage occurred. Substantial improvement is commenced when the first alteration of any structural part of the building is begun.
(Ord. No. 2009-09 § 1)

7-2 WATER SERVICE.

7-2.1 New Connections. Prior to any connection of any property to the borough water system, there shall be paid a water connection fee of seven hundred ($700.00) dollars payable to the borough at the time of application. All water taps made and services installed must be metered.

7-2.2 Meter Connections and Fees. Each residential and commercial service within the borough shall have installed by the Public Works Department a water meter. The cost of the water meter shall be charged to the property owner in accordance with the size of the water service at the property as follows:

¾” line	$250.00
1” line	$305.00
1 ½” line	$500.00
2” line	$590.00

Meters may be purchased and installed by the property owner in accordance with and authority of the Public Works Department and its policies and procedures.

7-2.3 Installation and Repairs of Meter Pits. Each residential and commercial service shall have a meter pit installed in the borough right-of-way or easement at the property owner’s expense.

If a property has a meter pit which is not located as required above and is in good condition, the property may use the pit as located, but shall relocate the meter in conformance with this ordinance upon sale of the property.

If the property owner fails to comply with the installation or repair of their water meter pit, it shall be the duty of the Department of Public Works to arrange for installation or repair of said meter pit, which may include the hiring of an outside contractor at prevailing wage. All costs incurred for said services and materials shall be charged to the homeowner and shall be collected and enforced by the Borough according to law.

In addition to the abovementioned costs, an administrative fee of $500.00 shall be charged to the homeowner and shall be collected and enforced according to law.

7-2.4 Water Rate Schedule.

A. Residential and Commercial Customers. All residential, commercial, industrial, institutional and governmental users shall be charged a base rate per dwelling unit and on gallons used.

1. Quarterly base rate of eighty ($80.00) dollars per dwelling unit (Ord. No. 2013-07 § 1)

2. Single Unit Rate schedule (based on gallons used per meter):

Gallons Used	Rate Per Thousand (1,000) Gallons
0 – 14,000	$ 1.40
14,001 – 25,000	$ 1.55
25,001 – 50,000	$ 3.05
50,001 – 150,000	$ 4.50
150,001 – 300,000	$ 6.60
Over 300,000	$ 7.70

3. Duplex Unit Rate schedule (based on gallons used per meter):

Gallons Used	Rate Per Thousand (1,000) Gallons
0 – 28,000	$ 1.40
28,001 – 50,000	$ 1.55
50,001 – 100,000	$ 3.05
100,001 – 300,000	$ 4.50
300,001 – 600,000	$ 6.60
Over 600,000	$ 7.70

4. Triplex Unit Rate schedule (based on gallons used per meter):

Gallons Used	Rate Per Thousand (1,000) Gallons
0 – 42,000	$ 1.40
42,001 – 75,000	$ 1.55
75,001 – 150,000	$ 3.05
150,001 – 450,000	$ 4.50
450,001 – 900,000	$ 6.60
Over 900,000	$ 7.70

5. Quad Unit Rate schedule (based on gallons used per meter):

Gallons Used	Rate Per Thousand (1,000) Gallons
0 – 56,000	$ 1.40
56,001 – 100,000	$ 1.55
100,001 – 200,000	$ 3.05
200,001 – 600,000	$ 4.50
600,001 – 1,200,000	$ 6.60
Over 1,200,000	$ 7.70

(Ord. No. 2009-13 § 2)

B. Service Charges.
   1. A service charge of fifty ($50.00) dollars shall be made each time the water is turned on, and a like charge when the water is turned off for nonpayment of bills, carelessness, leaks, or to repair a meter box or curb stop.
   2. In the event the Public Works Department is called upon to turn off or turn on water service to any property after 3:30 p.m. and prior to 7:00 a.m. between Monday through Friday, or on Saturday, Sunday or holiday, there shall be a service charge of one hundred ($100.00) dollars.

C. During the year 2009, a flat rate of one hundred fifty ($150.00) dollars per quarter for two (2) consecutive quarters shall be charged to each property meter, which shall represent the base flat rate for water usage for the period of January 1, 2009 through May 30, 2009. Said quarterly rate shall be billed and due with regular quarterly bills.

7-2.5 Property Owner Responsibility.

A. Frozen Pipes. Any property owner, tenant or other person in charge of any property who permits water pipes to freeze and thereby causes a loss of water shall be liable to the borough for all loss of water at the rates fixed by this section.

B. Curb Boxes, Meters and Meter Pits. All curb boxes, meters and meter pits are and shall remain the property of the borough and shall not be tampered with. It is the property owner's responsibility to keep meter pits and curb boxes in good condition and up to grade. The property owner shall be charged for all expenses incurred by the borough for any repair.

C. Tampering. No person, other than an employee or agent of the Borough of Harvey Cedars Water and Sewer Utility Department, shall remove, replace or, in any manner, interfere or tamper with a meter attached to a water pipe used or intended to be used to supply water. Any plumbing configuration intended to bypass the meter is prohibited and shall be considered theft of service, as well as a violation of this section.

7-2.6 Prohibited water uses. No municipal water shall be used for the pumping of piling or other construction except when circumstances would render the installation of piling impossible and in that event, the property owner may apply to the board of commissioners or its designee for relief from this prohibition. Any relief granted hereunder shall be at the sole discretion of the board of commissioners or its designee and shall be metered and billed per gallon usage as per the water rate schedule set hereinabove.

7-2.7 Violations and Penalties. Each person violating any of the provisions of this section shall, upon conviction thereof, be liable to the penalty stated in Chapter III, section 3-9.

(Ord. No. 2009-09 § 2)

7-3 DETERMINATION THAT THE BOROUGH SHALL JOIN OCEAN COUNTY SEWERAGE AUTHORITY.

7-3.1 Purpose. It is determined by this governing body that it is in the best interest of the borough to become part of the district of the Ocean County Sewerage Authority established pursuant to the provisions of Chapter 14A of Title 40 of the New Jersey Statutes as an aid in obtaining relief from pollution or threatened pollution of waters in or bordering the State of New Jersey from causes arising within the County of Ocean and consequent conditions affecting the public health.

7-3.2 Borough to Join Sewerage Authority. A certified copy of this section together with a certified copy of a resolution of Ocean County Sewerage Authority approving this section, shall be filed in the office of the Secretary of State.

7-4 OCEAN COUNTY SEWERAGE AUTHORITY.

7-4.1 Creation of the Sewerage Authority. Pursuant to the Sewerage Authorities Laws, constituting Chapter 138 of the Pamphlet Laws of 1946, of the State of New Jersey, approved April 23, 1946, the Authority was created by virtue of a resolution duly adopted by the board of Chosen Freeholders of the County of Ocean, and is a public body politic and corporate of the State of New Jersey, organized and existing under the law, established as an instrumentality exercising public and essential governmental functions to provide for the public health and welfare, with all necessary or proper powers to acquire, construct, maintain, operate and use sewerage facilities for the relief of the waters in, bordering or entering the district (as defined in the agreement) from pollution or threatened pollution and for improvement of conditions affecting the public health.

7-4.2 Purpose. The authority is ready to design, finance, construct, maintain, operate and use sewerage facilities for the relief of the waters in, bordering or entering the district as defined in the agreement, from pollution or threatened pollution and for improvement of conditions affecting the public health; and put in operation a regional sewerage system; and pursuant to said Chapter 138, an agreement and supplement thereto with the authority for the disposal of sewage from the borough have been submitted to the borough and it appears after due consideration that it is in the best interest of the borough to enter into an agreement and supplement thereto as approved by the borough attorney.

7-4.3 Necessity. That the borough has ascertained and does hereby determine that it is situate within the district as defined in the agreement of the Ocean County Sewerage Authority, that it can advantageously use the regional sewerage system of the authority, and that it will be economical and in other respects advantageous to it to have waste water, sewage and other wastes treated and disposed of by the Ocean County Sewerage Authority on and pursuant to the terms of an agreement about to be executed between the borough and the Ocean County Sewerage Authority and any supplements or amendments thereto.

That the borough shall enter into an agreement and any supplements or amendments thereto in a form approved by the borough attorney under the corporate seal of the borough which shall be affixed and attested by the borough clerk, and to deliver same.

7-5 USE OF PUBLIC SEWERS; CHARGES.

7-5.1 Definitions. Unless the context specifically indicates otherwise, the meaning of the terms used in this section shall be as follows:

a. "Bod" (denoting biochemical oxygen demand) shall mean the quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedure in five days at 20º centigrade, expressed in milligrams per liter by weight.

b. "Combined sewer" shall mean a sewer in which both surface runoff and sewage are received.

c. "Garbage" shall mean solid wastes from the preparation, cooking and disposing of foods and from the handling, storage and sale of produce.

d. "Industrial cost recovery" shall mean the recovery from the industrial users of the treatment works, of the grant amount allocable to the treatment of waste from such users as defined in the Federal regulations.

e. "Industrial wastes" shall mean the liquid wastes from industrial and laboratory processes as distinct from sanitary sewage.

f. "Infiltration" shall mean the water entering the sewer system from the ground, through such means as, but not limited to, defective pipes, pipe joints, connections or manhole walls.

g. "Inflow" shall mean the water discharged into the sewer system from such sources as, but not limited to, roof leaders, cellar, yard and area drains, foundation drains, cooling water discharges, surface drains, manhole covers, storm sewers or catch basins.

h. "Ocean County Sewerage Authority" shall mean the sewerage authority created, pursuant to N.J.R.S. 40:14A-1 et seq., of the revised statutes of the State of New Jersey, to provide sewage collection and treatment service to the municipalities of the County of Ocean.

i. "pH" shall mean the logarithm of the reciprocal of the weight of hydrogen ions in grams per liter of solution, and indicates the degree of acidity or alkalinity of a substance.

j. "Person" shall mean any individual, firm, company, association, society, corporation or group.

k. "Private sewage disposal system" shall mean, as herein referred to any septic tanks, cesspools, sewage disposal devices or subsurface drainage system.

l. "Public sewer" shall mean a sanitary sewer in which all owners of abutting properties have equal right and which is controlled by public authority.

m. "Sanitary sewer" shall mean a sewer which carries sewage and in which storm, surface and ground waters are not permitted.

n. "Sewage" shall mean a combination of the water carried wastes from any buildings or structures.

o. "Sewage treatment plant" shall mean any arrangement of devices and structures used for treating sewage.

p. "Sewage works" shall mean all facilities for collecting, pumping, treating and disposing of sewage.

q. "Sewer" shall mean a pipe or conduit for carrying sewage.

r. "Storm sewer or storm drain" shall mean a sewer which carries storm and surface waters and drainage.

s. "Slug" shall mean any discharge of water, sewage or industrial waste which in concentration of any given constituent or in quantity of flow exceeds for any period of duration longer than 15 minutes more than five times the average 24 hour concentration during normal operation.

t. "Suspended solids" shall mean solids that either float on the surface of or are in suspension in water, sewage or other liquids, and which are removable by laboratory filtering.

u. "User charge" shall mean the charge levied on users of the treatment works for the cost of operation and maintenance (including replacements) of such works as defined in the Federal regulations.

v. "Watercourse" shall mean a channel in which a flow of water occurs, either continually or intermittently.

7-5.2 Purposes. The purposes of this section are as follows:

a. To establish control and restrictions upon the use of public sewers as set forth in subsection 7-5.3.

b. To impose a user charge on all domestic, commercial, industrial, institutional and governmental users of the sewer system of the borough which sewage, contributed to and flowing therein, is conveyed and treated by the aforementioned OCSA, as set forth in subsection 7-5.4.

7-5.3 Use Restrictions.

a. No person shall discharge or cause to be discharged any storm water, surface water, groundwater, roof runoff, subsurface drainage, swimming pool or pond water, cooling water or unpolluted industrial process waters to any sanitary sewer. All new sewer extensions or connections shall be properly designed and constructed in order to avoid the creation of infiltration and inflow sources within the sanitary sewer system.

b. Except as hereinafter provided, or limited, no person shall discharge or cause to be discharged any of the following described waters or wastes to any public sewer:

1. Any liquid or vapor having a temperature higher than 150º Fahrenheit or 65º Centigrade.

2. Any garbage that has not been properly shredded.

3. Any ashes, cinders, sand, mud, straw, shavings, metal, glass, rags, feathers, tar, plastics, wood, pauch manure or any other solid or viscous substance capable of causing obstruction to the flow in sewers or other interferences with the proper operation of the sewage works.

4. Mineral acidity, pH not less than 5.5.

5. Caustic alkalinity, pH not greater than 9.5.

6. Must not contain any explosive or flammable substance and no gases or vapors, either free or occluded in concentration, toxic or dangerous to humans, animals or aquatic life in streams or to the sewer system.

7. No excessive amount of grease or oil, whether emulsified or not, in excess of 100 mg/1 or containing substances which may solidify or become viscous at temperatures between 32º Fahrenheit and 150º Fahrenheit.

8. Insoluble substances shall not exceed a daily average of 225 mb/1 (milligrams per liter).

9. Chlorine demand shall not exceed an average greater than 20 parts per million.

10. Five day biochemical oxygen demand (BOD) shall not exceed a daily average greater than 250 mg/1 (milligrams per liter).

11. Wastes shall not contain sulfides exceeding two parts per million.

12. Wastes must not contain any toxic or irritating substances which will create conditions hazardous to public health and safety.

13. Wastes must contain no poisons in sufficient quantities to endanger man or interfere with biological processes.

14. Wastes must not contain phenols and/or orthocreosols in excess of 0.01 parts per million.

15. Wastes must not contain any noxious or malodorous gas or substance which either singularly or through interaction with other wastes or substances found in waste water treatment processes are capable of creating a public nuisance, hazard to life, or preventing entry into any portion of the system for operational duties, maintenance, or repair.

16. Wastes must not contain gasoline, napha, petroleum products or any substance which may create an explosion hazard in the system or which, in any way may be injurious to personnel or the system.

17. Wastes must not contain oils, fats or grease, except as may result from household, hotel or restaurant operation.

18. Milk, brewery or distillery waste in any form shall be prohibited.

19. Wastes are prohibited which contain any radioactive substances or isotopes.

20. Wastes are prohibited which contain or cause excessive discoloration (such as, but not limited to, dye wastes and vegetable tanning solutions). Color shall be considered excessive when visible following 1:1 dilution with domestic sewage.

21. Unusual volumes of flow or concentration of wastes, constituting slugs as defined herein, are prohibited.

22. Materials or liquids removed from septic tanks or cesspools are prohibited. Such wastes, however, will be accepted directly at the OCSA wastewater treatment facilities at charges and during times prescribed by the OCSA.

23. Total nitrogen, composed of organic nitrogen and ammonia nitrogen shall not exceed 40 mg/1 (milligrams per liter). Ammonia nitrogen concentrations shall not exceed 25 mg/1 (milligrams per liter).

24. Following discharge to the public sewer, any waste which results in the presence of residual chlorine in the public sewer is prohibited.

25. Any liquid having a flash point lower than 235º Fahrenheit as determined by the Tagliabue (Tag.) closed cup method.

26. Waters or wastes are prohibited which contain substances which are not compatible to treatment or reduction by the sewage treatment process employed or are compatible to treatment only to such degree that the sewage treatment plant effluent cannot meet the requirements of other agencies having jurisdiction over discharge to the receiving waters.

27. And in addition, any waste or substance shall be prohibited which shall cause or result in:

    (a) Chemical reaction, either directly or indirectly, with the materials of construction, to impair the strength or durability of any sewer structure.
    (b) Mechanical action that will destroy or damage the sewer structure.
    (c) Restriction of hydraulic capacity of sewer structures.
    (d) Restriction of normal inspection or maintenance of sewer structure.
    (e) Danger to public health and safety.
    (f) Obnoxious conditions inimical to the public interest.

c. The admission into the public sewers of any waters or wastes containing any quantity of substances having the characteristics described in subsections 7-5.1 and 7-5.2 shall be prohibited unless approved by the borough and the OCSA. Where necessary, the owner shall provide at his expense such preliminary treatment as may be necessary, as determined by the borough and the OCSA, to reduce the quality of such wastes to these limits. Plans, specifications and any other pertinent information relating to proposed preliminary treatment facilities shall be submitted for the approval of the borough, the OCSA, and of the Department of Environmental Protection of the State of New Jersey, and no construction of such facilities shall be commenced until the approvals are obtained in writing.

d. Where preliminary treatment facilities are provided for any waters or wastes, they shall be maintained continuously in satisfactory and effective operation by the owner at his expense.

e. No statement contained in this subsection shall be construed as preventing any special agreement or arrangement between the borough, the OCSA, and any person whereby a waste with high BOD or suspended solids values, or a high chlorine demand may be accepted by the borough and the OCSA for collection and treatment, subject to payment therefore by such person.

7-5.4 User Charges.

A. Residential and Commercial Customers. All residential, commercial, industrial, institutional and governmental users shall be charged a base rate per dwelling unit and on gallons used.

1. Quarterly base rate of seventy ($70.00) dollars per dwelling unit (Ord. No. 2013-07 § 2)
2. Rate schedule (based on gallons used per meter):

Single Unit	$1.60 per thousand gallons over	50,000 gallons
Duplex	$1.60 per thousand gallons over	100,000 gallons
Triplex	$1.60 per thousand gallons over	150,000 gallons
Quad	$1.60 per thousand gallons over	200,000 gallons

(Ord. No. 2010-11 § 1)

B. Connection Fee. Prior to any connection of any property to the borough sewer system, there shall be paid a sewer connection fee of one hundred ($100.00) dollars for new connections to the sanitary sewerage system payable to the borough at the time of application.

C. During the year 2009, a flat rate of sixty dollars ($60.00) per quarter for two (2) consecutive quarters shall be charged to each property water meter, which shall represent the base flat rate for sewer rental for the period of January 1, 2009 through May 30, 2009. Said quarterly rate shall be billed and due with regular quarterly bills.

(Ord. No. 2009-09 § 3)

7-5.5 Violations and Penalties. Each person violating any of the provisions of this section shall, upon conviction thereof, be liable to the penalty stated in Chapter III, section 3-9.

7-6 SEWER CONNECTIONS REQUIRED.

7-6.1 Preamble. The Ocean County Sewerage Authority is now constructing and establishing and has constructed and established, for the residents of the Borough of Harvey Cedars, a comprehensive waste water treatment to service the residents of the Borough of Harvey Cedars.

The Borough of Harvey Cedars has constructed and established a comprehensive waste water collection system throughout the Borough of Harvey Cedars, which is connected with the Ocean County Sewerage Authority's interceptor lines designed in order to prevent pollution of waters in and around the Borough of Harvey Cedars.

The Board of Commissioners deems it advisable and necessary that all buildings located on streets in which a sewer is constructed or to be constructed hereafter be connected with the borough's sewerage system.

7-6.2 Definitions. As used in this section:

a. "Building" shall mean any structure erected or fixed upon or in the soil or designed as permanent use in the position in which it is so fixed, provided the purpose of use is that of habitation, trade, retail and commercial establishments, religion or education, or any building or structure owned or used by the United States Government and the State of New Jersey.

b. "Sewer" shall mean any sewer or main designed or used for collection or disposal of sanitary sewerage and located in any public street within the borough.

7-6.3 Connection to Sewerage System Required. All buildings located on streets within the borough in which sewers are now or shall be constructed by the Ocean County Sewerage Authority in the Borough of Harvey Cedars shall be required to be connected with the sewerage system constructed and being constructed and established by the Ocean County Sewerage Authority and the Borough of Harvey Cedars within the Borough of Harvey Cedars when the same shall have been completed and placed in operation and such connection can be lawfully made pursuant to Chapter 63, Title 40 of the New Jersey Revised Statutes.

7-6.4 Manner of Connections. The connections shall be made in the manner and under the conditions provided in regulations and ordinances adopted by the Ocean County Sewerage Authority and the board of commissioners of the borough, respectively.

7-6.5 Notice to Connect. Notice is hereby given to the owners of all properties effected thereby to have such building connected with the borough's waste-water collection system within ten months when same shall have been completed and placed in operation by the approval of the Ocean County Sewerage Authority.

7-6.6 Notice to Close Cesspool; Septic Tank. Notice is also hereby given to the owners of all properties affected thereby to have their existing cesspool or septic tank filled and closed within ten months from the date their building is connected with the borough's waste water collection system in a manner and under the conditions as provided by the board of commissioners of the borough, their inspector, or duly authorized agent.

7-6.7 Board of Commissioners Carry Out Mandate. The board of commissioners of the borough is hereby empowered to carry out the mandate of this ordinance for and on behalf of the Ocean County Sewerage Authority pursuant to Ordinance No. 77-2, shown as section 7-5 of this chapter.

7-6.8 Violation and Penalty. Any person violating any of the provisions of this section shall be subject, upon conviction, to the penalties stated in Chapter III, section 3-9.

7-7 INSTALLATION OF SEWER SERVICE PIPE.

7-7.1 Installation Required. Each house must have a separate sewer service pipe from the dwelling to the sewer collection system.

7-7.2 Sewer Installations. The pipe to be used for all sewer service shall be one of the following:

a. *PVC Sewer Pipe.* All pipe shall be best quality unplasticized polyvinyl chloride (PVC) sewer pipe, with joints providing flexibility and watertightness under service conditions. Pipe shall be in accordance with ASTM Specification D3034-73, and shall meet the requirements for extra strength minimum of SDR-35 section of the above noted ASTM Specifications. Lengths of pipe shall not exceed 12-1/2 feet. Joints shall be of the bell-and-spigot type with rubber ring seal. The bell shall consist of an integral wall section with a solid cross-section rubber ring, and ring groove so designed to prevent ring displacement. All jointing shall be in accordance with the manufacturer's recommendations.

   Connections to building drains shall be made utilizing approved adapters, if required.

b. *Cast-iron Sewer Pipe.* All cast-iron sewer pipe shall be extra-heavy soil pipe meeting the specifications of the Cast Iron Soil Pipe Institute. All pipe shall be furnished in nominal five foot lengths. All extra-heavy cast-iron soil pipe and fittings shall receive a foundry coal tar dip on both interior and exterior surfaces. Joints shall be of the compression rubber gasket type. All jointing shall be in accordance with the manufacturer's recommendations.

   Connections to building drains shall be made utilizing approved adapters, if required. Connections to existing PVC building sewers installed to within ten feet of the property line shall be made utilizing approved adapters.

   After the pipes are laid and properly caulked or connected, backfills shall be made and carefully tamped to grade. Before the pipe is connected, the same shall be approved by the borough inspector or duly authorized agent.

   The depth of the sewer service shall be a minimum of 26 inches below grade line.

7-7.3 Violations and Penalties. Each person violating any of the provisions of this section shall, upon conviction thereof, be liable to the penalty stated in Chapter III, section 3-9.

7-8 WATER CONSERVATION.

7-8.1 Water Conservation Restrictions. The usage of water for the sprinkling of lawns and gardens during the peak season of June 1st through September 30 will be restricted as follows:

a. Wednesday, Friday, Sunday – Odd numbered house addresses.

b. Tuesday, Thursday, Saturday – Even numbered house addresses.

c. No watering on Mondays.

d. Hours 6:00 a.m. – 9:00 a.m., 7:00 p.m. – 10:00 p.m.

e. The laying of sod from June 1 through August 31 is prohibited.

f. All hoses shall be used with nozzles.

g. All automatic irrigation and sprinkler systems shall be equipped with rain sensors.

h. The use of potable water bubbler systems for the prevention of freezing of water near pilings, bulkheads and docks is prohibited.

7-8.2 Violations. Any person violating any part of this section shall be subject to a fine not exceeding five hundred ($500.00) dollars.

7-9 BILLING POLICIES AND PRACTICES.

A. Meter readings shall be completed on a quarterly basis for billing purposes.

B. Water and sewer utility bills shall be sent by the borough on a quarterly basis for each year in March, June, September and December.

C. Payments are due by the 25th of the month on which the bill is sent out. Grace periods and interest rates shall be established by resolution each year.

No interest or penalties shall be charged on delinquent water and sewer utility accounts for governmental entities, including federal, state and local political subdivision accounts, including county government accounts, Board of Education accounts and local government accounts.

D. Billing for multi-family/use units with separate owners sharing a single meter shall be calculated according to the rate schedules hereinabove, divided by the number of said units equally, and sent to each owner.

(Ord. No. 2009-09 § 4)

E. All service and miscellaneous charges shall be due 30 days from the billing date.

(Ord. No. 2010-11 § 2)

CHAPTER VIII

TRAFFIC

8-1 WORDS AND PHRASES.

Whenever any words and phrases are used in this chapter, the meaning respectively ascribed to them in Subtitle I of Title 39 of the Revised Statutes of New Jersey shall be deemed to apply to such words and phrases used herein unless specifically defined as follows:

"Right-of-way" shall mean the public property area between the paved roadway and the property line.
(Ord. No. 2014-04 §1)

8-2 OFFICIAL TIME STANDARD.

Whenever certain hours are named in this chapter, they shall mean either Eastern Standard Time or Eastern Daylight Saving Time as may be in current use in the borough.

8-3 PARKING.

8-3.1 Regulations Not Exclusive. The provisions of this chapter imposing a time limit on parking shall not relieve any person of the duty to observe other more restrictive provisions prohibiting or limiting the stopping, standing or parking of vehicles as set forth in R.S. 39:4-138, any other New Jersey statute or as hereinafter provided.

8-3.2 Parking Prohibited at All Times on Certain Streets.

a. No person shall park a vehicle at any time upon any of the streets or parts thereof described in Schedule I attached to and made a part of this chapter.

b. It shall be unlawful to park any automobile or other vehicle within twenty-five feet of an intersection of any two public streets or highways, or within fifty feet of the end of any dead-end street within the borough.

c. No person shall park a vehicle in a parking space designated and marked as being set aside for the physically handicapped in any parking facility unless said vehicle shall have affixed thereto an identification certificate or marker issued by the New Jersey Director of the Division of Motor Vehicles.

   Parking in a handicapped space without the aforesaid vehicle identification shall create a rebuttable presumption that use of the space was not for the physically handicapped.

d. Any person violating any provision of subsection 8-3.2c of this chapter for the first time shall be fined one hundred ($100.00) dollars.

e. Any person charged with a second or subsequent offense for violating or failing to comply with any of the provisions of this chapter shall, upon commission hereof, be punishable by a fine of not less than one hundred ($100.00) dollars, nor more than one thousand ($1,000.00) dollars, or by imprisonment for a term not to exceed 90 days, or by community service of not more than 90 days, or any combination of fine, imprisonment and community service as determined by the municipal court judge. The continuation of such violation for each successive day shall constitute a separate offense, and the person or persons allowing or permitting the continuation of the violation may be punished as provided above for each separate offense.

f. The violation of any provision of this chapter shall be subject to abatement summarily by a restraining order or injunction issued by a court of competent jurisdiction.

8-3.3 Parking Prohibited during Certain Hours on Certain Streets. No person shall park a vehicle between the hours specified in Schedule II of any day (except Sundays and public holidays) upon any of the streets or parts of streets described in Schedule II attached to and made a part of this chapter.

8-3.4 Stopping or Standing Prohibited during Certain Hours on Certain Streets. No person shall stop or stand a vehicle between the hours specified in Schedule III of any day (except Sundays and public holidays) upon any of the streets or parts of streets described in Schedule III attached to and made a part of this chapter.

8-3.5 Parking Time Limited on Certain Streets. No person shall park a vehicle for longer than the time limit shown in Schedule IV at any time between the hours listed in Schedule IV of any day (except Sundays and public holidays) upon any of the streets or parts of streets described in Schedule IV attached to and made a part of this chapter.

8-3.6 Loading-Unloading. It shall be unlawful to leave any truck, omnibus or other commercial vehicle standing or parked, except for loading and unloading purposes, upon any of the public streets of the borough.

8-3.7 Trailers Prohibited.

a. <u>All Trailers</u>
No person shall cause or permit to be parked any trailer upon the following public streets within the Borough of Harvey Cedars:
Bay Terrace
West 80th Street

b. <u>Trailers – Watercraft</u>
1. From April 1 to November 1 watercraft trailers shall be permitted to be parked on the paved street immediately adjacent to the trailer owner's property line for a period of no more than twenty-four (24) hours. However, said trailers shall be permitted to remain on the paved street for a period of no more than two (2) weeks upon registration with the Police Department.
2. From November 2 to March 31 watercraft trailers shall be permitted to be parked on the paved street immediately adjacent to the trailer owner's property line from 6:00 a.m. to 6 p.m.
3. At any time watercraft trailers shall be permitted to be parked on the right-of-way immediately adjacent to the trailer owner's property line.

c. <u>Trailers – Non-Watercraft</u>
No person shall cause or permit to be parked any non-watercraft trailer upon any street or right-of-way from 6:00 p.m. to 6:00 a.m.

d. Trailers – Exceptions
Construction trailers are permitted as per Chapter 13 Zoning.
(Ord. No. 2015-04 §1)

e. <u>Penalty</u>
Any trailer in violation of this section for more than forty-eight (48) hours shall be removed and stored by the Borough and charged in accordance with Section 3-15. Any person violating any provision of subsection 8-3.7 of this chapter shall be fined a minimum of fifty ($50.00) dollars.

(Ord. No. 2014-04 §2)

8-4 TRUCKS OVER FOUR TONS EXCLUDED FROM CERTAIN STREETS.

Trucks over four tons gross weight are hereby excluded from the streets or parts of streets described in Schedule V except for the pick up and delivery of materials on such streets. Schedule V is attached to and made a part of this chapter.

8-5 ONE-WAY STREETS.

The streets or parts of streets described in Schedule VI attached to and made a part of this chapter are hereby designated as One-way streets in the direction indicated.

8-6 THROUGH STREETS, STOP INTERSECTIONS AND YIELD INTERSECTIONS.

8-6.1 Through Streets. Pursuant to the provisions of R.S. 39:4-140, the streets or parts of streets described in Schedule VII attached to and made a part of this chapter are hereby designated as Through Streets. STOP signs shall be installed on the near right side of each street intersecting the Through Street except where YIELD signs are provided for in the designations.

8-6.2 Stop Intersections. Pursuant to the provisions of R.S.39:4-140, the intersections described in Schedule VIII attached to and made a part of this chapter are hereby designated as Stop Intersections. STOP signs shall be installed as provided therein.

8-6.3 Yield Intersections. Pursuant to the provisions of R.S. 39:4-140, the intersections described in Schedule IX attached to and made a part of this chapter are hereby designated as Yield Intersections. YIELD signs shall be installed as provided therein.

8-7 LOADING ZONES.

The locations described in Schedule X attached to and made a part of this chapter are hereby designated as Loading Zones.

8-8 TAXI STANDS.

The locations described in Schedule XI attached to and made a part of this chapter are hereby designated as Taxi Stands.

8-9 BUS STOPS.

The locations described in Schedule XII attached to and made a part of this chapter are hereby designated as Bus Stops.

8-10 TURN PROHIBITIONS.

8-10.1 Left Turn Prohibition. No person shall make a left turn at any of the locations described in Schedule XIII attached to and made a part of this chapter.

8-10.2 U-Turn Prohibition. No person shall make a U-Turn at any of the locations described in Schedule XIV attached and made a part of this chapter.

8-10.3 No Turns. No person shall make a turn at any of the locations described in Schedule XV attached to and made a part of this chapter.

8-11 PENALTY.

Unless another penalty is expressly provided by New Jersey Statute, every person convicted of a violation of a provision of this ordinance or any supplement thereto shall be liable to a penalty of not more than fifty ($50.00) dollars or imprisonment for a term not exceeding 15 days or both.

All former traffic ordinances of the Borough of Harvey Cedars covered in this traffic chapter are hereby repealed except that this repeal shall not affect or prevent the prosecution or punishment of any person for any act done or committed in violation of any ordinance hereby repealed prior to the taking effect of this ordinance.

SCHEDULE I

NO PARKING

In accordance with the provisions of subsection 8-3.2, no person shall park a vehicle at any time upon any of the following described streets or parts of street.

Name of Street	Sides	Location
Sunset Lane	Both	Entire Length
Maiden Lane	Both	Entire Length
Compass Street	Both	Entire Length
Kinsey Lane	Both	Entire Length
Mallard Lane	Both	Entire Length
*Passaic Avenue	Both	Entire Length
Hudson Avenue	East	Entire Length
Salem Avenue	East	Entire Length

(Ord. No. 2008-11 §1)

*It shall be unlawful to park any automobile or other vehicle upon Passaic Avenue when appropriate signs to that effect are posted thereon.

SCHEDULE II

PARKING PROHIBITED CERTAIN HOURS

In accordance with the provisions of subsection 8-3.3, no person shall park a vehicle between the hours specified upon any of the following described streets or parts of streets.

RESERVED

SCHEDULE III

NO STOPPING OR STANDING

In accordance with the provisions of subsection 8-3.4, no person shall stop or stand a vehicle upon any of the following described streets or parts of streets.

Name of Street	Sides	Location
Camden Avenue	Both	Beginning at the westerly curbline of Long Beach Boulevard to a point 100 feet west thereof.

SCHEDULE IV

PARKING TIME LIMITED

In accordance with the provisions of subsection 8-3.5, no person shall park a vehicle for longer than the time limit shown upon any of the following streets or parts of streets.

RESERVED

(Ord. No. 2008-11 § 2)

SCHEDULE V

TRUCKS OVER FOUR TONS

In accordance with the provisions of section 8-4, trucks over four tons gross weight are excluded from the following described streets or parts of streets.

RESERVED

SCHEDULE VI

ONE-WAY STREETS

In accordance with the provisions of section 8-5, the following described streets or parts of streets are hereby designated as one-way streets.

Name of Street	Direction	Limits
Kinsey Lane	West	Entire Length
Maiden Lane	West	Entire Length
81st Street	West	Between Long Beach Boulevard and Anchor Street
Anchor Street	South	Between 81st Street and 80th Street

SCHEDULE VII

THROUGH STREETS

In accordance with the provisions of subsection 8-6.1, the following described streets or parts of streets are hereby designated as Through Streets. STOP signs shall be installed on the near right side of each street intersecting the Through Street except where YIELD signs are provided for in the designations.

RESERVED

SCHEDULE VIII

STOP INTERSECTIONS

In accordance with the provisions of subsection 8-6.2, the following intersections are hereby designated as Stop Intersections.

86th Street and Jamaica Lane:
STOP signs shall be installed on Jamaica Lane.

86th Street and Sandpiper Lane:
STOP signs shall be installed on Sandpiper Lane.

86th Street and Driftwood Lane:
STOP signs shall be installed on Driftwood Lane.

84th Street and Anchor Street:
STOP signs shall be installed on Anchor Street.

83rd Street and Anchor Street:
STOP Signs shall be installed on Anchor Street.

83rd Street and Mallard Street:
STOP signs shall be installed on Mallard Street.

80th Street and Anchor Street:
STOP signs shall be installed on Anchor Street.

80th Street and Compass Street:
STOP signs shall be installed on Compass Street.

79th Street and Compass Street:
STOP signs shall be installed on Compass Street.

78th Street and Compass Street:
STOP signs shall be installed on Compass Street.

Cumberland Avenue and Holly Avenue:
STOP signs shall be installed on Holly Avenue.

Union Avenue and Holly Avenue:
STOP signs shall be installed on Holly Avenue.

Atlantic Avenue and Cedars Avenue:
STOP signs shall be installed on Cedars Avenue at:

1. East Intersection

2. West Intersection

Schedule VIII Con't.

Mallard Street and Kinsey Street:
STOP signs shall be installed on Kinsey Street.

Maiden Lane and Sunset Lane:
STOP signs shall be installed on Sunset Lane.

Maiden Lane and Meadowview Street:
STOP signs shall be installed on Meadowview Street.

Maiden Lane and Compass Street:
STOP signs shall be installed on Compass Street.

Essex Avenue and Holly Avenue:
STOP signs shall be installed on Holly Avenue.

Essex Avenue and Harvest Avenue:
STOP signs shall be installed on Harvest Avenue.

Essex Avenue and Cox Avenue:
STOP signs shall be installed on Cox Avenue.

Essex Avenue and Olsen Avenue:
STOP signs shall be installed on Olsen Avenue.

Essex Avenue and Fives Avenue:
STOP signs shall be installed on Fives Avenue.

Camden Avenue and Harvest Avenue:
STOP signs shall be installed on Harvest Avenue.

Harvest Avenue and Barnegat Avenue:
STOP signs shall be installed on Barnegat Avenue.

Salem Avenue and Holly Avenue:
STOP signs shall be installed on Holly Avenue.

SCHEDULE IX

YIELD INTERSECTIONS

In accordance with the provisions of subsection 8-6.3, the following intersections are designated as Yield Intersections. YIELD signs having sides 36 inches long shall be installed.

RESERVED

SCHEDULE X

LOADING ZONES

In accordance with the provisions of section 8-7, the following described locations are hereby designated as Loading Zones.

RESERVED

SCHEDULE XI

TAXI STANDS

In accordance with the provisions of section 8-8, the following described locations are hereby designated as Taxi Stands.

RESERVED

SCHEDULE XII

BUS STOPS

In accordance with the provisions of section 8-9, the following described locations are hereby designated as Bus Stops.

RESERVED

SCHEDULE XIII

NO LEFT TURN

In accordance with the provisions of subsection 8-10.1, no person shall make a left turn at any of the following described locations.

RESERVED

SCHEDULE XIV

NO U-TURN

In accordance with the provisions of subsection 8-10.2, no person shall make a U-Turn at any of the following described locations.

RESERVED

SCHEDULE XV

NO TURNS

In accordance with the provisions of subsection 8-10.3, no person shall make a turn at any of the following described locations.

RESERVED

CHAPTER IX

STORMWATER REGULATIONS AND STORMWATER CONTROL

9-1 TITLE AND PURPOSE.

9-1.1 Title. This chapter shall be known as "The Stormwater Regulations and Stormwater Control" of the Borough of Harvey Cedars. (Ord. No. 2006-13 § 1)

9-1.2 Purpose. This chapter is adopted for the purpose of regulating the municipal separate storm sewer system(s) operated by the Borough of Harvey Cedars so as to protect public health, safety and welfare, and to prescribe penalties for the failure to comply.

9-2 DEFINITIONS.

For the purpose of this ordinance, the following terms, phrases, words, and their derivations shall have the meanings stated herein unless their use in the text of this Chapter clearly demonstrates a different meaning. When not inconsistent with the context, words used in the present tense include the future, words used in the plural number include the singular number, and words used in the singular number include the plural number. The word "shall" is always mandatory and not merely directory. The definitions below are the same as or based on corresponding definitions in the New Jersey Pollutant Discharge Elimination System (NJPDES) rules at NJAC 7:14A-1.2 and in the Stormwater Management Rules at N.J.A.C. 7:8-1.2. (Ord. No. 2010-17 § 2)

CAFRA Planning Map means the geographic depiction of the boundaries for Coastal Planning Areas, CAFRA Centers, CAFRA Cores and CAFRA Nodes pursuant to N.J.A.C. 7:7E-5B.3.

CAFRA Centers, Cores or Nodes means those areas within boundaries accepted by the Department pursuant to N.J.A.C. 7:8E-5B.

Compaction means the increase in soil bulk density.

Core means a pedestrian-oriented area of commercial and civic uses serving the surrounding municipality, generally including housing and access to public transportation.

County review agency means an agency designated by the County Board of Chosen Freeholders to review municipal stormwater management plans and implementing ordinance(s). The county review agency may either be:

A county planning agency; or

A county water resource association created under N.J.S.A 58:16A-55.5, if the ordinance or resolution delegates authority to approve, conditionally approve, or disapprove municipal stormwater management plans and implementing ordinances.

Department means the New Jersey Department of Environmental Protection.

Designated Center means a State Development and Redevelopment Plan Center as designated by the State Planning Commission such as urban, regional, town, village, or hamlet.

Design engineer means a person professionally qualified and duly licensed in New Jersey to perform engineering services that may include, but not necessarily be limited to, development of project requirements, creation and development of project design and preparation of drawings and specifications.

Development means the division of a parcel of land into two or more parcels, the construction, reconstruction, conversion, structural alteration, relocation or enlargement of any building or structure, any mining excavation or landfill, and any use or change in the use

of any building or other structure, or land or extension of use of land, by any person, for which permission is required under the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq. In the case of development of agricultural lands, development means: any activity that requires a State permit; any activity reviewed by the County Agricultural Board (CAB) and the State Agricultural Development Committee (SADC), and municipal review of any activity not exempted by the Right to Farm Act , N.J.S.A 4:1C-1 et seq.

Domestic sewage – waste and wastewater from humans or household operations.

Drainage area means a geographic area within which stormwater, sediments, or dissolved materials drain to a particular receiving waterbody or to a particular point along a receiving waterbody.

Environmentally critical areas means an area or feature which is of significant environmental value, including but not limited to: stream corridors; natural heritage priority sites; habitat of endangered or threatened species; large areas of contiguous open space or upland forest; steep slopes; and well head protection and groundwater recharge areas. Habitats of endangered or threatened species are identified using the Department's Landscape Project as approved by the Department's Endangered and Nongame Species Program.

Empowerment Neighborhood means a neighborhood designated by the Urban Coordinating Council "in consultation and conjunction with" the New Jersey Redevelopment Authority pursuant to N.J.S.A 55:19-69.

Erosion means the detachment and movement of soil or rock fragments by water, wind, ice or gravity.

Illicit connection – any physical or non-physical connection that discharges domestic sewage, non-contact cooling water, process wastewater, or other industrial waste (other than stormwater) to the municipal separate storm sewer system operated by the Borough of Harvey Cedars, unless that discharge is authorized under a NJPDES permit other than the Tier A Municipal Stormwater General Permit (NJPDES Permit Number NJ0141852). Non-physical connections may include, but are not limited to, leaks, flows, or overflows into the municipal separate storm sewer system.

Impervious surface means a surface that has been covered with a layer of material so that it is highly resistant to infiltration by water.

Industrial waste – non-domestic waste, including, but not limited to, those pollutants regulated under Section 307(a), (b), or (c) of the Federal Clean Water Act (33 U.S.C. § 1317(a), (b), or (c)).
Infiltration is the process by which water seeps into the soil from precipitation.

Major development means any "development" that provides for ultimately disturbing one or more acres of land or regardless of area of land disturbance requires an approval from the Borough Board of Adjustment or Borough Planning Board for a minor or major subdivision or site plan. Disturbance for the purpose of this rule is the placement of impervious surface or exposure and/or movement of soil or bedrock or clearing, cutting, or removing of vegetation.

Mitigation means an action by an applicant providing compensation or offset actions for onsite stormwater management requirements where the applicant has demonstrated the inability or impracticality of strict compliance with the stormwater management requirements set forth in NJAC 7:8, in an adopted regional stormwater management plan, or in this local ordinance, and has received a waiver from strict compliance from the municipality. Mitigation, for the purposes of this ordinance, includes both the mitigation plan detailing how the project's failure to strictly comply will be compensated, and the implementation of the approved mitigation plan within the same HUC-14 within which the subject project is proposed (if possible and practical), or a contribution of funding toward a regional stormwater control project, or provision for equivalent treatment at an alternate location, or other equivalent water quality benefit.

Municipal separate storm sewer system (MS4) – a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or storm drains) that is owned or operated by the Borough of Harvey Cedars or other public body, and is designed and used for collecting and conveying stormwater.

Municipality means any city, borough, town, township, or village.

NJPDES permit – a permit issued by the New Jersey Department of Environmental Protection to implement the New Jersey Pollutant Discharge Elimination System (NJPDES) rules at N.J.A.C. 7:14A.

Node means an area designated by the State Planning Commission concentrating facilities and activities which are not organized in a compact form.

Non-contact cooling water – water used to reduce temperature for the purpose of cooling. Such waters do not come into direct contact with any raw material, intermediate product (other than heat) or finished product. Non-contact cooling water may however contain algaecides, or biocides to control fouling of equipment such as heat exchangers, and/or corrosion inhibitors.

Nutrient means a chemical element or compound, such as nitrogen or phosphorus, which is essential to and promotes the development of organisms.

Person – any individual, corporation, company, partnership, firm, association, or political subdivision of this State subject to municipal jurisdiction.

Person means any individual, corporation, company, partnership, firm, association, Borough of Harvey Cedars, or political subdivision of this State subject to municipal jurisdiction pursuant to the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq.

Pollutant means any dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, refuse, oil, grease, sewage sludge, munitions, chemical wastes, biological materials, medical wastes, radioactive substance (except those regulated under the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 et seq.), thermal waste, wrecked or discarded equipment, rock, sand, cellar dirt, industrial, municipal, agricultural, and construction waste

or runoff, or other residue discharged directly or indirectly to the land, ground waters or surface waters of the State, or to a domestic treatment works. "Pollutant" includes both hazardous and nonhazardous pollutants.

Process wastewater – any water which, during manufacturing or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, byproduct, or waste product. Process wastewater includes, but is not limited to, leachate and cooling water other than non-contact cooling water.

Recharge means the amount of water from precipitation that infiltrates into the ground and is not evapotranspired.

Refuse container – any waste container that a person controls whether owned, leased, or operated, including dumpsters, trash cans, garbage pails, and plastic trash bags. (Ord. No. 2010-17 § 3)

Sediment means solid material, mineral or organic, that is in suspension, is being transported, or has been moved from its site of origin by air, water or gravity as a product of erosion.

Site means the lot or lots upon which a major development is to occur or has occurred.

Soil means all unconsolidated mineral and organic material of any origin.

State Development and Redevelopment Plan Metropolitan Planning Area (PA1) means an area delineated on the State Plan Policy Map and adopted by the State Planning Commission that is intended to be the focus for much of the state's future redevelopment and revitalization efforts.

State Plan Policy Map is defined as the geographic application of the State Development and Redevelopment Plan's goals and statewide policies, and the official map of these goals and policies.

Storm drain inlet – an opening in a storm drain used to collect stormwater runoff and includes, but is not limited to, a grate inlet, curb-opening inlet, slotted inlet, and combination inlet. (Ord. No. 2010-17 § 3)

Stormwater – water resulting from precipitation (including rain and snow) that runs off the land's surface, is transmitted to the subsurface, is captured by separate storm sewers or other sewerage or drainage facilities, or is conveyed by snow removal equipment.

Stormwater means water resulting from precipitation (including rain and snow) that runs off the land's surface, is transmitted to the subsurface, or is captured by separate storm sewers or other sewage or drainage facilities, or conveyed by snow removal equipment.

Stormwater runoff means water flow on the surface of the ground or in storm sewers, resulting from precipitation.

Stormwater management basin means an excavation or embankment and related areas designed to retain stormwater runoff. A stormwater management basin may either be normally dry (that is, a detention basin or infiltration basin), retain water in a permanent pool (a retention basin), or be planted mainly with wetland vegetation (most constructed stormwater wetlands).

Stormwater management measure means any structural or nonstructural strategy, practice, technology, process, program, or other method intended to control or reduce stormwater runoff and associated pollutants, or to induce or control the infiltration or groundwater recharge of stormwater or to eliminate illicit or illegal non-stormwater discharges into stormwater conveyances.

Tidal Flood Hazard Area means a flood hazard area, which may be influenced by stormwater runoff from inland areas, but which is primarily caused by the Atlantic Ocean.

Urban Coordinating Council Empowerment Neighborhood means a neighborhood given priority access to State resources through the New Jersey Redevelopment Authority.

Urban Enterprise Zones means a zone designated by the New Jersey Enterprise Zone Authority pursuant to the New Jersey Urban Enterprise Zones Act, N.J.S.A. 52:27H-60 et. seq.

Urban Redevelopment Area is defined as previously developed portions of areas:

1. Delineated on the State Plan Policy Map (SPPM) as the Metropolitan Planning Area (PA1), Designated Centers, Cores or Nodes;
2. Designated as CAFRA Centers, Cores or Nodes;
3. Designated as Urban Enterprise Zones; and
4. Designated as Urban Coordinating Council Empowerment Neighborhoods.

Waters of the State means the ocean and its estuaries, all springs, streams, wetlands, and bodies of surface or ground water, whether natural or artificial, within the boundaries of the State of New Jersey or subject to its jurisdiction.

Wetlands or *wetland* means an area that is inundated or saturated by surface water or ground water at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of vegetation typically adapted for life in saturated soil conditions, commonly known as hydrophytic vegetation.

9-3 ILLICIT CONNECTIONS.

No person shall discharge or cause to be discharged through an illicit connection to the municipal separate storm sewer system operated by the Borough of Harvey Cedars any domestic sewage, non-contact cooling water, process wastewater, or other industrial waste (other than stormwater).

9-4 IMPROPER DISPOSAL OF WASTE.

9-4.1 The spilling, dumping, or disposal of materials other than stormwater to the municipal separate storm sewer system operated by the Borough of Harvey Cedars is prohibited. The spilling, dumping, or disposal of materials other than stormwater in such a manner as to cause the discharge of pollutants to the municipal separate storm sewer system is also prohibited.

9-4.2 Exceptions to Prohibition.

a. Water line flushing and discharges from potable water sources.
b. Uncontaminated ground water (e.g., infiltration, crawl space or basement sump pumps, foundation or footing drains, rising ground waters)
c. Air conditioning condensate (excluding contact and non-contact cooling water).
d. Irrigation water (including landscape and lawn watering runoff).
e. Flows from springs, riparian habitats and wetlands, water reservoir discharges and diverted stream flows.
f. Residential car washing water, and residential swimming pool discharges.
g. Sidewalk, driveway and street wash water.
h. Flows from fire fighting activities.
i. Flows from rinsing of the following equipment with clean water:
   - Beach maintenance equipment immediately following their use for their intended purposes; and
   - Equipment used in the application of salt and de-icing materials immediately following salt and de-icing material applications. Prior to rinsing with clean water, all residual salt and de-icing materials must be removed from equipment and vehicles to the maximum extent practicable using dry cleaning methods (e.g., shoveling and sweeping). Recovered materials are to be returned to storage for reuse or properly discarded.

   Rinsing of equipment, as noted in the above situation is limited to exterior, undercarriage, and exposed parts and does not apply to engines or other enclosed machinery.

9-5 WILDLIFE FEEDING.

Refer to section 3-6.

9-6 CONTAINERIZED YARD WASTE.

Refer to Section 18-4.c.
(Ord. No. 2010-17 § 4)

9-7 LITTER CONTROL.

Refer to section 3-1.

9-8 PET WASTE.

Refer to section 6-3.

9-9 ENFORCEMENT.

This ordinance shall be enforced by the Harvey Cedars Police Department.

(Ord. No. 2006-01 § 1)

9-10 STORMWATER CONTROL

9-10.1 Policy Statement

Flood control, groundwater recharge, and pollutant reduction through nonstructural or low impact techniques shall be explored before relying on structural Best Management Practices (BMPs). Structural BMPs should be integrated with nonstructural stormwater management strategies and proper maintenance plans. Nonstructural strategies include both environmentally sensitive site design and source controls that prevent pollutants from being placed on the site or from being exposed to stormwater. Source control plans should be developed based upon physical site conditions and the origin, nature, and the anticipated quantity or amount of potential pollutants. Multiple stormwater management BMPs may be necessary to achieve the established performance standards for water quality, quantity, and groundwater recharge.

9-10.2 Purpose

It is the purpose of this ordinance to establish minimum stormwater management requirements and controls for "major development," as defined in Section 9-10.5.

9-10.3 Applicability

A. This ordinance shall be applicable to all site plans and subdivisions for the following major developments that require preliminary or final site plan or subdivision review:

1. Non-residential major developments; and
2. Aspects of residential major developments that are not pre-empted by the Residential Site Improvement Standards at N.J.A.C. 5:21.

B. This ordinance shall also be applicable to all major developments undertaken by The Borough of Harvey Cedars.

9-10.4 Compatibility with Other Permit and Ordinance Requirements

Development approvals issued for subdivisions and site plans pursuant to this ordinance are to be considered an integral part of development approvals under the subdivision and site plan review process and do not relieve the applicant of the responsibility to secure required permits or approvals for activities regulated by any other applicable code, rule, act, or ordinance. In their interpretation and application, the provisions of this ordinance shall be held to be the minimum requirements for the promotion of the public health, safety, and general welfare. This ordinance is not intended to interfere with, abrogate, or annul any other ordinances, rule or regulation, statute, or other provision of law except that, where any provision of this ordinance imposes restrictions different from those imposed by any other ordinance, rule or regulation, or other provision of law, the more restrictive provisions or higher standards shall control.

9-10.5 Reserved.

(Ord. No. 2010-17 § 1)

9-10.6 General Standards

A. Design and Performance Standards for Stormwater Management Measures

1. Stormwater management measures for major development shall be developed to meet the erosion control, groundwater recharge, stormwater runoff quantity, and stormwater runoff quality standards in Section 9-10.7. To the maximum extent practicable, these standards shall be met by incorporating nonstructural stormwater management strategies into the design. If these strategies alone are not sufficient to meet these standards, structural stormwater management measures necessary to meet these standards shall be incorporated into the design.

2. The standards in this ordinance apply only to new major development and are intended to minimize the impact of stormwater runoff on water quality and water quantity in receiving water bodies and maintain groundwater recharge. The standards do not apply to new major development to the extent that alternative design and performance standards are applicable under a regional stormwater management plan or Water Quality Management Plan adopted in accordance with Department rules.

   Note: Alternative standards shall provide at least as much protection from stormwater-related loss of groundwater recharge, stormwater quantity and water quality impacts of major development projects as would be provided under the standards in N.J.A.C. 7:8-5.

9-10.7 Stormwater Management Requirements for Major Development

A. The development shall incorporate a maintenance plan for the stormwater management measures incorporated into the design of a major development in accordance with Section 9-10.13 “Maintenance and Repair”.

B. Stormwater management measures shall avoid adverse impacts of concentrated flow on habitat for threatened and endangered species *including “swamp pink” and “bog turtle”* as documented in the Department’s Landscape Project or Natural Heritage Database established under N.J.S.A. 13:1B-15.147 through 15.150.
(Ord. No. 2007-03 § 1)

C. The following linear development projects are exempt from the groundwater recharge, stormwater runoff quantity, and stormwater runoff quality requirements of subsections F and G below:

1. The construction of an underground utility line provided that the disturbed areas are revegetated upon completion;

2. The construction of an aboveground utility line provided that the existing conditions are maintained to the maximum extent practicable; and

3. The construction of a public pedestrian access, such as a sidewalk or trail with a maximum width of 14 feet, provided that the access is made of permeable material.

D. A waiver from strict compliance from the groundwater recharge, stormwater runoff quantity, and stormwater runoff quality requirements of subsections F and G below may be obtained for the enlargement of an existing public roadway; or the construction or enlargement of a public pedestrian access, provided that the following conditions are met:

1. The applicant demonstrates that there is a public need for the project that cannot be accomplished by any other means;

2. The applicant demonstrates through an alternatives analysis, that through the use of nonstructural and structural stormwater management strategies and measures, the option selected complies with the requirements of subsections F and G below to the maximum extent practicable;

3. The applicant demonstrates that, in order to meet the requirements of subsections F and G below, existing structures currently in use, such as homes and buildings, would need to be condemned; and

4. The applicant demonstrates that it does not own or have other rights to areas, including the potential to obtain through condemnation lands not falling under D.3 above within the upstream drainage area of the receiving stream, that would provide additional opportunities to mitigate the requirements of subsections F and G below that were not achievable on-site.

E. Nonstructural Stormwater Management Strategies

1. To the maximum extent practicable, the standards in subsections F and G below shall be met by incorporating nonstructural stormwater management strategies set forth at subsection E into the design. The applicant shall identify the nonstructural measures incorporated into the design of the project. If the applicant contends that it is not feasible for engineering, environmental, or safety reasons to incorporate any nonstructural stormwater management measures identified in Paragraph 2 below into the design of a particular project, the applicant shall identify the strategy considered and provide a basis for the contention.

2. Nonstructural stormwater management strategies incorporated into site design shall:

   a. Protect areas that provide water quality benefits or areas particularly susceptible to erosion and sediment loss;

   b. Minimize impervious surfaces and break up or disconnect the flow of runoff over impervious surfaces;

   c. Maximize the protection of natural drainage features and vegetation;

d. Minimize the decrease in the "time of concentration" from pre-construction to post construction. "Time of concentration" is defined as the time it takes for runoff to travel from the hydraulically most distant point of the watershed to the point of interest within a watershed;

e. Minimize land disturbance including clearing and grading;

f. Minimize soil compaction;

g. Provide low-maintenance landscaping that encourages retention and planting of native vegetation and minimizes the use of lawns, fertilizers and pesticides;

h. Provide vegetated open-channel conveyance systems discharging into and through stable vegetated areas;

i. Provide other source controls to prevent or minimize the use or exposure of pollutants at the site, in order to prevent or minimize the release of those pollutants into stormwater runoff. Such source controls include, but are not limited to:

(1) Site design features that help to prevent accumulation of trash and debris in drainage systems, including features that satisfy Section 4.E.3. below;

(2) Site design features that help to prevent discharge of trash and debris from drainage systems;

(3) Site design features that help to prevent and/or contain spills or other harmful accumulations of pollutants at industrial or commercial developments; and

(4) When establishing vegetation after land disturbance, applying fertilizer in accordance with the requirements established under the Soil Erosion and Sediment Control Act, N.J.S.A. 4:24-39 et seq., and implementing rules.

3. Site design features identified under Section 9-10.7.E.2.i.(2) above shall comply with the following standard to control passage of solid and floatable materials through storm drain inlets. For purposes of this paragraph, “solid and floatable materials” means sediment, debris, trash, and other floating, suspended, or settleable solids. For exemptions to this standard see subsection c. below.

a. Design engineers shall use either of the following grates whenever they use a grate in pavement or another ground surface to collect stormwater from that surface into a storm drain or surface water body under that grate:

(1) The New Jersey Department of Transportation (NJDOT) bicycle safe grate, which is described in Chapter 2.4 of the NJDOT Bicycle Compatible Roadways and Bikeways Planning and Design Guidelines (April 1996); or

(2) A different grate, if each individual clear space in that grate has an area of no more than seven (7.0) square inches, or is no greater than 0.5 inches across the smallest dimension.

Examples of grates subject to this standard include grates in grate inlets, the grate portion (non-curb-opening portion) of combination inlets, grates on storm sewer manholes, ditch grates, trench grates, and grates of spacer bars in slotted drains. Examples of ground surfaces include surfaces of roads (including bridges), driveways, parking areas, bikeways, plazas, sidewalks, lawns, fields, open channels, and stormwater basin floors.

b. Whenever design engineers use a curb-opening inlet, the clear space in that curb opening (or each individual clear space, if the curb opening has two or more clear spaces) shall have an area of no more than seven (7.0) square inches, or be no greater than two (2.0) inches across the smallest dimension.

c. This standard does not apply:

(1) Where the review agency determines that this standard would cause inadequate hydraulic performance that could not practicably be overcome by using additional or larger storm drain inlets that meet these standards;

(2) Where flows from the water quality design storm as specified in Section 19-10.7.G.1 are conveyed through any device (e.g., end of pipe netting facility, manufactured treatment device, or a catch basin hood) that is designed, at a minimum, to prevent delivery of all solid and floatable materials that could not pass through one of the following:

(a) A rectangular space four and five-eighths inches long and one and one-half inches wide (this option does not apply for outfall netting facilities); or

(b) A bar screen having a bar spacing of 0.5 inches.

(3) Where flows are conveyed through a trash rack that has parallel bars with one-inch (1”) spacing between the bars, to the elevation of the water quality design storm as specified in Section 9-10.7.G.1; or

(4) Where the New Jersey Department of Environmental Protection determines, pursuant to the New Jersey Register of Historic Places Rules at N.J.A.C. 7:4-7.2(c), that action to meet this standard is an undertaking that constitutes an encroachment or will damage or destroy the New Jersey Register listed historic property.

4. Any land area used as a nonstructural stormwater management measure to meet the performance standards in subsections F and G shall be dedicated to a government agency, subjected to a conservation restriction filed with the appropriate County Clerk’s office, or subject to an approved equivalent restriction that ensures that measure or an equivalent stormwater management measure approved by the reviewing agency is maintained in perpetuity.

5. Guidance for nonstructural stormwater management strategies is available in the New Jersey Stormwater Best Management Practices Manual. The BMP Manual may be obtained from the address identified in Section 9-10.10, or found on the Department's website at www.njstormwater.org.

F. Erosion Control, Groundwater Recharge and Runoff Quantity Standards

1. This subsection contains minimum design and performance standards to control erosion, encourage and control infiltration and groundwater recharge, and control stormwater runoff quantity impacts of major development.

a. The minimum design and performance standards for erosion control are those established under the Soil Erosion and Sediment Control Act, N.J.S.A. 4:24-39 et seq. and implementing rules.

b. The minimum design and performance standards for groundwater recharge are as follows:

(1) The design engineer shall, using the assumptions and factors for stormwater runoff and groundwater recharge calculations at Section 9-10.8, either:

(a) Demonstrate through hydrologic and hydraulic analysis that the site and its stormwater management measures maintain 100 percent of the average annual pre-construction groundwater recharge volume for the site; or

(b) Demonstrate through hydrologic and hydraulic analysis that the increase of stormwater runoff volume from pre-construction to post-construction for the 2-year storm is infiltrated.

(2) This groundwater recharge requirement does not apply to projects within the "urban redevelopment area," or to projects subject to (3) below.

(3) The following types of stormwater shall not be recharged:

(a) Stormwater from areas of high pollutant loading. High pollutant loading areas are areas in industrial and commercial developments where solvents and/or petroleum products are loaded/unloaded, stored, or applied, areas where pesticides are loaded/unloaded or stored; areas where hazardous materials are expected to be present in greater than "reportable quantities" as defined by the United States Environmental Protection Agency (EPA) at 40 CFR 302.4; areas where recharge would be inconsistent with Department approved remedial action work plan or landfill closure plan and areas with high risks for spills of toxic materials, such as gas stations and vehicle maintenance facilities; and

(b) Industrial stormwater exposed to "source material." "Source material" means any material(s) or machinery, located at an industrial facility, that is directly or indirectly related to process, manufacturing or other

industrial activities, which could be a source of pollutants in any industrial stormwater discharge to groundwater. Source materials include, but are not limited to, raw materials; intermediate products; final products; waste materials; by-products; industrial machinery and fuels, and lubricants, solvents, and detergents that are related to process, manufacturing, or other industrial activities that are exposed to stormwater.

(4) The design engineer shall assess the hydraulic impact on the groundwater table and design the site so as to avoid adverse hydraulic impacts. Potential adverse hydraulic impacts include, but are not limited to, exacerbating a naturally or seasonally high water table so as to cause surficial ponding, flooding of basements, or interference with the proper operation of subsurface sewage disposal systems and other subsurface structures in the vicinity or downgradient of the groundwater recharge area.

c. In order to control stormwater runoff quantity impacts, the design engineer shall, using the assumptions and factors for stormwater runoff calculations at subsection 9-10.8, complete one of the following:

(1) Demonstrate through hydrologic and hydraulic analysis that for stormwater leaving the site, post-construction runoff hydrographs for the two, 10, and 100-year storm events do not exceed, at any point in time, the pre-construction runoff hydrographs for the same storm events;

(2) Demonstrate through hydrologic and hydraulic analysis that there is no increase, as compared to the pre-construction condition, in the peak runoff rates of stormwater leaving the site for the two, 10, and 100-year storm events and that the increased volume or change in timing of stormwater runoff will not increase flood damage at or downstream of the site. This analysis shall include the analysis of impacts of existing land uses and projected land uses assuming full development under existing zoning and land use ordinances in the drainage area;

(3) Design stormwater management measures so that the post-construction peak runoff rates for the 2, 10 and 100 year storm events are 50, 75 and 80 percent, respectively, of the pre-construction peak runoff rates. The percentages apply only to the post-construction stormwater runoff that is attributable to the portion of the site on which the proposed development or project is to be constructed. The percentages shall not be applied to post-construction stormwater runoff into tidal flood hazard areas if the increased volume of stormwater runoff will not increase flood damages below the point of discharge; or

(4) In tidal flood hazard areas, stormwater runoff quantity analysis in accordance with (1), (2) and (3) above shall only be applied if the increased volume of stormwater runoff could increase flood damages below the point of discharge.

G. Stormwater Runoff Quality Standards

1. Stormwater management measures shall be designed to reduce the post-construction load of total suspended solids (TSS) in stormwater runoff by 80 percent of the anticipated load from the developed site, expressed as an annual average. Stormwater management measures shall only be required for water quality control if an additional 1/4 acre of impervious surface is being proposed on a development site. The requirement to reduce TSS does not apply to any stormwater runoff in a discharge regulated under a numeric effluent limitation for TSS imposed under the New Jersey Pollution Discharge Elimination System (NJPDES) rules, N.J.A.C. 7:14A, or in a discharge specifically exempt under a NJPDES permit from this requirement. The water quality design storm is 1.25 inches of rainfall in two hours. Water quality calculations shall take into account the distribution of rain from the water quality design storm, as reflected in Table 1. The calculation of the volume of runoff may take into account the implementation of non-structural and structural stormwater management measures.

Table 1: Water Quality Design Storm Distribution

Time (Minutes)	Cumulative Rainfall (Inches)	Time (Minutes)	Cumulative Rainfall (Inches)
0	0.0000	65	0.8917
5	0.0083	70	0.9917
10	0.0166	75	1.0500
15	0.0250	80	1.0840
20	0.0500	85	1.1170
25	0.0750	90	1.1500
30	0.1000	95	1.1750
35	0.1330	100	1.2000
40	0.1660	105	1.2250
45	0.2000	110	1.2334
50	0.2583	115	1.2417
55	0.3583	120	1.2500
60	0.6250		

2. For purposes of TSS reduction calculations, Table 2 below presents the presumed removal rates for certain BMPs designed in accordance with the New Jersey Stormwater Best Management Practices Manual. The BMP Manual may be obtained from the address identified in Section 9-10.10, or found on the Department's website at www.njstormwater.org. The BMP Manual and other sources of technical guidance are listed in Section 9-10.10. TSS reduction shall be calculated based on the removal rates for the BMPs in Table 2 below. Alternative removal rates and methods of calculating removal rates may be used if the design engineer provides documentation demonstrating the capability of these alternative rates and methods to the review agency. A copy of any approved alternative rate or method of calculating the removal rate shall be provided to the Department at the following address: Division of Watershed Management, New Jersey Department of Environmental Protection, PO Box 418 Trenton, New Jersey, 08625-0418.

3. If more than one BMP in series is necessary to achieve the required 80 percent TSS reduction for a site, the applicant shall utilize the following formula to calculate TSS reduction:

   $R = A + B – (AXB)/100$

   Where

   R = total TSS percent load removal from application of both BMPs, and

   A = the TSS percent removal rate applicable to the first BMP

   B = the TSS percent removal rate applicable to the second BMP

Table 2: TSS Removal Rates for BMPs

Best Management Practice	TSS Percent Removal Rate
Bioretention Systems	90
Constructed Stormwater Wetland	90
Extended Detention Basin	40-60
Infiltration Structure	80
Manufactured Treatment Device	See Section 6.C
Sand Filter	80
Vegetative Filter Strip	60-80
Wet Pond	50-90

4. If there is more than one onsite drainage area, the 80 percent TSS removal rate shall apply to each drainage area, unless the runoff from the subareas converge on site in which case the removal rate can be demonstrated through a calculation using a weighted average.

5. Stormwater management measures shall also be designed to reduce, to the maximum extent feasible, the post-construction nutrient load of the anticipated load from the developed site in stormwater runoff generated from the water quality design storm. In achieving reduction of nutrients to the maximum extent feasible, the design of the site shall include nonstructural strategies and structural measures that optimize nutrient removal while still achieving the performance standards in Sections 9-10.7.F and G.

6. Additional information and examples are contained in the New Jersey Stormwater Best Management Practices Manual, which may be obtained from the address identified in Section 9-10.10.

7. In accordance with the definition of FW1 at N.J.A.C. 7:9B-1.4, stormwater management measures shall be designed to prevent any increase in stormwater runoff to waters classified as FW1.

8. Special water resource protection areas shall be established along all waters designated Category One at N.J.A.C. 7:9B, and perennial or intermittent streams that drain into or upstream of the Category One waters as shown on the USGS Quadrangle Maps or in the County Soil Surveys, within the associated HUC14 drainage area. These areas shall be established for the protection of water quality, aesthetic value, exceptional ecological significance, exceptional recreational significance, exceptional water supply significance, and exceptional fisheries significance of those established Category One waters. These areas shall be designated and protected as follows:

   a. The applicant shall preserve and maintain a special water resource protection area in accordance with one of the following:

      (1) A 300-foot special water resource protection area shall be provided on each side of the waterway, measured perpendicular to the waterway from the top of the bank outwards or from the centerline of the waterway where the bank is not defined, consisting of existing vegetation or vegetation allowed to follow natural succession is provided.

      (2) Encroachment within the designated special water resource protection area under Subsection (1) above shall only be allowed where previous development or disturbance has occurred (for example, active agricultural use, parking area or maintained lawn area). The encroachment shall only be allowed where applicant demonstrates that the functional value and overall condition of the special water resource protection area will be maintained to the maximum extent practicable. In no case shall the remaining special water resource protection area be reduced to less than

150 feet as measured perpendicular to the top of bank of the waterway or centerline of the waterway where the bank is undefined. All encroachments proposed under this subparagraph shall be subject to review and approval by the Department.

b. All stormwater shall be discharged outside of and flow through the special water resource protection area and shall comply with the Standard for Off-Site Stability in the "Standards For Soil Erosion and Sediment Control in New Jersey," established under the Soil Erosion and Sediment Control Act, N.J.S.A. 4:24-39 et seq.

c. If stormwater discharged outside of and flowing through the special water resource protection area cannot comply with the Standard For Off-Site Stability in the "Standards for Soil Erosion and Sediment Control in New Jersey," established under the Soil Erosion and Sediment Control Act, N.J.S.A. 4:24-39 et seq., then the stabilization measures in accordance with the requirements of the above standards may be placed within the special water resource protection area, provided that:

(1) Stabilization measures shall not be placed within 150 feet of the Category One waterway;

(2) Stormwater associated with discharges allowed by this section shall achieve a 95 percent TSS post-construction removal rate;

(3) Temperature shall be addressed to ensure no impact on the receiving waterway;

(4) The encroachment shall only be allowed where the applicant demonstrates that the functional value and overall condition of the special water resource protection area will be maintained to the maximum extent practicable;

(5) A conceptual project design meeting shall be held with the appropriate Department staff and Soil Conservation District staff to identify necessary stabilization measures; and

(6) All encroachments proposed under this section shall be subject to review and approval by the Department.

d. Paragraph G.8 does not apply to the construction of one individual single family dwelling that is not part of a larger development on a lot receiving preliminary or final subdivision approval on or before February 2, 2004, provided that the construction begins on or before February 2, 2009.

9-10.8 Calculation of Stormwater Runoff and Groundwater Recharge

A. Stormwater runoff shall be calculated in accordance with the following:

1. The design engineer shall calculate runoff using one of the following methods:

a. The USDA Natural Resources Conservation Service (NRCS) methodology, including the NRCS Runoff Equation and Dimensionless Unit Hydrograph, as described in the NRCS National Engineering Handbook Section 4 – Hydrology and Technical Release 55 – Urban Hydrology for Small Watersheds; or

b. The Rational Method for peak flow and the Modified Rational Method for hydrograph computations.

2. For the purpose of calculating runoff coefficients and groundwater recharge, there is a presumption that the pre-construction condition of a site or portion thereof is a wooded land use with good hydrologic condition. The term "runoff coefficient" applies to both the NRCS methodology at Section 9-10.8.A.1.a and the Rational and Modified Rational Methods at Section 9-10.8.A.1.b. A runoff coefficient or a groundwater recharge land cover for an existing condition may be used on all or a portion of the site if the design engineer verifies that the hydrologic condition has existed on the site or portion of the site for at least five years without interruption prior to the time of application. If more than one land cover have existed on the site during the five years immediately prior to the time of application, the land cover with the lowest runoff potential shall be used for the computations. In addition, there is the presumption that the site is in good hydrologic condition (if the land use type is pasture, lawn, or park), with good cover (if the land use type is woods), or with good hydrologic condition and conservation treatment (if the land use type is cultivation).

3. In computing pre-construction stormwater runoff, the design engineer shall account for all significant land features and structures, such as ponds, wetlands, depressions, hedgerows, or culverts, that may reduce pre-construction stormwater runoff rates and volumes.

4. In computing stormwater runoff from all design storms, the design engineer shall consider the relative stormwater runoff rates and/or volumes of pervious and impervious surfaces separately to accurately compute the rates and volume of stormwater runoff from the site. To calculate runoff from unconnected impervious cover, urban impervious area modifications as described in the NRCS Technical Release 55 – Urban Hydrology for Small Watersheds and other methods may be employed.

5. If the invert of the outlet structure of a stormwater management measure is below the flood hazard design flood elevation as defined at N.J.A.C. 7:13, the design engineer shall take into account the effects of tailwater in the design of structural stormwater management measures.

B. Groundwater recharge may be calculated in accordance with the following:

1. The New Jersey Geological Survey Report GSR-32 A Method for Evaluating Ground-Water Recharge Areas in New Jersey, incorporated herein by reference as amended and supplemented. Information regarding the methodology is available

from the New Jersey Stormwater Best Management Practices Manual; at http://www.state.nj.us/dep/njgs/; or at New Jersey Geological Survey, 29 Arctic Parkway, P.O. Box 427 Trenton, New Jersey 08625-0427; (609) 984-6587.

9-10.9 Standards for Structural Stormwater Management Measures

A. Standards for structural stormwater management measures are as follows:

1. Structural stormwater management measures shall be designed to take into account the existing site conditions, including, for example, environmentally critical areas, wetlands; flood-prone areas; slopes; depth to seasonal high water table; soil type, permeability and texture; drainage area and drainage patterns; and the presence of solution-prone carbonate rocks (limestone).

2. Structural stormwater management measures shall be designed to minimize maintenance, facilitate maintenance and repairs, and ensure proper functioning. Trash racks shall be installed at the intake to the outlet structure as appropriate, and shall have parallel bars with one-inch (1”) spacing between the bars to the elevation of the water quality design storm. For elevations higher than the water quality design storm, the parallel bars at the outlet structure shall be spaced no greater than one-third (1/3) the width of the diameter of the orifice or one-third (1/3) the width of the weir, with a minimum spacing between bars of one-inch and a maximum spacing between bars of six inches. In addition, the design of trash racks must comply with the requirements of Section 9-10.11.D.

3. Structural stormwater management measures shall be designed, constructed, and installed to be strong, durable, and corrosion resistant. Measures that are consistent with the relevant portions of the Residential Site Improvement Standards at N.J.A.C. 5:21-7.3, 7.4, and 7.5 shall be deemed to meet this requirement.

4. At the intake to the outlet from the stormwater management basin, the orifice size shall be a minimum of two and one-half inches in diameter.

5. Stormwater management basins shall be designed to meet the minimum safety standards for stormwater management basins at Section 9-10.11.

B. Stormwater management measure guidelines are available in the New Jersey Stormwater Best Management Practices Manual. Other stormwater management measures may be utilized provided the design engineer demonstrates that the proposed measure and its design will accomplish the required water quantity, groundwater recharge and water quality design and performance standards established by Section 9-10.7 of this ordinance.

C. Manufactured treatment devices may be used to meet the requirements of Section 9-10.7 of this ordinance, provided the pollutant removal rates are verified by the New Jersey Corporation for Advanced Technology and certified by the Department.

9-10.10 Sources for Technical Guidance

A. Technical guidance for stormwater management measures can be found in the documents listed at 1 and 2 below, which are available from Maps and Publications, New Jersey Department of Environmental Protection, 428 East State Street, P.O. Box 420, Trenton, New Jersey, 08625; telephone (609) 777-1038.

1. Guidelines for stormwater management measures are contained in the New Jersey Stormwater Best Management Practices Manual, as amended. Information is provided on stormwater management measures such as: bioretention systems, constructed stormwater wetlands, dry wells, extended detention basins, infiltration structures, manufactured treatment devices, pervious paving, sand filters, vegetative filter strips, and wet ponds.

2. The New Jersey Department of Environmental Protection Stormwater Management Facilities Maintenance Manual, as amended.

B. Additional technical guidance for stormwater management measures can be obtained from the following:

1. The "Standards for Soil Erosion and Sediment Control in New Jersey" promulgated by the State Soil Conservation Committee and incorporated into N.J.A.C. 2:90. Copies of these standards may be obtained by contacting the State Soil Conservation Committee or any of the Soil Conservation Districts listed in N.J.A.C. 2:90-1.3(a)4. The location, address, and telephone number of each Soil Conservation District may be obtained from the State Soil Conservation Committee, P.O. Box 330, Trenton, New Jersey 08625; (609) 292-5540;

2. The Rutgers Cooperative Extension Service, 732-932-9306; and

3. The Soil Conservation Districts listed in N.J.A.C. 2:90-1.3(a)4. The location, address, and telephone number of each Soil Conservation District may be obtained from the State Soil Conservation Committee, P.O. Box 330, Trenton, New Jersey, 08625, (609) 292-5540.

9-10.11 Safety Standards for Stormwater Management Basins

A. This section sets forth requirements to protect public safety through the proper design and operation of stormwater management basins. This section applies to any new stormwater management basin.

B. Requirements for Trash Racks, Overflow Grates and Escape Provisions

1. A trash rack is a device designed to catch trash and debris and prevent the clogging of outlet structures. Trash racks shall be installed at the intake to the outlet from the stormwater management basin to ensure proper functioning of the basin outlets in accordance with the following:

a. The trash rack shall have parallel bars, with no greater than six inch spacing between the bars.

b. The trash rack shall be designed so as not to adversely affect the hydraulic performance of the outlet pipe or structure.

c. The average velocity of flow through a clean trash rack is not to exceed 2.5 feet per second under the full range of stage and discharge. Velocity is to be computed on the basis of the net area of opening through the rack.

d. The trash rack shall be constructed and installed to be rigid, durable, and corrosion resistant, and shall be designed to withstand a perpendicular live loading of 300 lbs/ft sq.

2. An overflow grate is designed to prevent obstruction of the overflow structure. If an outlet structure has an overflow grate, such grate shall meet the following requirements:

a. The overflow grate shall be secured to the outlet structure but removable for emergencies and maintenance.

b. The overflow grate spacing shall be no less than two inches across the smallest dimension.

c. The overflow grate shall be constructed and installed to be rigid, durable, and corrosion resistant, and shall be designed to withstand a perpendicular live loading of 300 lbs./ft sq.

3. For purposes of this paragraph 3, escape provisions means the permanent installation of ladders, steps, rungs, or other features that provide easily accessible means of egress from stormwater management basins. Stormwater management basins shall include escape provisions as follows:

a. If a stormwater management basin has an outlet structure, escape provisions shall be incorporated in or on the structure. With the prior approval of the reviewing agency identified in Section 9-10.11.C a free-standing outlet structure may be exempted from this requirement.

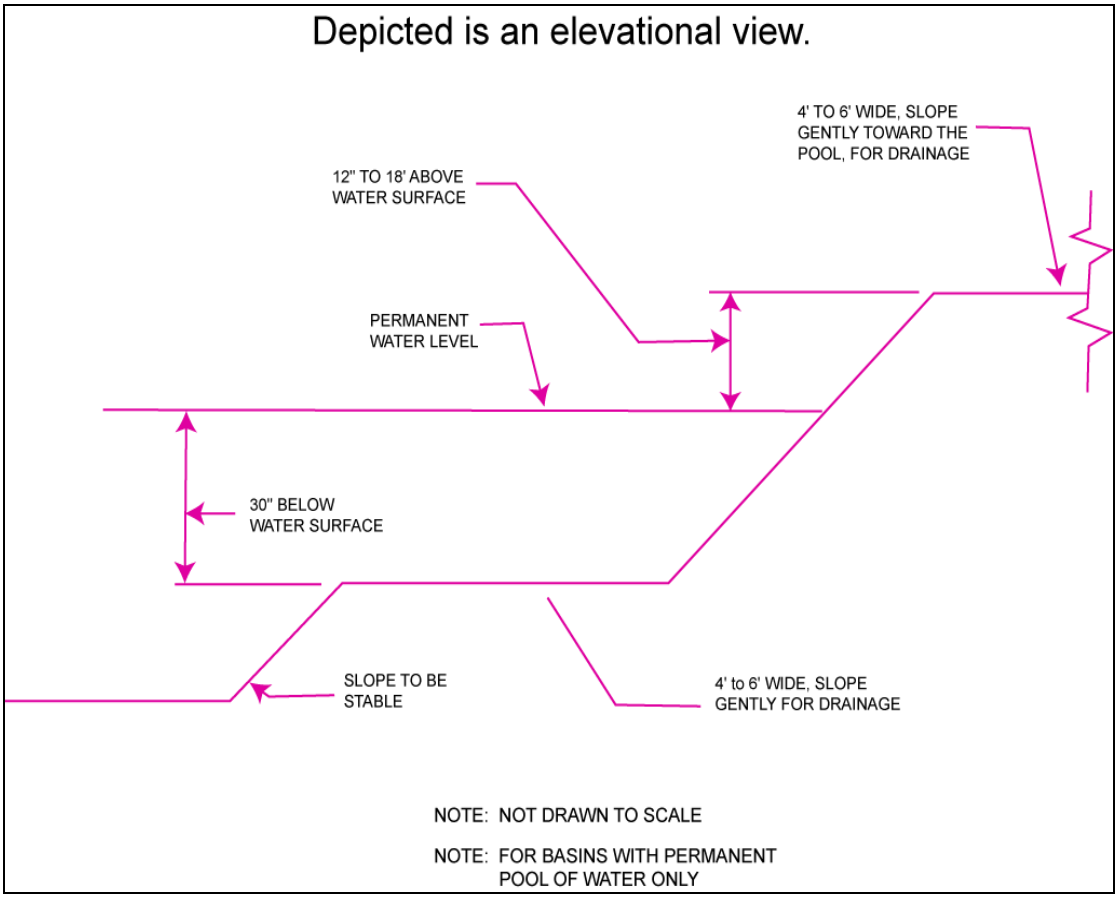
b. Safety ledges shall be constructed on the slopes of all new stormwater management basins having a permanent pool of water deeper than two and one-half feet. Such safety ledges shall be comprised of two steps. Each step shall be four to six feet in width. One step shall be located approximately two and one-half feet below the permanent water surface, and the second step shall be located one to one and one-half feet above the permanent water surface. See subsection D below for an illustration of safety ledges in a stormwater management basin.

c. In new stormwater management basins, the maximum interior slope for an earthen dam, embankment, or berm shall not be steeper than 3 horizontal to 1 vertical.

C. Variance or Exemption from Safety Standards

1. A variance or exemption from the safety standards for stormwater management basins may be granted only upon a written finding by the appropriate reviewing agency (municipality, county or Department) that the variance or exemption will not constitute a threat to public safety.

D. Illustration of Safety Ledges in a New Stormwater Management Basin



9-10.12 Requirements for a Site Development Stormwater Plan

A. Submission of Site Development Stormwater Plan

1. Whenever an applicant seeks municipal approval of a development subject to this ordinance, the applicant shall submit all of the required components of the Checklist for the Site Development Stormwater Plan at subsection C below as part of the submission of the applicant's application for subdivision or site plan approval.

2. The applicant shall demonstrate that the project meets the standards set forth in this ordinance.

3. The applicant shall submit four (4) copies of the materials listed in the checklist for site development stormwater plans in accordance with subsection C below.

B. Site Development Stormwater Plan Approval

The applicant's Site Development project shall be reviewed as a part of the subdivision or site plan review process by the municipal board or official from whom municipal approval is sought. That municipal board or official shall consult the engineer retained by the Planning and/or Zoning Board (as appropriate) to determine if all of the checklist requirements have been satisfied and to determine if the project meets the standards set forth in this ordinance.

C. Checklist Requirements

The following information shall be required:

1. Topographic Base Map

The reviewing engineer may require upstream tributary drainage system information as necessary. It is recommended that the topographic base map of the site be submitted which extends a minimum of 200 feet beyond the limits of the proposed development, at a scale of 1"=200' or greater, showing 2-foot contour intervals. The map as appropriate may indicate the following: existing surface water drainage, shorelines, steep slopes, soils, erodible soils, perennial or intermittent streams that drain into or upstream of the Category One waters, wetlands and flood plains along with their appropriate buffer strips, marshlands and other wetlands, pervious or vegetative surfaces, existing man-made structures, roads, bearing and distances of property lines, and significant natural and manmade features not otherwise shown.

2. Environmental Site Analysis

A written and graphic description of the natural and man-made features of the site and its environs. This description should include a discussion of soil conditions, slopes, wetlands, waterways and vegetation on the site. Particular attention should be given to unique, unusual, or environmentally sensitive features and to those that provide particular opportunities or constraints for development.

3. Project Description and Site Plan(s)

A map (or maps) at the scale of the topographical base map indicating the location of existing and proposed buildings, roads, parking areas, utilities, structural facilities for stormwater management and sediment control, and other permanent structures. The map(s) shall also clearly show areas where alterations occur in the natural terrain and cover, including lawns and other landscaping, and seasonal high ground water elevations. A written description of the site plan and justification of proposed changes in natural conditions may also be provided.

4. Land Use Planning and Source Control Plan

   This plan shall provide a demonstration of how the goals and standards of Sections 9-10.6 through 9-10.9 are being met. The focus of this plan shall be to describe how the site is being developed to meet the objective of controlling groundwater recharge, stormwater quality and stormwater quantity problems at the source by land management and source controls whenever possible.

5. Stormwater Management Facilities Map

   The following information, illustrated on a map of the same scale as the topographic base map, shall be included:

   a. Total area to be paved or built upon, proposed surface contours, land area to be occupied by the stormwater management facilities and the type of vegetation thereon, and details of the proposed plan to control and dispose of stormwater.

   b. Details of all stormwater management facility designs, during and after construction, including discharge provisions, discharge capacity for each outlet at different levels of detention and emergency spillway provisions with maximum discharge capacity of each spillway.

6. Calculations

   a. Comprehensive hydrologic and hydraulic design calculations for the pre-development and post-development conditions for the design storms specified in Section 4 of this ordinance.

   b. When the proposed stormwater management control measures (e.g., infiltration basins) depends on the hydrologic properties of soils, then a soils report shall be submitted. The soils report shall be based on onsite boring logs or soil pit profiles. The number and location of required soil borings or soil pits shall be determined based on what is needed to determine the suitability and distribution of soils present at the location of the control measure.

7. Maintenance and Repair Plan

   The design and planning of the stormwater management facility shall meet the maintenance requirements of Section 10.

8. Waiver from Submission Requirements

   The municipal official or board reviewing an application under this ordinance may, in consultation with the municipal engineer, waive submission of any of the requirements in subsections C.1 through C.6 above in this section when it can be demonstrated that the information requested is impossible to obtain or it would create a hardship on the applicant to obtain and its absence will not materially affect the review process.

9-10.13 Maintenance and Repair

A. Applicability

1. Projects subject to review as in Section 9-10.3 of this ordinance shall comply with the requirements of subsections B and C below.

B. General Maintenance

1. The design engineer shall prepare a maintenance plan for the stormwater management measures incorporated into the design of a major development.

2. The maintenance plan shall contain specific preventative maintenance tasks and schedules; cost estimates, including estimated cost of sediment, debris, or trash removal; and the name, address, and telephone number of the person or persons responsible for preventative and corrective maintenance (including replacement). Maintenance guidelines for stormwater management measures are available in the New Jersey Stormwater Best Management Practices Manual. If the maintenance plan identifies a person other than the developer (for example, a public agency or homeowners' association) as having the responsibility for maintenance, the plan shall include documentation of such person's agreement to assume this responsibility, or of the developer's obligation to dedicate a stormwater management facility to such person under an applicable ordinance or regulation.

3. Responsibility for maintenance shall not be assigned or transferred to the owner or tenant of an individual property in a residential or commercial development or project, unless such owner or tenant owns or leases the entire residential development or project.

4. If the person responsible for maintenance identified under subsection B.2 above is not a public agency, the maintenance plan and any future revisions based on subsection B.7 below shall be recorded upon the deed of record for each property on which the maintenance described in the maintenance plan must be undertaken.

5. Preventative and corrective maintenance shall be performed to maintain the function of the stormwater management measure, including repairs or replacement to the structure; removal of sediment, debris, or trash; restoration of eroded areas; snow and ice removal; fence repair or replacement; restoration of vegetation; and repair or replacement of nonvegetated linings.

6. The person responsible for maintenance identified under subsection B.2 above shall maintain a detailed log of all preventative and corrective maintenance for the structural stormwater management measures incorporated into the design of the development, including a record of all inspections and copies of all maintenance-related work orders.

7. The person responsible for maintenance identified under subsection B.2 above shall evaluate the effectiveness of the maintenance plan at least once per year and adjust the plan and the deed as needed. The plan and any adjustments shall be subject to review and approval by the Municipal Engineer.

8. The person responsible for maintenance identified under subsection B.2 above shall retain and make available, upon request by any public entity with administrative, health, environmental, or safety authority over the site, the maintenance plan and the documentation required by subsections B.6 and B.7 above, within 15 days of the request.

9. The requirements of subsections B.3 and B.4 do not apply to stormwater management facilities that are dedicated to and accepted by the municipality or another governmental agency.

10. In the event that the stormwater management facility becomes a danger to public safety or public health, or if it is in need of maintenance or repair, the municipality shall so notify the responsible person in writing. Upon receipt of that notice, the responsible person shall have fourteen (14) days to effect maintenance and repair of the facility in a manner that is approved by the municipal engineer or his designee. The municipality, in its discretion, may extend the time allowed for effecting maintenance and repair for good cause. If the responsible person fails or refuses to perform such maintenance and repair, the municipality or County may immediately proceed to do so and shall bill the cost thereof to the responsible person.

C. Nothing in this section shall preclude the municipality in which the major development is located from requiring the posting of a performance or maintenance guarantee in accordance with N.J.S.A. 40:55D-53.

9-10.14 Penalties

Any person(s) who erects, constructs, alters, repairs, converts, maintains, or uses any building, structure or land in violation of this ordinance shall be subject to general penalty provisions, of Chapter 3 of the Code of the Borough of Harvey Cedars and a fine not to exceed $1,250.

9-10.15 Fees

There are no fees associated with this chapter but reference is made to the following chapters and sections where fees may apply: Chapter 14 Land Use Procedures, Chapter 15 Site Plan Review, and Chapter 16 Land Subdivision.

9-10.16 Section 15: Waivers

A waiver from strict compliance with the requirements of Sections 9-10.7.F and G may be issued in those cases where an applicant has demonstrated the inability or impracticality of strict compliance, other than projects addressed under Section 14, with the stormwater management requirements set forth in NJAC 7:8, in an adopted regional stormwater management plan, or in a local ordinance which is as strict as NJAC 7:8. A waiver from strict compliance for such projects can only be obtained if the applicant agrees to undertake a suitable mitigation measure identified in the mitigation section of the municipality's Stormwater Management Plan. In such cases, the Applicant must

submit a mitigation plan detailing how the project's failure to strictly comply will be compensated. In cases where a waiver is granted, an applicant should provide mitigation, if possible and/or practical within the same HUC-14 watershed within which the subject project is proposed, or contribute funding toward a regional stormwater control project, or provide for equivalent treatment at an alternate location, or other equivalent water quality benefit, in lieu of implementing the required stormwater control measures on their specific site.

(Ord. No. 2006-13 § 2)

Any project considered "Major Development" does not need a waiver if alternative design standards that are at least as protective as would be achieved through NJAC 7:8, are applicable under a regional stormwater plan or a water quality management plan. The Borough may also grant a variance or exemption from the design and performance standards for stormwater management measures set forth in the plan and ordinance, provided the plan includes a mitigation plan and the Borough submits a written report to the county review agency describing the variance or exemption and required mitigation.
(Ord. No. 2007-03 § 2)

9-11 PRIVATE STORM DRAIN INLET RETROFITTING

9-11.1 Purpose

An ordinance requiring the retrofitting of existing storm drain inlets which are in direct contact with repaving, repairing, reconstruction, or resurfacing or alterations of facilities on private property, to prevent the discharge of solids and floatables (such as plastic bottles, cans, food wrappers and other litter) to the municipal separate storm sewer system(s) operated by the Borough of Harvey Cedars so as to protect public health, safety and welfare, and to prescribe penalties for the failure to comply.

9-11.2 Prohibited Conduct

No person in control of private property (except a residential lot with one single family house) shall authorize the repaving, repairing (excluding the repair of individual potholes), resurfacing (including top coating or chip sealing with asphalt emulsion or a thin base of hot bitumen), reconstructing or altering any surface that is in direct contact with an existing storm drain inlet on that property unless the storm drain inlet either:

1. Already meets the design standard below to control passage of solid and floatable materials; or
2. Is retrofitted or replaced to meet the standard below prior to the completion of the project.

9-11.3 Design Standard

Storm drain inlets identified in Section 9-11.2 above shall comply with the following standard to control passage of solid and floatable materials through storm drain inlets. For purposes of this paragraph, “solid and floatable materials” means sediment, debris, trash, and other floating, suspended, or settleable solids. For exemptions to this standard see below.

1. Design engineers shall use either of the following grates whenever they use a grate in pavement or another ground surface to collect stormwater from that surface into a storm drain or surface water body under that grate:
   a. The New Jersey Department of Transportation (NJDOT) bicycle safe grate, which is described in Chapter 2.4 of the NJDOT Bicycle Compatible Roadways and Bikeways Planning and Design Guidelines (April 1996); or
   b. A different grate, if each individual clear space in that grate has an area of no more than (7.0) square inches, or is no greater than 0.5 inches across the smallest dimension.

   Examples of grates subject to this standard include grates in grate inlets, the grate portion (non-curb-opening portion) of combination inlets, grates on storm sewer manholes, ditch grates, trench grates, and grates of spacer bars in slotted drains. Examples of ground surfaces include surfaces of roads (including bridges), driveways, parking areas, bikeways, plazas, sidewalks, lawns, fields, open channels, and stormwater basin floors.

2. Whenever design engineers use a curb-opening inlet, the clear space in that curb opening (or each individual clear space, if the curb opening has two or more clear spaces) shall have an area of no more than seven (7.0) square inches, or be no greater than two (2.0) inches across the smallest dimension.

3. Exemptions. This standard does not apply:
   a. Where the municipal engineer agrees that this standard would cause inadequate hydraulic performance that could not practicably be overcome by using additional or larger storm drain inlets that meet these standards;
   b. Where flows are conveyed through any device (e.g. end of pipe netting facility, manufactured treatment device, or a catch basin hood) that is designed, at a minimum, to prevent delivery of all solid and floatable materials that could not pass through one of the following:
      i. A rectangular space four and five-eighths inches long and one and one-half inches wide (this option does not apply for outfall netting facilities); or
      ii. A bar screen having a bar spacing of 0.5 inches.
   c. Where flows are conveyed through a trash rack that has parallel bars with one-inch (1”) spacing between the bars; or
   d. Where the New Jersey Department of Environmental Protection determines, pursuant to the New Jersey Register of Historic Places Rules at NJAC 7:4-7.2(c), that action to meet this standard is an undertaking that constitutes an encroachment of will damage or destroy the New Jersey Register listed historic property.

9-11.4 Penalties

Each person violating any of the provisions of this section shall, upon conviction thereof, be liable to the penalty stated in Chapter III, section 3-9.

(Ord. No. 2010-17 § 5)

9-12 REFUSE CONTAINERS / DUMPSTERS

9-12.1 Purpose

An ordinance requiring dumpsters and other refuse containers that are outdoors or exposed to stormwater to be covered at all times and prohibits the spilling, dumping, leaking, or otherwise discharge of liquids, semi-liquids or solids from the containers to the municipal separate storm sewer system(s) operated by the Borough of Harvey Cedars and/or the waters of the State so as to protect public health, safety and welfare, and to prescribe penalties for the failure to comply.

9-12.2 Prohibited Conduct

Any person who controls, whether owned, leased, or operated a refuse container or dumpster must ensure that such container or dumpster is covered at all times and shall prevent refuse from spilling out or overflowing.

Any person who owns, leases, or otherwise uses a refuse container or dumpster must ensure that such container or dumpster does not leak or otherwise discharge liquids, semi-liquids or solids to the municipal separate storm sewer system(s) operated by the Borough of Harvey Cedars.

Refer to section 3-1.20 for additional litter container regulations.

9-12.3 Exceptions to Prohibition.

a. Litter receptacles (other than dumpsters or individual homeowner containers)
b. Refuse containers at facilities authorized to discharge stormwater under a valid NJPDES permit
c. Large bulky items (e.g. furniture, bound carpet and padding, white goods placed curbside for pickup)

9-12.4 Penalties

Each person violating any of the provisions of this section shall, upon conviction thereof, be liable to the penalty stated in Chapter III, section 3-9.

(Ord. No. 2010-17 § 5)

CHAPTER X

WATERFRONT REGULATIONS

10-1 BEACH PROTECTION.

10-1.1 Declaration.

a. It has been clearly demonstrated that well established and protected sand dunes, together with berms, beaches and underwater slopes of suitable configuration and or proper grade and heights, are a durable and effective protection against high tides and flooding, and against damage by the ocean under storm conditions, and are the natural protections of the coastal areas adjacent thereto, and the State and its subdivisions and their habitants have an interest in the continued protection thereof, and in the right to restore them in the event of damage or destruction.

b. The dunes are vulnerable to erosion by both wind and water, but primarily wind, since its attacks against the dunes are sustained for substantial and frequently recurring periods of time, whereas, if protected by typical berms, beaches and underwater slops, the dunes are attacked by water only at infrequent intervals. The best available means of protecting the dunes against wind erosion is by preventing indiscriminate trespassing, construction or other acts which might destroy or damage the dunes, and through the use of native plantings, supplemented by sand fencing and other devices designed to prevent the free blowing of sand and the maintenance of the surface tensions, root accumulations, normal contours and other features found in typical natural dunes.

c. The immediate dune and beach area is not capable of rigid definition, or delineation, or of completely firm stabilization, so that particular site, at one time free of dunes, may, as the result of natural forces, become part of the dune area necessary for the continuation of the protection above outlined, and persons purchasing or owning such property do so subject to the public interest therein.

d. It is a purpose of this section to define the areas so affected and to establish regulations to assure their continued effectiveness. This section is declared to be an exercise of the police power in the interest of safety and welfare and for the protection of persons and property.

e. The erosion of the beachfront during the storm of March 6th and 7th, 1962, created as immediate and imminent threat and danger to life of persons and property in the borough by reasons of the destruction of the sand barriers which protect the borough's oceanfront to the end that it becomes necessary to the health, safety and welfare of the borough to repair, restore, replace or construct protective barriers on both public and private property within the borough.

f. The interference with or depletion of the beach and sand dunes tends to permit encroachment by the sea and the conditions above recited make it imperative that the governing body regulate and control the removal of sand from the beach or dunes or any other interference with or depletion of the protective barrier on the oceanfront of the borough.

10-1.2 Definitions.

As used in this chapter:

Backshore shall mean that zone of the shore or beach lying between the foreshore and dune area, and normally acted upon by waves only during severe storms, especially when combined with exceptionally high water.

Beach shall mean the zone of unconsolidated material that extends landward from the low water line to the place where there is marked change in material or physiographic form, i.e. dune or bulkhead. Includes foreshore and backshore.

Strand shall mean the same area included within the definition of beach.

Beach-dune area shall mean the district set off by this chapter to include the dunes, beaches, strand, backshore and foreshore, and the areas where, according to a normal beach profile, the same would or should exist. The beach-dune area, as defined herein, has been established by Thomas J. Taylor Associates, Borough Engineers, and constitutes all that area lying eastwardly of the building line as hereinafter defined.

Boardwalk shall include the term "walkway" and shall mean a walk or promenade of planking built across the dune line or berm to connect the street ends or other property with the open beach. These shall be perpendicular to the western boundary of the dune zone, and in no case shall a wooden promenade parallel to or along the beach be permitted. The height, width, length, and type of construction of these must be approved by the borough engineers.

Dunes shall mean a hill of sand accumulated along the beachfront, usually by natural means. It shall extend from the backshore to the line where the normal leeward slope intersects the established grade of the hinterland.

Dune area shall mean the area actually or normally occupied by dunes. For purpose of this chapter it shall be construed to include its actual dimensions or according to a computed profile with a height of 14 feet above mean sea level, a crest of 20 feet and a leeward slope of 1.5, whichever shall be greater, but not greater than 50 feet from the average seaward side of the dune crest as computed by the borough engineers and provided further that the leeward slope shall in no case be made steeper than 1.5.

Dune line shall mean a row of dunes, which may blend in with a berm or berms, which blend in with each other, are roughly parallel to the ocean, and serve as a protective barrier against the elements.

Foreshore shall mean the part of the shore, lying between the crest of the seaward berm and the ordinary low water mark, that is ordinarily traversed by the uprush and back rush of the waves.

Mean sea level shall include the term "sea level" and shall refer to the 1988 Sea Level Datum established by the U.S. Coast and Geodetic Survey, or, such other datum as may be established by the U.S. Army Corps of Engineers or other properly authorized agencies. (Ord. No. 2004-16 § 1)

Natural dune shall mean a dune created by natural forces, or one that has developed the contours, vegetation, root systems, etc., characteristic of dunes so created.

Natural vegetation shall include the terms "native vegetation" or "indigenous vegetation". Specifically it shall mean such plants as beach-grass (Ammophila Breviligulata), dusty miller (Artemisia Stelleriana), hudsonia (Hudsonia Tomentosa), sea rocket (Cakile Endentula), seaside goldenrod (Solidago Sempervirens), bayberry (Myrica Pennsylvanica) or beach plum (Prunus Maritima) which normally grow, or may be planted on the slopes of dunes or behind them; no distinction is made as to how such plants are introduced into their locations.

Sand fence shall include the term "snow fence" and shall mean either of two types of barricade established in a line or a pattern to accumulate sand and aid in the formation of a dune.

a. Brush Type: This consists of dead bushes, trees, reeds or similar debris collected in bundles and fixed by stakes or similar means.

b. Picket Type: This shall be the commercial variety of light wooden fence, held together by wire and secured by posts.

Slope leeward shall mean the face or surface of the dune or berm going from its crest or plateau away from the ocean.

Bulkhead line and *building line* shall mean the line so designated on map entitled "Ocean Front Building Line and Bulkhead Line for the Borough of Harvey Cedars", prepared by Thomas J. Taylor, Associates, Borough Engineers, dated March 5, 1965 and on file in the office of the borough clerk, and as designated on any future revision thereof by map or maps prepared by the borough engineers and kept on file in the office of the borough clerk.

10-2 REGULATIONS.

10-2.1 Application. This chapter shall be applicable to the beach-dune area as hereinbefore defined.

10-2.2 Construction in Beach Dune Area.

a. No construction of any sort shall be allowed in the foreshore or backshore area thereof excepting protective works undertaken by the borough, with the approval of the Bureau of Navigation of the State of New Jersey and/or the U.S. Army Corps of Engineers, as applicable.

b. No construction of any sort shall be allowed in the remainder of the beach-dune area except the following:

1. Any use mentioned in paragraph (a) above.

2. Boardwalks, steps and walkways to permit access across the dunes or berms to the open beach, without damage to the dunes themselves.

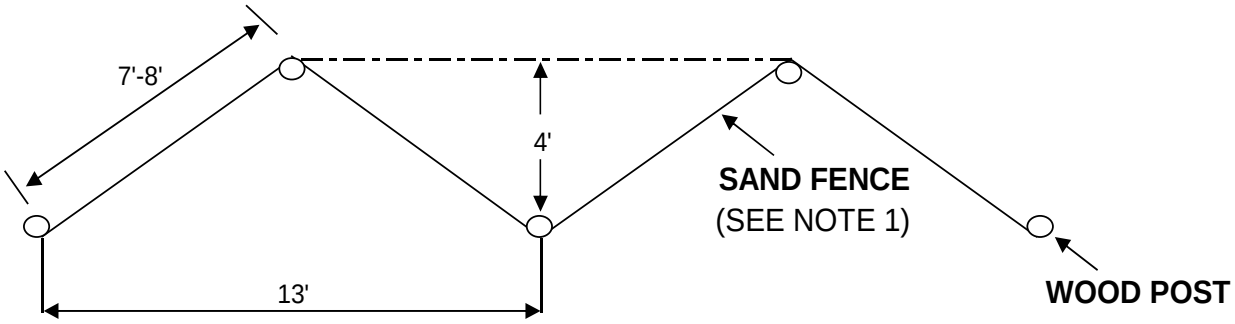
(a) Elevated boardwalk structures as defined above are subject to NJDEP design as on file at the Borough Hall.

(b) At-grade dune walkovers or paths to the open beach consisting of a natural sand base shall be designated as follows:

- Walkover shall be fenced on both sides
- Path width should be no more than 4’ wide
- Fence posts should be spaced 8-10 feet apart
- Maximum post height of 24” connected either by rope or round rail no more than 18” at its apex
- Only one walkover per property allowed

(Ord. No. 2014-08 § 1)

3. Sand fences to encourage the accumulation of sand. Sand fences along the ocean front may only be placed by private property owners beginning not more than five (5) feet east of the building line or the structure, whichever is most eastward, and must be placed in a zigzag pattern as per the Army Corps of Engineers design:
(Ord. No. 2010-16 § 1)



NOTE:

1. SAND FENCE SHALL BE WOVEN FRONT TO BACK AROUND POSTS AS SHOWN.

TYPICAL SAND FENCE LAYOUT

NOT TO SCALE

4. Dune Planting

(a) Private property owners along the oceanfront may install dune plantings.

(b) American beachgrass is the preferred species for stabilization of newly established dunes, and for stabilization of the primary frontal dune. Woody plant species are suitable for back dune and secondary dune environments. Herbaceous plant species are preferred as supplemental plantings for all dune areas.

(c) Dune vegetation should be diversified as much as possible, in an effort to provide continuous stabilization in the event that pathogens reduce or eliminate the effectiveness of one species. A complex of associated grasses, herbaceous species and woody species is preferred to the planting of one species.

(d) Acceptable dune vegetation:

American Beachgrass (Ammophila breviligulata)
Coastal Panicgrass (Panicum amarulum)
Bayberry (Myrica pennsylvanica)
Beach Plum (Prunus maritime)
Shore Juniper (Juniperus conferta)
Seaside Goldenrod (Solidago sempervirens)
Beach Pea (Lathyrus japonicas)
Sea Oats (Uniola paniculata)
Bitter Panicgrass (Panicum amarum)
Saltmeadow Cordgrass (Spartina patens)

(Ord. No. 2010-16 § 2)

10-2.3 Commissioners Duty. The commissioners shall conduct or require such hearings, and the production of such proofs as it shall reasonably consider necessary to establish the foregoing.

10-3 ACCESS TO BEACH.

Access to the open beach in this zone shall be obtained only across street ends or along properly constructed and authorized boardwalks and steps. Where boardwalks and steps are constructed in street end extensions or easement extensions, access shall be across such boardwalks and steps only.

The construction of boardwalks and steps shall only be permitted at street ends and at the easterly ends of vehicular easements provided, however, that said boardwalks and steps shall be constructed at the ends of said streets and easements which run in a generally east/west direction.

10-4 FENCING.

The borough may erect or require the construction of fencing along the western limits of the backshore and dune areas and provide or require suitable markings to identify the same. Persons may enter such areas only to carry out the purpose of this chapter. Where walkways or boardwalks exist, the same shall be suitably bordered with fences to prevent damage to the dunes or berms which they cross.

10-5 REMOVAL OF SAND.

10-5.1 Permit Required. No individual shall authorize or participate in any manner in the moving or displacement of sand within the beach-dune area unless a permit therefor shall have been issued pursuant to an application in writing to the board of commissioners.

10-5.2 Application Information. The application shall contain the following information:

a. Name and address of the applicant.

b. Location of sand to be moved or displaced.

c. The nature and purpose of the proposed moving or displacement.

d. Proposed method by which the applicant desires to move or displace the sand, including a description of the equipment, machinery or other apparatus to be used.

e. Estimate in terms of cubic yards as to the quantity of sand to be moved or displaced.

f. Such other information as may be required by the board of commissioners.

10-5.3 Inspection by Commissioners. No permit shall be issued without a determination by the board of commissioners based upon an inspection of the area involved and a report thereon by the borough engineers that such removal will not create or increase a danger or hazard to life or property.

10-5.4 Permit Regulations. No permit will be granted if the proposed moving or displacement will:

a. Adversely affect the littoral drift on the beach-dune area.

b. Result in a reduction of dune protection and the dune area as defined in subsection 10-1.2 of this chapter.

c. Interfere with the general configuration of the beach-dune area of the subject property or neighboring properties.

d. No permit will be granted for and it shall be unlawful for any individual, firm or corporation to authorize or participate in:

    1. The removal of sand from the beach-dune area or from any street end.

    2. The removal of destruction of natural vegetation within the beach-dune area.

e. Where by action of high winds and/or tides, sand is blown or washed upon lands, including street ends, lying westwardly from the dune line, such sand shall not be removed from the lands unless a permit therefor shall have been issued pursuant to and in full compliance with the requirements set out in subsection 10-5.2.

10-6 ADMINISTRATION.

10-6.1 Engineer's Duty. The borough engineers shall, by such surveys and calculations as they find necessary, locate the beach and dune areas as defined in this chapter, and plot the same on a plan of the borough, which plotting, or a copy thereof shall be on file in the office of the borough clerk and available for inspection. They shall from time to time make any corrections in their findings and plottings that changes in the natural or artificial features of the terrain may justify or require.

10-6.2 Administering Official. The building inspector is designated as the person responsible for the enforcement of this chapter.

10-7 PROHIBITED ACTIVITIES.

No person shall undertake or cause to be undertaken any of the following activities:

a. The operation of any motor vehicle except in designated access ways.
b. Pedestrian traffic on or over dunes or sand fencing.
c. The removal, mutilation or destruction of sand, sand fencing or vegetation.

(Ord. No. 2008-19 § 2)

10-8 VIOLATIONS AND PENALTIES.

Any person, firm, corporation or public agency that shall be convicted of a violation of a provision of this ordinance shall, upon conviction whereof by any court authorized by law to hear and determine the matter, be subject to a fine not exceeding one thousand dollars ($1,000) or imprisonment for a term not exceeding ninety (90) days, or both, as such court in its discretion may impose. Each day that such violation exists shall constitute a separate offense.

In addition to the above penalties, the Harvey Cedars Beach Patrol, Code Enforcement Officer, Police Department or other duly authorized officers or employees are hereby empowered to pursue such legal and equitable relief as may be necessary to abate any violation or enforce any condition of this ordinance.

(Ord. No. 2008-19 § 3)

10-9 ALTERNATE AUTHORITY.

Should any provision of this section as applied to any specific parcel of land be adjudged by any court of competent jurisdiction to be a taking within the meaning of the statutes relating to the exercise of the power of eminent domain, the borough may, at its option, if the public safety, welfare or need so require, pay into court or otherwise secure the value of such land, and proceed to take title to the same in accordance with the procedure then provided by law.

CHAPTER XI

C. A. T. V.

11-1 PURPOSE OF THE ORDINANCE

The Borough hereby grants to Comcast of Long Beach Island renewal of its non-exclusive Municipal Consent to place in, upon, across, above, over and under highways, streets, alleys, sidewalks, easements, public ways and public places in the Borough, poles, wires, cables, underground conduits, manholes and other television conductors, fixtures, apparatus and equipment as may be necessary for the construction, operation and maintenance in the Borough of a cable television and communications system.

11-2 DEFINITIONS

For the purpose of this Ordinance, the following terms, phrases, words and their derivations shall have the meaning given herein. Such meaning or definition of terms is supplemental to those definitions of the Federal Communications Commissioner ("FCC") rules and regulations, 47 C.F.R. Subsection 76.1 et seq., and the Cable Communications Policy Act, 47 U.S.C. Section 521 et seq., as amended, and the Cable Television Act, N.J.S.A. 48:5A-1 et seq., and shall in no way be construed to broaden, alter or conflict with the federal and state definitions:

a. "Municipality" or "Borough" is the Borough of Harvey Cedars, County of Ocean, State of New Jersey.

b. "Company" is the grantee of rights under this Ordinance and is known as Comcast of Long Beach Island.

c. "Act" or "Cable Television Act" is Chapter 186 of the General Laws of New Jersey, and subsequent amendments thereto, N.J.S.A. 48:5A-1, et seq.

d. "FCC" is the Federal Communications Commission.

e. "Board" or 'BPU" is the Board of Public Utilities, State of New Jersey.

f. "Office" or "OCTV" is the Office of Cable Television of the Board.

g. "Basic Cable Service" means any service tier, which includes the retransmission of local television broadcast signals as defined by the FCC.

11-3 STATEMENT OF FINDINGS

Public hearings conducted by the Borough, concerning the renewal of Municipal Consent herein granted to the Company were held after proper public notice pursuant to the terms and conditions of the Act and the regulations of the Board adopted pursuant thereto. Said hearings, having been fully open to the public, and the Borough, having received at said public hearings all comments regarding the qualifications of the Company to receive this renewal of Municipal Consent, the Borough hereby finds that the Company possesses the necessary legal, technical, character, financial and other qualifications and that the Company's operating and construction arrangements are adequate and feasible.

11-4 DURATION OF FRANCHISE

The non-exclusive Municipal Consent granted herein shall expire 15 years from the date of expiration of the previous Certificate of Approval issued by the Board.

In the event that the Municipality shall find that the Company has not substantially complied with the material terms and conditions of this Ordinance, the Municipality shall have the right to petition the OCTV for appropriate action, including modification and/or termination of the Certificate of Approval; provided however, that the Municipality shall first have given the Company written notice of all alleged instances of non-compliance and an opportunity to cure same within ninety (90) days of that notification.

11-5 FRANCHISE FEE

Pursuant to the terms and conditions of the Act, the Company shall, during each year of operation under the consent granted herein, pay to the Borough two percent (2%) of the gross revenues from all recurring charges in the nature of subscription fees paid by subscribers for cable television reception service in the Borough or any higher amount permitted by the Act or otherwise allowable by law, whichever is greater.

11-6 FRANCHISE TERRITORY

The consent granted under this Ordinance to the renewal of the franchise shall apply to the entirety of the Borough and any property subsequently annexed hereto.

11-7 EXTENSION OF SERVICE

The Company shall be required to proffer service along any public right-of-way to any person's residence or business located in all areas of the franchise territory as described herein, at tariffed rates for standard and non-standard installations.

11-8 SYSTEM UPGRADE

The Company has completed an upgrade of the cable television distribution system serving the Borough. The upgraded system is a hybrid fiber optic/coaxial cable system following a "fiber to the node" architecture. The upgraded system provides improved picture quality, enhanced signal reliability and increased channel capacity.

The upgrade has been completed following the Company's engineering guidelines for hybrid fiber/coaxial ("HFC") plant design, which meets or exceeds all applicable state and federal regulations as well as voluntary cable television industry standards and follows commonly accepted industry practices.

The Company shall make every effort to deploy new or advanced technology and or services in the Borough that are commercially available, economically practicable, and technically feasible. That technology shall include but not be limited to: video-on-demand; digital video compression; advanced or high-definition television, digital audio services; digital television, high-speed Internet service via cable modem; and interactive program guides.

11-9 CONSTRUCTION REQUIREMENTS

Restoration: In the event that the Company or its agents shall disturb any pavement, street surfaces, sidewalks, driveways, or other surface in the nature topography, the Company shall, at its sole expense, restore and replace such places or things so disturbed in as good a condition as existed prior to the commencement of said work.

Relocation: If at any time during the period of this consent, the Municipality shall alter or change the grade of any street, alley or other way or place the Company, upon reasonable notice by the Municipality, shall remove, re-lay or relocate its equipment, at the expense of the Company.

Temporary Removal of Cables: The Company shall, upon request of the Municipality at the Company's expense, temporarily raise, lower, or remove its lines in order to facilitate the moving of buildings or machinery or in other like circumstances. Whenever the request is made by, for, or on behalf of private parties, the cost will be borne by those same parties.

Removal or Trimming of Trees: During the exercise of its rights and privileges under this franchise, the Company shall have the authority to trim trees upon and overhanging streets, alleys, sidewalks or other public places of the municipality so as to prevent the branches of such trees from coming in contact with the wires and cable of the Company. Such trimming shall be only to the extent necessary to maintain proper clearance of the Company's wire and cables.

11-10 CUSTOMER SERVICE

In providing services to its customers, the Company shall comply with N.J.A.C. 14:18-1. et seq. and all applicable state and federal statutes and regulations. The Company shall strive to meet or exceed all voluntary company and industry standards in the delivery of customer service and shall be prepare to report on it to the community upon written request of the Borough Administrator or Clerk.

a. The Company shall continue to comply fully with all applicable state and federal statutes and regulations regarding credits for outages, the reporting of same to regulatory agencies and notification of same to customers.

b. The Company shall continue to fully comply with all applicable state and federal statutes and regulations regarding the availability of devices for the hearing impaired and the notification of same to customers.

c. The Company shall use every effort to meet or exceed voluntary standards for telephone accessibility developed by the National Cable Television Association (NCTA). Those standards shall include, but not be limited to, the goal of answering eighty (80%) percent of incoming telephone calls within thirty (30) seconds.

d. Nothing herein shall impair the right of any subscriber or the Municipality to express any comment with respect to telephone accessibility to the Complaint Officer, or impair the right of the Complaint Officer to take any action that is appropriate under law.

e. The Company is permitted, but is not required to, charge a late fee consistent with applicable state and federal statutes and regulations.

11-11 MUNICIPAL COMPLAINT OFFICER

The Office of Cable Television is hereby designed as the Complaint Officer for the Municipality pursuant to N.J.S.A. 48:5A-26(b). All complaints shall be received and processed in accordance with N.J.A.C. 14:17-6.5. The Municipality shall have the right to request copies of records and reports pertaining to complaints by Borough customers from the OCTV.

11-12 LOCAL OFFICE

During the term of this franchise, and any renewal thereof, the Company shall maintain a local business office or agent for the purpose of receiving, investigating and resolving all complaints regarding the quality of service, equipment malfunctions and similar matters. Such local business office shall be open during normal business hours and in no event less than 9:00 a.m. to 5:00 p.m., Monday through Friday. Telephone response for such purposes as mentioned herein will be provided by the Company's employees, representatives or agents twenty-four (24) hours per day.

The telephone number and address of the local office shall be listed in applicable telephone directories and in correspondence from the Company to the customer. The telephone number for the local office shall utilize an exchange that is a non-toll call for Borough residents.

11-13 PERFORMANCE BONDS

During the life of the franchise the Company shall give to the municipality a bond in the amount of twenty-five thousand ($25,000.00) dollars. Such bond shall be to insure the faithful performance of all undertakings of the Company as represented in its application for municipal consent incorporated herein.

11-14 SUBSCRIBER RATES

The rates of the Company shall be subject to regulation as permitted by federal and state law.

11-15 PUBLIC, EDUCATIONAL AND GOVERNMENTAL ACCESS

a. The Company shall continue to provide residents with a system-wide public access channel maintained by the Company. Qualified individuals and organizations may utilize public access for the purpose of cable casting non-commercial access programming in conformance with the Company's published public access rules.

b. The Company shall continue to provide a dedicated municipal access channel maintained by the Company for use by the Municipality and its designees for the purpose of cable casting non-commercial public, educational and governmental programming.

c. The Company shall continue to provide a system-wide leased access channel maintained by the Company for the purpose of cable casting commercial access programming in conformance with the Company's guideline and applicable state and federal statutes and regulations.

d. The Company shall take any steps that are necessary to ensure that the signals originated on the access channels are carried without material degradation, and with a signal whose quality is equal to that of the other channels that the Company transmits.

11-16 COMMITMENTS BY THE COMPANY

a. $5,900.00 Technology Grant

b. The Company shall continue to provide standard installation of one free cable drop and monthly-expanded basic service to the municipal building, police, fire and first aid departments, libraries and community centers. This obligation shall apply to any new facilities that are constructed during this municipal consent. Installation shall be completed within 30 days of the certificate of occupancy. The Municipality shall notify the Company of any new construction requiring a free drop.

c. The Company shall provide standard installation of one free cable drop monthly expanded service to each elementary and middle school, public or private, in the Municipality no later than one year after issuance of a Certificate of Approval by the Board of Public Utilities.

d. Company representatives shall appear at least once annually, upon reasonable written request of the Borough, at a public hearing of the Governing Body or before the Borough's Cable Television Advisory Committee, to discuss matters pertaining to the provision of cable service residents of the Borough and other related issues as the Borough and Company may see fit.

11-17 TWO WAY SERVICES AND INTERCONNECTION

In the event that the Borough determines that it is necessary and feasible for it to contract with the Company for the purpose of providing two-way or interconnection services, the Company shall be required to apply to the BPU for approval to enter into and establish the terms and conditions of such contract. All costs for such application to the BPU shall be borne by the Borough.

11-18 EMERGENCY USES

The Company shall be required to fully comply with all applicable federal and state statutes and rules and regulations governing the implementation, operation and testing of the Emergency Alert System (EAS).

The Company shall in no way be held liable for any injury suffered by the municipality or any other person, during an emergency, if for any reason the municipality is unable to make full use of the cable television system as contemplated herein.

11-19 LIABILITY INSURANCE

The Company shall at all times maintain a comprehensive general liability insurance policy with a single limit amount of $1,000,000 covering liability for any death, personal injury, property damages or other liability arising out of its construction and operation of the cable television system, and an excess liability (or "umbrella") policy in the amount of $3,000,000.

11-20 INCORPORATION OF THE APPLICATION

All of the commitments and statements contained in the application and any amendment thereto submitted in writing to the Municipality by the Company, except as modified herein, are binding upon the Company as terms and conditions of this Municipal Consent. The application and any other relevant writings submitted by the Company shall be considered a part of this Ordinance and made a part hereof by reference as long as it does not conflict with state or federal law. All ordinances or parts of ordinances or other agreements between the Borough and the Company that are in conflict with the provisions of this agreement are hereby declared invalid and superseded.

11-21 COMPETITIVE EQUITY

Should the Borough grant a franchise to construct, operate and maintain a cable television system to any other person, corporation or entity on terms materially less burdensome or more favorable than the terms contained herein, the Company may substitute such language that is more favorable or less burdensome for the comparable provision of this Ordinance subject to the provisions of N.J.A.C. 14:17-6.7.

11-22 SEPARABILITY

If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any court or federal or state agency of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and its validity or unconstitutionality shall not affect the validity of the remaining portions of the Ordinance.

11-23 EFFECTIVE DATE

This Ordinance shall take effect immediately upon issuance of a Renewal Certificate of Approval from the BPU.
(Ord. No. 2004-20 § 1)

CHAPTER XII

BUILDING AND HOUSING

12-1 STATE UNIFORM CONSTRUCTION CODE ENFORCING AGENCY.

12-1.1 Enforcing Agency Created. There is hereby created in accordance with the provisions of State Uniform Construction Code Act, P.L. 1975, c. 217, (hereinafter referred to as act), an enforcing agency to be known as the Department of Building Administration of the Borough of Harvey Cedars.

12-1.2 Department of Building Administration. The department of building administration of the borough shall consist of a building administrator and such subcode officials, assistants and other personnel as are appointed by the board of commissioners to administer and enforce the provisions of State uniform construction code adopted in accordance with the provisions of the act. Nothing herein, however, shall prevent the borough from accepting inspections as to compliance with the State uniform construction code or any subcode thereof made by an inspection authority approved by the State of New Jersey pursuant to law.

12-1.3 Duties of Building Administrator. The duties of the building administrator shall be to administer and enforce the State uniform construction code pursuant to the provisions of the act. The building administrator shall be the chief administrator of the department of building administration. He shall establish the day-to-day operating routines of the department and coordinate the activities of the subcode officials and other departmental personnel.

12-1.4 Administrator Serve as Subcode Official. The building administrator may serve as a subcode official for any subcode which he is qualified to administer under the State uniform construction code act.

12-1.5 Enforce Provisions. Subcode officials shall enforce the provisions of the subcodes for which they are responsible in accordance with the provisions of the act and the regulations promulgated thereunder. The Ocean County Electrical Bureau is hereby designated to act as the electrical subcode inspection agency of the borough for the year 1977.

12-1.6 Official Positions; Responsibility. One person may hold more than one subcode official position provided that person is qualified to hold each such position pursuant to the act and regulations adopted thereunder. Each subcode official shall be responsible for the administration and enforcement of the appropriate subcode, subject to the procedure of the Department of Building Administration as established by the building administrator. The building administrator shall have the power to overrule a determination of a subcode official based on an interpretation of a substantive provision of the subcode which such subcode official administers only if he is qualified pursuant to the act to act as a subcode official for that subcode. However, each subcode official shall have exclusive decision making authority with respect to the technical provisions of the subcode for which he has been appointed the official.

12-1.7 Assistants and Personnel. The board of commissioners may appoint such other assistants and personnel as it deems necessary for the proper functioning of the department of building administration. Such assistants and personnel shall be under the supervision of the building administrator or the appropriate subcode official.

12-1.8 Qualifications. The building administrator and all subcode officials, assistants and other departmental personnel shall be qualified in accordance with the provisions of the act and the regulations promulgated thereunder.

12-1.9 Terms. The building administrator and all subcode officials shall be appointed by the board of commissioners and shall serve a term established per agreement. Intergovernmental agreements shall have a minimum term of 4 years as per State statute.
(Ord. No. 2011-16 § 1)

12-1.10 Compensation. The annual salary and compensation for the building administrator and all subcode officials, assistants and other departmental personnel shall be determined from time to time by the board of commissioners and shall be paid in accordance with the provisions of authorized agreements. (Ord. No. 2011-16 § 1)

12-1.11 Limitation on Outside Employment, Business.

a. No person employed by the department of building administration as a building administrator or subcode official, assistant to the building administrator or subcode official, trainee, inspector, or plan reviewer, shall engage in, or otherwise be connected directly or indirectly for purposes of economic gain, with any business or employment furnishing labor, materials, appliances or services for the construction, alteration, demolition, or maintenance of buildings or structures within the State. Nor shall any such official or employee engage in any other activity or work which conflicts with his official duties.

b. This subsection shall not apply to:
    1. The ownership of stock or other investment instrument in any corporation listed on any national stock exchange;
    2. Any such business or employment outside the State;
    3. Dual employment by two or more enforcing agencies.

c. The limitation on outside business or employment described in subsection 12-1.11a shall, for a period of 18 months from the effective date of the act, apply only to such business or employment within the borough. Thereafter, the application of subsection 12-1.11a shall extend throughout the entire State.

12-1.12 Central Permit Office. The department of building administration shall maintain a central permit office at the Harvey Cedars Borough Hall. This office shall be open during business hours established by the building administrator and shall receive applications for construction permits and plan review; issue construction permits and certificates of occupancy; collect fees, penalties and fines and issue notices and orders in accordance with the provisions of the act and the regulations promulgated thereunder. (Ord. No. 2011-16 § 1)

12-1.13 Public Right to do Business. The public shall have the right to do business with the department of building administration at the office location set forth in subsection 12-1.12 of this section except in the case of emergencies or unforeseen or unavoidable circumstances.

12-2 FEE SCHEDULES.*

12-2.1 Fees. There are hereby established the following construction and subcode fees:

As per Schedule A.

*Editor's Note: Prior ordinances codified herein include Ordinance Nos. 77-3, 84-12, 85-7, 88-10 and 92-6.

SCHEDULE "A"

1. BUILDING SUBCODE FEES.

Minimum Building Subcode Fee shall be $35.00

A. NEW CONSTRUCTION: Fees for new construction shall be based upon the volume of structure. Volume shall be computed in accordance with N.J.A.C. 5:23-2.28. Use groups and types of construction are as classified and defined in Articles 3 and 4 of the Building Subcode.

NEW CONSTRUCTION (except as in ii. and iii. below):

i. Per cubic foot of volume……..……..……$0.024

OTHER USE GROUPS:

ii. Use Groups A-1, A-2, A-3, A-4, F-1, F-2, S-1 and S-2…$0.013

iii. Structures on farms, including commercial farm buildings under N.J.A.C. 5:23-3.2(D)…….. $0.0006
Maximum fee……$850.00

B. RENOVATIONS, ALTERATIONS AND REPAIRS AND SITE CONSTRUCTION ASSOCIATED WITH PREMANUFACTURED CONSTRUCTION: Fee based on estimated cost of the work. To determine estimated cost, the applicant shall submit to the construction official such cost data as may be available produced by the architect or engineer of record, or by a recognized estimating firm, or by the contractor. A bona fide contractor's bid if available shall be submitted. The Construction Official shall make the final decision regarding estimated cost.

i. $1.00 - $50,000.00……..$20.00 per $1,000.00

ii. $50,001.00 – 100,000.00……...……..add $16.00 per $1,000.00

iii. Over $100,000.00 ……..……..…add $13.00 per $1,000.00

C. ADDITIONS: Fees shall be computed on the same basis as for new construction for the added portion.

D. COMBINATION RENOVATIONS AND ADDITIONS: Fees shall be computed separately in accordance with items A and B above.

E. TEMPORARY STRUCTURES: Temporary structures, towers, fences greater than six feet in height, open decks not attached to a principal or accessory structure, and similar structure for which volume cannot be computed……..$35.00

F. ROOFING: The fee for roofing or siding in R-3 and R-4 uses shall be $35.00.

G. Pools:

i. Above ground …….. $35.00
ii. In ground……..……. $100.00
iii. Commercial……..…….……. $200.00

H. BULKHEADS, DOCKS, WHARVES, PIERS: The fees shall be computed as an alteration.

2. PLUMBING SUBCODE FEES.

A. MINIMUM FEE: $50.00
(Ord. No. 2011-16 § 2)

B. FIXTURES AND APPLIANCES: The installation of plumbing per fixture or stack shall include but not limited to water closets, bathtubs, shower stalls, laundry tubs, floor drains, drinking fountains, dishwashers, clothes washers, hot water heaters, roof drains, hose bibs, or similar devices, the fee shall be per fixture or appliance: $12.00

C. MODULAR, PRE-MANUFACTURED and RAISED STRUCTURES BUILDING DRAINS AND WATER PIPING installed on site shall be: $50.00

D. SPECIAL DEVICE:
1. Residential – the installation of a boiler (hot water or steam), air conditioners and condensation piping, refrigeration, sewer pumps: $50.00
(Ord. No. 2011-16 § 2)
2. Commercial – the installation of grease traps, oil interceptors, backflow preventors, sewer injectors, boiler (hot water or steam), air conditioning and condensation piping, refrigeration: $82.00
(Ord. No. 2011-16 § 2)

E. GAS and/or OIL PIPING:
1. Residential $50.00
(Ord. No. 2011-16 § 2)
2. Commercial $75.00

F. GAS APPLIANCE CONNECTIONS fee for each connection to the gas system $8.00

G. LAWN IRRIGATION $50.00

H. WATER and/or SEWER CONNECTIONS
1. Residential – each connection $40.00
2. Commercial – each connection $75.00

I. WATER HEATER REPLACEMENT same fuel, exempt from 2.a. – minimum fee $40.00
(Ord. No. 2011-16 § 2)

J. INSTALLATION OF PROPANE FUEL TANKS
1. Residential $50.00
2. Commercial $250.00
(Ord. No. 2011-16 § 2)

K. Plumbing permit re-instatement fee $40.00

(Ord. No. 2010-20 § 1)

3. FIRE PROTECTION SUBCODE FEES.

A. MINIMUM FEE: $50.00
(Ord. No. 2011-16 § 3)

B. GAS or OIL FIRED APPLIANCES not connected to the plumbing system, exempt from 3.a. minimum fee: $25.00

C. FIRE SUPPRESSION SYSTEMS
1. 1 to 20 heads $50.00
2. 21 to 100 heads $120.00
3. 101 to 200 heads $230.00
4. 201 to 400 heads $594.00
5. 401 to 1,000 heads $822.00
6. Over 1,000 heads $1,050.00

D. FIRE ALARMS, DETECTORS fees to be computed as fire suppression systems. In computing fees for heads and detectors, the number of each to be computed separately.

E. FIRE PUMPS the fee shall be $116.00
(Ord. No. 2011-16 § 3)

F. STANDPIPE SYSTEMS each $289.00
(Ord. No. 2011-16 § 3)

G. ENGINEERED SUPPRESSION SYSTEM the fee shall be $116.00
(Ord. No. 2011-16 § 3)

H. INDEPENDENT PRE-ENGINEERED SYSTEM the fee shall be $116.00
(Ord. No. 2011-16 § 3)

I. INCINERATORS the fee shall be $365.00

J. FUEL DISPENSING UNITS in the case of service stations the fee shall be per island $350.00
(Ord. No. 2011-16 § 3)

K. SMOKE CONTROL SYSTEMS and/or KITCHEN EXHAUST HOODS the fee shall be $200.00
(Ord. No. 2011-16 § 3)

L. INSTALLATION OF COMBUSTIBLE and/or FLAMMABLE TANKS
1. Residential $56.00
2. Commercial $350.00
(Ord. No. 2011-16 § 3)

M. Fire permit re-instatement $40.00

(Ord. No. 2010-20 § 2)

4. ELECTRICAL SUBCODE FEES.

A. MINIMUM FEE $50.00
(Ord. No. 2011-16 § 4)

B. FIXTURES OR RECEPTACLES (receptacles and fixtures shall include lighting outlets, wall switches, electrical discharge fixtures, convenience receptacles or similar fixtures, and motors or devices of less than one horsepower or one kilowatt, burglar, fire, and communication devices, etc.) the fee as follows:
1. 1 to 25 devices: $50.00
(Ord. No. 2011-16 § 4)
2. For each additional 25 devices: add $10.00

C. MOTORS OR ELECTRICAL DEVICES (each):
1. 1 to 9 horsepower $12.00
2. 10 to 50 horsepower $50.00
3. 51 to 100 horsepower $200.00
4. Over 100 horsepower $500.00

D. TRANSFORMERS AND GENERATORS kilowatt or kilovolt (each)
1. 0 to 9 $12.00
2. 10 to 45 $50.00
3. 46 to 100 $200.00
4. Over 100 $500.00

E. SERVICE PANELS, ENTRANCE OR SUB-PANEL (each)
1. 0 to 200 amps $50.00
2. 201 to 400 amps $150.00
3. 401 to 1000 amps $250.00
4. Over 1000 amps $500.00

F. For the purpose of computing fees above, all motors and plug-in appliances shall be counted, including control equipment, generators, transformers and heating, cooking or other devices consuming or generating electrical current.

G. SIGNS each shall be $50.00

H. POOL EQUIPOTENTIAL BONDING GRID $35.00
(Ord. No. 2011-16 § 4)

I. Electrical permit re-instatement fee $40.00

(Ord. No. 2010-20 § 3)

5. FEES APPLICABLE TO SUBSECTIONS 1 THROUGH 4. ABOVE

A. PLAN REVIEW FEE: Twenty percent of the amount to be charged for a new construction permit.

B. BASIC CONSTRUCTION FEE. The sum of the parts computed on the basis of the volume or cost of construction, the number of plumbing fixtures and equipment, the number of electrical fixtures and devices, and the number of sprinklers, standpipes, and detectors (smoke and heat) at the unit rates provided herein plus any special fees.

C. CERTIFICATES AND OTHER PERMITS:

i. Demolition or Removal Permit:

(a) Structures less than 5,000 square feet in area and less than 30 feet in height for one or two family residences (use Group R-3 of the Building Subcode), and for structures on farms including commercial farm buildings under N.J.A.C. 5:23-3.2(d)..…… $46.00

(b) All Other Use Groups…….. $85.00

ii. Sign Permit: Permit fee to construct a sign shall be in the amount of $1.00 per square foot surface area of the sign, computed on one side only for double-faced signs.

iii. Certificate of Occupancy:…..…….. $28.00

iv. Certificate of Occupancy granted pursuant to a change of Use Group…….….. $125.00

(a) $50.00 to Building

(b) $25.00 to Plumbing

(c) $25.00 to Fire

(d) $25.00 to Electrical

v. Certificate of Continued Occupancy…... $100.00

(a) $40.00 to Building

(b) $20.00 to Plumbing

(c) $20.00 to Fire

(d) $20.00 to Electrical

vi. Elevator Devices: The fee for elevator devices where applicable shall be in accordance with N.J.A.C. 5:23-12.6.

vii. Annual Permits:

(a) Construction Permit – Flat fee based upon the number of maintenance workers who are employed by the facility, and who are primarily engaged in work that is governed by a subcode. Managers, engineers and clericals shall not be considered maintenance workers for the purpose of establishing the annual construction permit fee.

(b) Annual permits may be issued for building/fire protection, electrical and plumbing.

(i) 1 to 25 works (including foremen), each …….$667.00

(ii) Over 25 workers, each additional worker..…….$150.00

(c) Training Registration Fee to be paid prior to issuance of an Annual Permit, fee shall be submitted (payable to "Treasurer, State of New Jersey"), per subcode …….……$140.00

viii. Reinstatement of lapsed permit, per subcode ..…. $35.00

ix. For cross connections and backflow preventors subject to testing and requiring reinspection, each device…….…… $40.00

x. Mechanical inspections in a use group R-3 or R-4 structure by mechanical inspector:

(a) First device……..…… $43.00

(b) Each additional device……..… $10.00

12-2.2 All Code Agreement Amendment.

a. Authorization. The appropriate officers of this municipality are hereby authorized and directed to enter into and execute an amendment to the All Code Agreement with the County of Ocean providing for a revision of the fee schedule to be effective May 1, 1992.

b. Copy on File. A copy of said Agreement is on file and available for public inspection at the office of the Municipal Clerk during regular business hours.

12-2.3 – 12-2.11 Reserved.

12-2.12 Surcharge Fee. In order to provide for the training, certification and technical support programs required by the uniform construction code act and the regulations, the Department of Building Administration shall collect, in addition to the fees specified above, a surcharge fee of $.0017 per cubic foot of volume of new construction. The surcharge fee shall be remitted to the Bureau of Housing Inspection, Department of Community Affairs, on a quarterly basis, for the fiscal quarters ending September 30, December 31, March 31, and June 30 of each year, and not later than one month next succeeding the end of the quarter for which it is due, beginning July 1, 1991. (Ord. No. 2011-16 § 5)

At the end of each fiscal year, and not later than July 31, the Department of Building Administration shall report to the Bureau of Housing Inspection the total amount of surcharge fees collected during the fiscal year; provided, however, that the first annual report shall be for the third and fourth quarters only of the fiscal year ending June 30, 1977.

12-2.13 Biannual Report. The building administrator shall, with the advice of the subcode officials, prepare and submit to the board of commissions committee biannually, a report recommending a fee schedule based on the operation expenses of the department.

12-2.14 Fee Schedule Posted. A schedule of the fees imposed by this section shall be posted in the office of the building administrator and shall be accessible to the public.

12-2.15 Payment of Taxes. No certificate of occupancy or permit shall be issued pursuant to Chapter XII of the Revised General Ordinances of the Borough of Harvey Cedars unless the applicant therefor presents proof that all taxes, assessments, water and sewer charges on the property for which said permit or certificate is sought, have been paid to the Borough of Harvey Cedars. An individual seeking a permit or certificate of occupancy may acquire from the borough tax collector, a certificate that said taxes, assessments, and water and sewer charges on the subject property have been paid and are current on the subject property.

12-2.16 Temporary Certificate of Occupancy. When a certificate of occupancy is required for the transfer of property, a temporary 30 day certificate of occupancy may be issued by the zoning officer, conditioned upon the payment of all taxes, assessments, water and sewer charges on the subject property within said 30 days. No renewal of the certificate of occupancy shall be authorized unless all taxes, assessments, water and sewer charges are paid.

12-2.17 Construction Shed. The fee for a permit for the construction of a shed shall be $.01 per cubic foot, provided that the minimum fee shall be $15.00.

12-3 RESERVED.

(Ord. No. 2011-16 §6)

12-4 UNFIT DWELLINGS.

12-4.1 Findings. By resolution duly adopted, the governing body of this borough has declared and determined that there exists in the borough buildings which are unfit for human habitation of occupancy or use, due to dilapidation, defects increasing the hazards of fire, accidents or other calamities, lack of ventilation, light or sanitary facilities, or due to other conditions rendering such buildings unsafe or unsanitary, or dangerous, or detrimental to the health or safety or otherwise inimical to the welfare of the residents of this borough; said resolution having been adopted pursuant to the provisions of the Revised Statutes of New Jersey.

12-4.2 Unfit Dwellings Prohibited. No owner or party in interest of any building which is, or may become, dangerous to human life, safety or health, or dangerous to adjacent property, or which would be likely to extend a conflagration, shall permit the same to remain in this borough.

12-4.3 Public Officer Designated. The director of public affairs shall be designated as the public officer to exercise the powers prescribed by this section.

12-4.4 Complaint to Owner. Whenever a petition is filed with the public officer by a public authority or by at least five residents of the borough charging that any building is unfit for human habitation or occupancy or use, or whenever it appears to the public officer, on his own motion, that any building is unfit for human habitation, or occupancy or use, the public officer shall, if his preliminary investigation discloses a basis for such charges, issue and cause to be served upon the owner of and parties in interest in such building a complaint stating the charges in that respect and containing a notice that a hearing will be held before the public officer or his designated agent, at a place therein fixed not less than 10 days nor more than 30 days after the serving of the complaint; that the owner and parties in interest shall be given the right to file an answer to the complaint and to appear in person, or otherwise, and give testimony at the place and time fixed in the complaint; and that the rules of evidence prevailing in courts of law or equity shall not be controlling in hearings before the public officer.

12-4.5 Determination of Unfitness. If, after such notice and hearing, the public officer determines that the building under consideration is unfit for human habitation or occupancy or use, he shall state in writing his findings of fact in support of such determination and shall issue and cause to be served upon the owner thereof and parties in interest an order:

If the repair, alteration or improvement of the building can be made at a reasonable cost in relation to the value of the building, requiring the owner, to the extent and within the time specified in the order, to repair, alter or improve the building to render it fit for human habitation, or occupancy, or use, or at the option of the owner, to vacate and close the building as a human habitation; or occupancy, or use or:

If the repair, alteration or improvement of the building cannot be made at a reasonable cost in relation to the value of the building, requiring the owner, within the time specified in the order, to remove or demolish the building.

12-4.6 Failure to Comply. If the owner fails to comply with an order to repair, alter or improve or, at the option of the owner, to vacate and close the building, the public officer may cause such building to be repaired, altered or improved, or to be vacated and closed; and the public officer may cause to be posted on the main entrance of any building so closed a placard with the following words: "This building is unfit for human habitation; the use or occupation of this building for human habitation or occupancy, or use is prohibited and unlawful."

12-4.7 Inhabiting Posted Building. It shall be unlawful for any person to own, have, keep, maintain or live in any building on which there has been posted a placard as herein provided for, or to remove or cause the removal of any posted placard.

12-4.8 Order to Remove or Demolish. If the owner fails to comply with an order to remove or demolish the building, the public officer may cause such building to be removed or demolished.

12-4.9 To be Lien Against Property. The amount of the cost of such repairs, alterations or improvements or vacating and closing, or removal or demolition shall be a municipal lien against the real property upon which such cost was incurred. If the building is removed or demolished by the public officer, he shall sell the materials of such building and shall credit the proceeds of such sale against the cost of the removal or demolition and any balance remaining shall be deposited in the Superior Court by the public officer, shall be secured in such manner as may be directed by the court, and shall be disbursed by the court to the persons found to be entitled thereto by final order or decree of the court; provided, however, that nothing in this section shall be construed to impair or limit in any way the power of the borough to define and declare nuisances and to cause their removal or abatement, by summary proceedings or otherwise.

12-4.10 Conditions Causing Unfitness. The public officer may determine that a building is unfit for human habitation or occupancy, or use, if he finds that conditions exist in the building which are dangerous or injurious to the health or safety of the occupants of such building, the occupants of neighboring buildings or other residents of the borough; without limiting the generality of the foregoing, such conditions may include the following: defects therein increasing the hazards of fire, accident or other calamities; lack of adequate ventilation, light or sanitary facilities; dilapidation; disrepair; structural defects; uncleanliness.

12-4.11 Unfit or Unsafe Buildings. It shall be unlawful for any person to have, keep or maintain a building that is unfit for human habitation, or occupancy, or use, or which is dangerous or injurious to the health or safety of the occupants of the buildings or the occupants of neighboring buildings or other residents or people in the borough as specified in this section.

12-4.12 Service of Complaint. Any complaint or complaints, order or orders issued by the public officer pursuant to the provisions of this section shall be served upon persons either personally or by registered mail, but if the whereabouts of such persons is unknown and the same cannot be ascertained by the public officer in the exercise of reasonable diligence, the public officer shall make an affidavit to that effect and then the serving of the complaint or order upon such persons may be made by publishing the same once each week for two successive weeks in a newspaper printed and published in the borough, or, in the absence of a newspaper, in one printed and published in Ocean County and circulating in the borough.

A copy of the complaint or order shall be posted in a conspicuous place on the premises affected by the complaint or order. A copy of the complaint or order shall be duly recorded or lodged for record with the clerk of the County of Ocean.

12-4.13 Powers of Public Officer. The public officer is hereby authorized to exercise such powers as may be necessary or convenient to carry out and effectuate the purposes and provisions of this section, including the following powers in addition to the other powers herein granted:

a. To investigate the building conditions in the borough in order to determine which buildings therein are unfit for human habitation or occupancy, or use.

b. To administer oaths, affirmations, examine witnesses and receive evidence;

c. To enter upon premises for the purpose of making examinations; provided, that such entries shall be made in such manner as to cause the least possible inconvenience to the persons in possession;

d. To appoint and fix the duties of officers, agents and employees as he deems necessary to carry out the purpose of this section.

e. To delegate any of his functions and powers under this section to such officers and agents as he may designate.

12-4.14 Removal or Repair by Borough. Any repair, alteration, improvement, removal or demolition as above provided, may be performed by the borough, through its proper officers or employees, or the borough may contract with other person to render such service on behalf of the borough, under its control and direction, and pursuant to specifications showing in detail the service to be rendered and to rules and regulations adopted by the board of commissioners for the same, and upon ample security for proper performance being given to the borough. The procedure to be followed in entering into any such contract shall be in accordance with R.S. 40:48-5, as amended and supplemented. The borough may recover the cost thereof from the owner by action at law, which action shall be in addition to any other remedy provided for by this section, and shall not make void any lien upon real estate provided for by this section, nor prevent the imposition of any penalty imposed for violation of this or any other ordinance of this borough.

12-5 DEFINITIONS.

As used in this chapter:

a. *Public officer* shall mean the officer or officers who are authorized by this chapter to exercise the powers prescribed by this chapter.

b. *Public authority* shall mean any housing authority of any officer who is in charge of any department or branch of government of the borough relating to health, fire, building regulations, or to other activities concerning buildings in the borough.

c. *Owner* shall mean the holder of the title in fee simple.

d. *Parties in interest* shall mean all individuals, associations and corporations who have interests of record in a building and any who are in possession thereof.

12-6 EXTERIOR DESIGN AND APPEARANCE OF BUILDINGS.

12-6.1 Findings. It is hereby found, determined and declared that excessive uniformity or similarity in the exterior design and appearance of buildings erected in the borough for occupancy by single or two families adversely affects the desirability of immediate and neighboring areas for residence purposes and in so doing impairs the benefits of occupancy of existing residential property in such area, impairs the stability and value of both improved and unimproved property in such areas, prevents the most appropriate development of such areas, produces degeneration and depreciation of residential property in such areas, deprives the municipality of tax revenue which it otherwise would receive and destroys a proper balance in relationship between the taxable value of real property in such areas and the costs of municipal services provided therefor, and for some or all of these reasons, results in a substantial depreciation in the property value of the borough; and it is further determined and declared that it is the purpose of this section to prevent these and other harmful effects of excessive uniformity or similarity in the exterior design and appearance of buildings erected in the borough for occupancy as dwellings by single or two families and thus to promote the general welfare of the community.

12-6.2 Similar Design to Neighboring Buildings Prohibited. Except as provided in this section, no person shall build, alter or relocate, and no building permit shall be issued for the erection, relocation or exterior alteration of any building for occupancy as a dwelling for one or two families if it is, will be made, or will become similar or substantially similar, to any neighboring building as hereinafter defined, then in existence or for which a building permit has been issued, in more than three of the following respects:

a. Substantially identical facade;

b. Height of the main roof ridge, or, in the case of a building with a flat roof, the highest point of the roof beams, above the elevation of the first floor;

c. Height of the main roof ridge above the top of the plate (all flat roofs shall be deemed identical in this dimension);

d. Length of the main roof ridge, or, in the case of a building with a flat roof, length of the main roof;

e. Width between outside walls at the end of the building measured under the main roof at right angles to the length thereof;

f. Relative location of windows in the front elevation or in each of both side elevations with respect to each other and with respect any door, chimney, porch or attached garage in the same elevation;

g. In the front elevation both:

    1. Relative location with respect to each other of garage, if attached, porch, if any and the remainder of the building.

2. Either height of any portion of the building located outside the limits of the main roof, measured from the elevation of the first floor to roof ridge, or, in the case of a flat roof, the highest point of the roof beams, or width of the portion of the building if it has a gable in the front elevation, otherwise length of the roof ridge or the flat roof in the front elevation.

12-6.3 Building Deemed Similar. Buildings shall be deemed to be similar to each other in any dimension with respect to which the difference between them is not more than two feet. As to buildings between which the only difference in relative location of elements is end to end or side to side, reversal of elements shall be deemed to be similar to each other in relative location of such elements.

12-6.4 Location of Similar Buildings. In relation to the premises with respect to which permit is sought, a building shall be deemed to be a neighboring building if the lot upon which it or any part of it has been or will be erected is any one of the following lots, as shown on the tax map of the borough:

a. Any lot on the street upon which the building to be erected on the premises would front which is the first or the second lot next along the street in either direction from the premises, without regard to intervening street lines.

b. Any lot any part of the street line frontage of which is across the street from the premises or from a lot referred to in paragraph a. of this subsection.

c. Any lot any part of the street line frontage of which faces the end of, and is within the width of, another street, if there are less than two lots between the premises and the end of the other street.

d. Any lot on another street which adjoins the premises.

e. Any lot any part of the street line frontage of which is across another street from the premises or from a lot referred to in the paragraph d of this subsection; provided, however, that not withstanding any of the foregoing provisions of this section, no building shall be deemed to be a neighboring building in relation to the premises if its rear elevation faces the street upon which the building which is to be erected on the premises would front.

12-6.5 Building Permit, Exterior Drawings Required. An applicant for a building permit for the erection, relocation or exterior alteration of any building for occupancy as a dwelling for one or two families, shall submit as a part of the application drawings showing the design of the exterior appearance of the proposed structure.

12-6.6 Denial of Application. In any case in which the building inspector of the borough shall deny an application for a building permit solely or partly because of a supposed violation of the provisions of subsection 12-6.2, he shall promptly send to the applicant, by prepaid mail addressed to the address of the applicant set forth in the application, a notice of his action which shall specify the ground of grounds upon which the same is based. Insofar as it relates to the provisions of subsection 12-6.2, action of the building inspector shall be subject to administrative review only upon an appeal to the building board duly taken under subsection 12-6.7.

12-6.7 Appeal to Building Board. Any person aggrieved by action of the building inspector in denying an application for a building permit solely or partly because of a supposed violation of the provisions of subsection 12-6.2, and any interested person who claims that action of the building inspector in granting an application for a building permit violates such provisions may take an appeal therefrom to the building board by filing a notice of appeal, which shall specify the grounds thereof, with the building inspector and with the board within 15 days from the date of which such action was taken. Upon receipt of such notice of appeal, the building inspector shall forthwith transmit to the board all of the papers constituting the record upon which the action appealed from was taken, and such appeal shall be heard by the building board in accordance with the provision of law governing the hearing of appeals by the board.

12-7 BUILDING BOARD.

12-7.1 Creation, Members. There is hereby created a building board which shall consist of the same persons, serving the same terms, as the members of the board of adjustment. Upon any such person ceasing to be a member of the board of adjustment, he shall automatically cease to be a member of the building board. The members of the building board shall be appointed initially by the board of commissioners for terms to expire on the date of expiration of their respective terms as members of the board of adjustment, and subsequent appointments shall be for terms of five years each. Vacancies shall be filled for the unexpired term of the member whose place has become vacant.

12-7.2 Meetings. Meetings of the building board shall be held at the call of the chairman and at such other times as the board may determine. The chairman, or in his absence, the acting chairman, may administer oaths and compel the attendance of witnesses. The board shall keep minutes if its proceedings, showing the vote of each member upon every question, or if absent or failing to vote, indicating such fact, and shall also keep records of its examinations and other official actions. The board shall have the power to adopt, amend and repeal rules and regulations, governing its procedure and the transaction of its business. A majority of the members of the board shall constitute a quorum for the transaction of business. Every rule or regulation, every amendment or repeal thereof, and every order, requirement, decision or determination of the board shall immediately be filed in the office of the board and shall be a public record.

12-7.3 Duty of Board. The building board shall hear appeals from any action of the building inspector denying a building permit because of a supposed violation of the provisions of this section and appeals from such other rulings and in respect of such other matters as shall be placed under its jurisdiction by the board of commissioners.

Unless the building board shall otherwise direct, an appeal to it shall stay all proceedings in furtherance of the action from which the appeal is taken.

12-7.4 Hearing. The building board shall fix a reasonable time for the hearing of each such appeal and shall give due notice thereof to the appellant and to the municipal officials or the municipal board from whose action the appeal is taken. The building board shall render a decision not later than thirty days from the day of the hearing. If no decision shall be rendered by the expiration of such thirty day period, unless the appellant shall have agreed to an extension, the action from which the appeal was taken shall be deemed reversed. Hearings shall be open to the public and upon a hearing any party may appear in person, by an agent or by attorney.

12-7.5 Powers of Building Board. Upon any appeal, the building board may reverse or affirm, wholly or partly, or may modify the action from which the appeal was taken. Upon a finding of practical difficulty or unnecessary hardship the building board shall have the power in passing upon appeals to vary or modify the strict application of this section, the terms of which occasioned the action from which the appeal is taken, provided that such relief can be granted without substantial detriment to the public good and will not substantially impair the intent and purpose of this section.

12-8 FLOOD DAMAGE PREVENTION.

STATUTORY AUTHORIZATION. The Legislature of the State of New Jersey has in N.J.S.A. 40:48-1 et seq. delegated the responsibility to local governmental units to adopt regulations designed to promote public health, safety, and general welfare of its citizenry. Therefore, the Borough of Harvey Cedars of New Jersey does ordain as follows:

12-8.1 Findings of Fact.

A. The flood hazard areas of the Borough of Harvey Cedars are subject to periodic inundation which results in loss of life, property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety and general welfare.

B. These flood losses are caused by the cumulative effect of obstructions in areas of special flood hazard which increase flood heights and velocities, and when inadequately anchored, damage uses in other areas. Uses that are inadequately floodproofed, elevated or otherwise protected from flood damage also contribute to the flood loss.

12-8.2 Statement of Purpose. It is the purpose of this section to promote the public health, safety and general welfare and to minimize public and private losses due to flood conditions in specific areas by provisions designed to:

A. To protect human life and health.

B. To minimize expenditure of public money for costly flood control projects.

C. To minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public.

D. To minimize prolonged business interruptions.

E. To minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets and bridges located in areas of special flood hazard.

F. To help maintain a stable tax base by providing for the sound use and development of areas of special flood hazard so as to minimize future flood blight areas.

G. To insure that potential buyers are notified that property is in an area of special flood hazard.

H. To ensure that those who occupy the areas of special flood hazard assume responsibility for their actions.

12-8.3 Methods of Reducing Flood Losses. In order to accomplish its purposes, this section includes methods and provisions for:

A. Restricting or prohibiting uses which are dangerous to health, safety and property due to water or erosion hazards, or which result in damaging increases in erosion or in flood heights or velocities.

B. Requiring that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction.

C. Controlling the alteration of natural flood plains, stream channels, and natural protective barriers, which help accommodate or channel flood waters.

D. Controlling filling, grading, dredging and other development which may increase flood damage.

E. Preventing or regulating the construction of flood barriers which will unnaturally divert flood waters or which may increase flood hazards to other lands.

12-8.4 Definitions. Unless specifically defined below, words or phrases used in this section shall be interpreted so as to give them the meaning they have in common usage and to give this section its most reasonable application.

Appeal shall mean a request for a review of the construction code official's interpretation of any provision of this section or a request for a variance.

Area of shallow flooding means a designated AO, AH, or VO zone on a community's Flood Insurance Rate Map with a one percent or greater chance of flooding to an average depth of one to three feet where a clearly defined channel does not exist, where the path of flooding is unpredictable and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

Area of special flood hazard shall mean the land in the flood plain within a community subject to a one percent or greater change of flooding in any given year.

Areas of special flood related erosion hazard is the land within a community which is most likely to be subject to severe flood related erosion losses. After a detailed evaluation of the special flood related erosion hazard area will be designated a Zone E on the Flood Insurance Rate Map.

Base flood shall mean the flood having a one percent chance of being equaled or exceeded in any given year.

Basement shall mean any area of the building having its floor subgrade (below ground level) on all sides.

Breakaway walls shall mean a wall that is not part of the structural support of the building and is intended through its design and construction to collapse under specific lateral loading forces without causing damage to the elevated portion of the building or supporting foundation system.

Coastal high hazard area shall mean an area of special flood hazard extending from offshore to the inland limit of primary frontal dune along an open coast and any other area subject to high velocity wave action from storms or seismic sources.

Development shall mean any man-made change to improved or unimproved real estate including, but not limited to, buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations, or storage of equipment or materials located within the area of special flood hazard.

Elevated building shall mean a non-basement building (i) built in the case of a building in an area of special flood hazard to have the top of the elevated floor or in the case of a building in a coastal high hazard area to have the bottom of the lowest horizontal structural member of the elevated floor elevated above the ground level by means of piling, columns (posts and piers), or shear walls parallel to the flow of the water and (ii) adequately anchored so as not to impair the structural integrity of the building during a flood up to the magnitude of the base flood. In an area of special flood hazard, *elevated building* shall also include a building elevated by means of fill or solid foundation perimeter walls with openings sufficient to facilitate the unimpeded movement of flood waters. In areas of coastal high hazard, *elevated building* shall also include a building otherwise meeting the definition of *elevated building* even though the lower area is enclosed by means of breakaway walls.

Erosion shall mean the process of the gradual wearing away of land masses.

Flood or flooding shall mean a general and temporary condition of partial or complete inundation of normally dry land areas from:

1. The overflow of inland or tidal waters.
2. The unusual and rapid accumulation or runoff of surface waters from any source.

Flood Insurance Rate Map (FIRM) shall mean the official map on which the Federal Insurance Administration has delineated both the area of special flood hazards and the risk premium zones applicable to the community.

Flood Insurance Study (FIS) shall mean the official report provided in which the Federal Insurance Administration has provided flood profiles, as well as the Flood Insurance Rate Map(s) and the water surface elevation of the base flood.

Flood-related erosion shall mean the collapse or subsidence of land along the shore of a lake or other body of water as a result of undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by unusually high water level in a natural body of water, accompanied by a severe storm, or by unanticipated force of nature, such as a flash flood or an abnormal tidal surge, or by some similarly unusual and unforeseeable event which results in flooding.

Flood-related erosion area or *flood-related erosion prone area* shall mean a land area adjoining the shore of a lake or other body of water, which due to the composition of the shore line or bank and high water levels or wind-driven currents, is likely to suffer flood-related erosion.

Flood-related erosion area management shall mean the operation of an overall program of corrective and preventive measures for reducing flood-related erosion damage, including but not limited to emergency preparedness plans, flood-related erosion control works, and flood plain management regulations.

Flood plain management regulations shall mean zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances (such as a flood plain ordinance, grading ordinance and erosion control ordinance) and other applications of police power. The term describes such State or local regulations, in any combination thereof, which provide standards for the purpose of flood damage prevention and reduction.

Highest adjacent grade shall mean the highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

Historic Structure shall mean any structure that is:

1. Listed individually in the Nature Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register.
2. Certified or preliminary determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district.
3. Individually listed on a State inventory of historic places in States with historic preservation programs which have been approved by the Secretary of the Interior; or
4. Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either

    a. By an approved State program as determined by the Secretary of the Interior; or
    b. Directly by the Secretary of the Interior in States without approved programs.

Lowest floor shall mean the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for the parking of vehicles, building access or storage in an area other than a basement is not considered a building's lowest floor, provided that such enclosure is not built so to render the structure in violation of other applicable non-elevation design requirements.

Manufactured home shall mean a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when attached to the required utilities. The term *manufactured home* does not include a *recreational vehicle*.

Manufactured home park or manufactured home subdivision shall mean a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

Mean sea level shall mean the average height of the sea for all states of the tide.

New construction shall mean structures for which the start of construction commenced on or after the effective date of a floodplain regulation adopted by a community and includes any subsequent improvements to such structures.

New manufactured home park or subdivision shall mean a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the effective date of the flood plain management regulations adopted by the municipality.

Primary frontal dune shall mean a continuous or nearly continuous mound or ridge of sand with relatively steep seaward and landward slopes immediately landward and adjacent to the beach and subject to erosion and overtopping from high tides and waves from coastal storms. The inland limit of the primary frontal dune occurs at the point where there is a distinct change from the relatively steep slope to a relatively mild slope.

Recreational vehicle shall mean a vehicle which is (a) built on single chassis; (b) 400 square feet or less when measured at the longest horizontal projections; (c) designed to be self-propelled or permanently towable by a light duty truck; and (d) designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

Sand dunes shall mean naturally occurring accumulations of sand in the ridges or mounds landward of the beach.

Start of Construction for other than new construction or substantial improvements under the Coastal Barrier Resources Act (P.L. 97-348) shall include substantial improvement and shall mean the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement was within 180 days of the permit date. The actual start shall mean either the first placement of permanent construction of a structure on a site such as the pouring of a slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling, nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not the alteration affects the external dimensions of the building.

Structure shall mean a walled and roofed building, a manufactured home, or a gas or liquid storage tank that is principally above ground.

Substantial Damage shall mean damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the replacement value of the structure before the damage occurred.
(Ord. No. 2010-23 § 1)

Substantial improvement shall mean any, reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which exceeds 50 percent of the replacement value of the structure before the *start of construction* of the improvement. This term includes structures which have incurred *substantial damage,* regardless of the actual repair work performed. The term does not, however, include either:

(a) Any project for improvement of a structure to correct existing violations of State or local health, sanitary or safety code specifications which have been identified by the local code enforcement officer and which are the minimum necessary to assure safe living conditions, or,

(b) Any alteration of a *historic structure,* provided that the alteration will not preclude the structure's continued designation as a *historic structure.*

(Ord. No. 2010-23 § 1)

Variance shall mean a grant of relief from the requirements of this section which permits construction in a manner that would otherwise be prohibited by this section.

12-8.5 General Provisions.

A. **Lands to which this section applies**. This section shall apply to all areas of special flood hazards within the jurisdiction of the Borough of Harvey Cedars.

B. **Basis for establishing the areas of special flood hazard.** The areas of special flood hazard for the Borough of Harvey Cedars, Community No. 345296, are identified and defined on the following documents prepared by the Federal Emergency Management Agency:

i. A scientific and engineering report "Flood Insurance Study, Ocean County, New Jersey (All Jurisdictions)" dated September 29, 2006.

ii. Flood Insurance Rate Map for Ocean County, New Jersey (All Jurisdictions) as shown on Index and panel numbers 0509, 0517 whose effective date is September 29, 2006.

The above documents are hereby adopted and declared to be a part of this ordinance. The Flood Insurance Study and maps are on file at Borough Hall, 7606 Long Beach Blvd., Harvey Cedars, New Jersey 08008.

C. **Penalties for noncompliance.** No structure or land shall hereafter be constructed, located, extended, converted, or altered without full compliance with the terms of this section and other applicable regulations. Violation of the provisions of this section by failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with conditions) shall constitute a misdemeanor. Any person who violates this ordinance or fails to comply with any of its requirements shall upon conviction thereof be fined not more than one thousand dollars ($1,000.00) or

imprisoned for not more than ninety (90) days, or both, for each violation, and in addition shall pay all costs and expenses involved in the case. Nothing herein contained shall prevent the Borough of Harvey Cedars from taking such other lawful action as is necessary to prevent or remedy any violation.

D. **Abrogation and greater restrictions.** This section is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this section and other ordinance, easement, covenant, or deed restriction conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

E. **Interpretation.** In the interpretation and application of this section, all provisions shall be:

1. Considered as minimum requirements.

2. Liberally construed in favor of the borough board of commissioners.

3. Deemed neither to limit nor repeal any other powers granted under State statutes.

F. **Warning and disclaimer of liability.** The degree of flood protection required by this section is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by man-made or natural causes. This section does not imply land outside the areas of special flood hazards or uses permitted within such areas will be free from flooding or flood damages. This section shall not create liability on the part of the Borough of Harvey Cedars or by any officer or employee thereof or the Federal Insurance Administration for any flood damages that result from reliance on this section or any administrative decision lawfully made thereunder.

12-8.6 Administration.

A. **Establishment of development permit.** A development permit shall be obtained before construction or development begins within any area of special flood hazard established under subsection 12-8.5B of this section. Application for a development permit shall be made to the construction code official on forms furnished by him and may include, but not be limited to, the following plans in duplicate drawn to scale showing the nature, location, dimensions, and elevations of the area in question; existing or proposed structures, fill, storage of materials; drainage facilities, and the location of the foregoing. Specifically, the following information is required.

1. Elevation in relation to mean sea level, of the lowest floor (including basement) of all structures.

2. Elevation in relation to mean sea level to which any structure has been floodproofed.

3. Certification by a registered professional engineer or architect that the floodproofing methods for any nonresidential structure meet the floodproofing criteria of subsection 12-8.7B.2.

4. Description of the extent to which any watercourse will be altered or relocated as a result of proposed development.

B. **Designation of construction code official.** The construction code official is hereby appointed to administer and implement this section by granting or denying development permit applications in accordance with its provisions.

C. **Duties and responsibilities of the construction code official.** Duties of the construction code official shall include, but not limited to:

1. Permit review.

   (a) Review all development permits to determine that the permit requirements of this section have been satisfied.

   (b) Review all development permits to determine that all necessary permits have been obtained from those Federal, State or local governmental agencies from which prior approval is required.

   (c) Review all development permits to determine if the proposed development is located in the floodway.

   (d) Review all development permits in the coastal high hazard area of the area of special flood hazard to determine if the proposed development alters sand dunes so as to increase potential flood damage.

   (e) Review plans for walls to be used to enclose space below the base flood level in accordance with subsection 12-8.7C.2(d).

2. Use of other base flood and floodway data.

   When base flood elevation and floodway data has not been provided in accordance with subsection 12-8.5B "Basis for Establishing the Areas of Special Flood Hazard", the construction code official shall obtain, review, and reasonably utilize any base flood elevation and floodway data available form a Federal, State of other source, in order to administer subsection 12-8.7B.1 "Specific Standards, Residential Construction" and 12-8.7B.2 "Specific Standards, Nonresidential Construction".

3. Information to be obtained and maintained.

   (a) Obtain and record the actual elevation (in relation to mean sea level) of the lowest floor (including basement) of all new or substantially improved structures, and whether or not the structure contains a basement.

   (b) For all new or substantially improved floodproofed structures.

      (1) Verify and record the actual elevation (in relation to mean sea level), and
      (2) Maintain the floodproofing certifications required in subsection 12-8.6A.3.

(c) In coastal high hazard areas, certification shall be obtained from a registered professional engineer or architect that the provisions of 12-8.7C.2(a) and 12-8.7C.2(b)(1) and (2) are met.

(d) Maintain for public inspection all records pertaining to the provisions of this section.

4. Alteration of watercourses.

(a) Notify adjacent communities and the New Jersey Department of Environmental Protection, Flood Plain Management Section and Land Use Regulation Program prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Insurance Administration.

(b) Require that maintenance is provided within the altered or relocated portion of said watercourse so the flood carrying capacity is not diminished.

5. Interpretation of firm boundaries. Make interpretations where needed, as to the exact location of the boundaries of the areas of special flood hazards (for example, where there appears to be a conflict between a mapped boundary and actual field conditions). The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in this subsection.

D. Variance procedure.

1. Appeal board.

(a) The board of adjustment as established by the borough shall hear and decide appeals and requests for variances from the requirements of this section.

(b) The board of adjustment shall hear and decide appeals when it is alleged there is an error in any requirement, decision or determination made by the construction code official in the enforcement or administration of this section.

(c) Any person aggrieved by the decision of the board of adjustment or any taxpayer may appeal such decision as provided by law.

(d) In passing upon such applications, the board of adjustment shall consider all technical evaluations, all relevant factors, standards specified in other sections of this section, and:

(1) The danger that materials may be swept onto other lands to the injury of others;

(2) The danger to life and property due to flooding or erosion damage;

(3) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;

(4) The importance of the services provided by the proposed facility to the community;

(5) The necessity to the facility of a waterfront location, where applicable;

(6) The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use;

(7) The compatibility of the proposed use with existing and anticipated development;

(8) The relationship of the proposed use to the comprehensive plan and flood plain management program for that area;

(9) The safety of access to the property in times of flood for ordinary and emergency vehicles;

(10) The expected heights, velocity, duration, rate of rise and sediment transport of the flood waters and the effects of wave action, if applicable, expected at the site; and,

(11) The costs of providing governmental services during and after flood conditions including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, and streets and bridges.

(e) Upon consideration of the factors listed above and the purposes of this section, the board of adjustment may attach such conditions to the granting of variances as it deems necessary to further the purposes of this section.

(f) The construction code official shall maintain the records of all appeal actions, including technical information, and report any variances to the Federal Insurance Administration upon request.

2. Conditions for variances.

(a) Generally, variances may be issued for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing items (1 through 11) above have been fully considered. As the lot size increases beyond the one-half acre, the technical justification required for issuing the variance increases.

(b) Variances may be issued for the repair or rehabilitation of historic structures upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.

(c) Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.

(d) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

(e) Variances shall only be issued upon:

(1) A showing of good and sufficient cause,

(2) A determination that failure to grant the variance would result in exceptional hardship to the applicant,

(3) A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or

(4) Victimization of the public as identified in section 12-8.6D.1(d).

(f) Any applicant to whom a variance is granted shall be given written notice that the structure will be permitted to be built with a lowest floor elevation below the base flood elevation, and that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.

12-8.7 Provisions for Flood Hazard Reduction.

A. General standards. In all areas of special flood hazards the following provisions are required:

1. Anchoring. All new construction and substantial improvements shall be anchored to prevent flotation, collapse or lateral movement of the structure. All manufactured homes shall be anchored to resist flotation, collapse or lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable State and local anchoring requirements for resisting wind forces.

2. Construction materials and methods.

(a) All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.

(b) All new construction and substantial improvements shall be constructed using methods and practices that minimize flood damage.

(c) For all interior spaces below the first floor living space, i.e. garage and storage areas, FEMA Technical Bulletin No. 2 shall not apply. All interior spaces below the first floor living space, in all flood zones, which includes the area below the Base Flood Elevation (BFE), with the exception of elevator shafts and a non-heated space not to exceed 100 sq. ft. for a foyer and stairwell, shall be unfinished with no insulation and be breakaway construction with a permitted exterior finish in accordance with the applicable Flood Zone Regulations. In addition, all houses shall be on structural piling which shall extend to and carry the structural support

of the first floor living space. No concrete walls or foundations are permitted except when elevating existing houses being raised to flood elevations, foundations may be considered by the Construction Dept. (Ord. No. 2014-15 § 1)

3. Utilities.

   (a) All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system;

   (b) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharge from the systems into flood waters;

   (c) On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding; and

   (d) Electrical, heating, ventilation, plumbing and air-conditioning equipment and other service facilities shall be designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

4. Subdivision proposals.

   (a) All subdivision proposals shall be consistent with the need to minimize flood damage.

   (b) All subdivision proposals shall have public utilities and facilities such as sewer, gas, electrical and water systems located and constructed to minimize flood damage.

   (c) All subdivision proposals shall have adequate drainage provided to reduce exposure to flood damage.

   (d) Base flood elevation data shall be provided for subdivision proposals and other proposed development which contain at least 50 lots or five acres (whichever is less).

5. Enclosure openings. All new construction and substantial improvements fully enclosed areas below the lowest floor that are usable solely for parking vehicles, building access or storage in an area other than a basement and which are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or must meet or exceed the following minimum criteria: A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided. The bottom of all openings shall be no higher than one foot above grade. Openings may be equipped with screens, louvers, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.

B. Specific standards. In all areas of special flood hazards where base flood elevation data has been provided as set forth in subsection 12-8.5B "Basis for establishing the areas of special flood hazard" or subsection 12-8.6C.2 "Use of other base flood and floodway data", the following standards are required:

1. Residential construction. In Zones A or AE zones new construction and substantial improvement of any residential structure shall have the lowest floor, including basement, elevated to or above base flood elevation; require within any AO zone on the municipality's FIRM that all new construction and substantial improvement of any residential structure shall have the lowest floor, including basement, elevated above the highest adjacent grade at least as high as the depth number specified in feet (at least two feet if no depth number is specified). And, require adequate drainage paths around structures on slopes to guide floodwaters around and away from proposed structures.

2. Nonresidential construction.

(a) In A or AE all new construction or substantial improvement of any commercial, industrial or other nonresidential structure shall either have the lowest floor, including basement, elevated to the level of the base flood elevation or, together with the attendant utilities and sanitary facilities, shall:

(b) require within any AO zone on the municipality's FIRM that all new construction and substantial improvement of any commercial, industrial or other nonresidential structure shall either have the lowest floor, including basement, elevated above the highest adjacent grade at least as high as the depth number specified in feet (at least two feet if no depth number is specified). And, require adequate drainage paths around structures on slopes to guide floodwaters around and away from proposed structures; or

(c) be floodproofed so that below the base flood level the structure is watertight with walls substantially impermeable to the passage of water;

(d) have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy; and

(e) be certified by a registered professional engineer or architect that the -design and methods of construction are in accordance with accepted standards of practice for meeting the applicable provisions of this subsection. Such certification shall be provided to the official as set forth in subsection 12-8.6C.3(b).

3. Manufactured homes.

(a) Manufactured homes shall be anchored in accordance with section 12-8.7A.1 "Anchoring".

(b) All manufactured homes to be placed or substantially improved within an area of special flood hazard shall be elevated on permanent foundation such that the top of the lowest floor is at or above the base flood elevation.

C. Coastal high hazard area. Coastal high hazard areas (V or VE zones) are located within the areas of special flood hazard established in subsection 12-8.5B. These areas have special flood hazards associated with high velocity waters from tidal surges and hurricane wave wash; therefore, the following provisions shall apply:

1. Location of structures.

(a) All buildings or structures shall be located landward of the reach of the mean high tide.
(b) The placement of manufactured homes shall be prohibited, except in an existing manufactured home park or manufactured home subdivision.

2. Construction methods.

(a) Elevation. All new construction and substantial improvements shall be elevated on piling or columns, so that the bottom of the lowest horizontal structural member of the lowest floor (excluding the piling or columns) is elevated to or above the base flood level, with all space below the lowest floor's supporting member open so as not to impede the flow of water, except for breakaway walls as provided for in subsection 12-8.7C.2(d).

(b) Structural support.

(1) All new construction and substantial improvements shall be securely anchored on piling or columns.

(2) The pile or column foundation and structure attached thereto, shall be anchored to resist flotation, collapse or lateral movement due to the effects of wind and water loading values, each of which shall have a one percent chance of being equaled or exceeded in any given year (100 year mean recurrence interval).

(3) There shall be no fill used for structural support.

(c) Certification. A registered professional engineer or architect shall develop or review the structural design specifications and plans for the construction and shall certify that the design and methods of construction to be used are in accordance with accepted standards of practice for compliance with the provisions of subsection 12-8.7C.2(a) and 12-8.7C.2 (b)(1) and (2).

(d) Space below the lowest floor.

(1) Any alteration, repair, reconstruction or improvement to a structure started after the enactment of this section shall not enclose the space below the lowest floor, unless breakaway walls, open wood lattice-work or insect screening are used as provided for in this section.

(2) Breakaway walls, open wood lattice-work or insect screening shall be allowed below the base flood elevation, provided that they are intended to collapse under wind and water loads without causing collapse, displacement, or other structural damage to the elevated portion of the building or supporting foundation system. Breakaway walls shall be designed for a safe loading resistance of not less than ten and no more than 20 pounds per square foot. Use of breakaway walls which exceed a design safe loading of 20 pounds per square foot (either by design or when so required by local or state codes) may be permitted only if a registered professional engineer or architect certifies that the designs proposed meet the following conditions.

(i) Breakaway wall collapse shall result from a water load less than that which would occur during the base flood, and

(ii) The elevated portion of the building and supporting foundation system shall not be subject to collapse, displacement, or other structural damage due to the effects of wind and water load acting simultaneously on all building components (structural and nonstructural). Water loading values used shall be those associated with the base flood. Wind loading values used shall be those required by applicable State or local building standards.

(3) If breakaway walls are utilized, such enclosed space shall be used solely for parking of vehicles, building access, or storage and not for human habitation. Prior to construction, plans for any breakaway wall must be submitted to the local administrator for approval.

3. Sand dunes. There shall be no alteration of sand dunes which would increase potential flood damage.

D. All provisions contained in subsection 12-8.7C shall apply to all buildings and structures whenever located in the Borough of Harvey Cedars.

12-8.8 – 12-8.10 RESERVED

12-8.11 Lot Elevation Below Borough Street Profile – Building Permits.

No building permit shall be issued for new construction on any land located east of Long Beach Boulevard when the elevation of such land is below the established Borough Street Profile as herein defined. Before any permit for construction shall issue, all land below the established Borough Street Profile must be filled with clean fill to an elevation of eight inches above the established Borough Street Profile.

In the event that the elevation of the existing street or streets (including easements) bordering said land is at a higher elevation than the established "Borough Street Profile" then the higher elevation shall govern and the land shall be filled to an elevation of eight inches above the street, streets or easements affected.

Established Borough Street Profile shall be a line drawn from a starting point at the east edge of the pavement thirty (30) feet east from the centerline of Long Beach Boulevard except as follows:

a. thirty five (35) feet east from the centerline of Long Beach Boulevard for 85th Street,
b. forty (40) feet east from the centerline of Long Beach Boulevard for 86th Street,

said starting point having an elevation established in 1988 (NAVD) Datum, the slope of the line shall be 2.1 percent extending eastwardly and perpendicular to Long Beach Boulevard.

All lot grades shall be established in USC&GS datum.

No building permit shall be issued for new construction on any land west of Long Beach Boulevard when the elevation of such land is below the elevation of the street or streets which border said land. Before any permit for construction shall issue, all land below the improved municipal street or streets which border said land must be filled with clean fill to an elevation of eight inches above the street or streets affected. If any land referred to herein does not front on an improved municipal street, then the reference point for lot elevation purposes shall be taken from the nearest municipal improved street to said land as determined by the municipal engineer.

All applications for building permits shall include a plot plan drawing showing a profile of the established Borough Street Profile, the relationship of the property along said profile, and the existing and proposed grades in conformance with this paragraph. In the event the building department determines that the plot plan must be reviewed by the municipal engineer, then the cost of said review shall be borne by the applicant.

In the case of additions, alterations or repairs to existing structures, the above requirement shall apply when:

~~a.~~ In the case of additions, alterations or repairs to existing structures, the above requirements shall apply when additions, alterations or repairs are made within any 36 month period which costs exceed 50 percent of replacement value of the existing structure or structures on a given building lot.
b. When any structure on a building lot is moved from its existing foundation for the purpose of installing piling or to raise the structure to a higher elevation.

(Ord. No. 2012-07 § 1)

12-9 HOURS OF CONSTRUCTION.

12-9.1 Days and hours. Construction and demolition activity, excluding emergency work, shall be performed as follows:

a. Mondays through Fridays
   1. After Labor Day through June 30th beginning no earlier than 7:00 a.m.
   2. From July 1 through Labor Day beginning no earlier than 8:00 a.m.

b. Saturdays beginning no earlier than 8:00 a.m.

c. No construction activity shall be performed on Sundays, except by the homeowner beginning no earlier than 8:00 a.m.

(Ord. No. 2015-03 § 1)

12-9.2 Exceptions. Exceptions may be made to Section 12-9.1 above for the following circumstances:

a. In the case of urgent necessity in the interest of public health and safety.

b. The 6:00 p.m. stop time may be extended for the contractor or homeowner to get the house under roof.

12-9.3 Enforcement, Violations and Penalties. Violation of any provision of this section shall be cause for an enforcement document to be issued to the violator by the code enforcement officer or law enforcement officer. The recipient of an enforcement document shall be entitled to a hearing in the Municipal Court having jurisdiction to contest such action.

(Ord. No. 2009-04 § 1)

12-10 UNDERGROUND UTILITIES.

12-10.1 Installation Required. Subject to the requirements of State law and any regulations promulgated thereunder, prior to the issuance of a Certificate of Occupancy for new construction or major renovation within the Borough of Harvey Cedars, the property owner(s) shall have all utility lines for electric, telephone, TV cable or other like or similar services that serve residential and commercial customers, installed and placed underground, subject only to the exceptions hereinafter stated; however, above-ground placement, construction, modification or replacement of meters, gauges, transformers, street lighting (including poles upon which such street lighting is affixed) and service connection pedestals shall be allowed.

Major renovation is defined as any construction which exceeds fifty percent (50%) of the replacement value of the structure on the property. (Ord. No. 2010-23 § 3)

In the case of additions, alterations or repairs to existing structures, the above requirements shall apply when additions, alterations or repairs are made within any 36 month period which costs exceed 50 percent of replacement value of the existing structure or structures on a given building lot. (Ord. No. 2012-07 § 2)

12-10.2 Exceptions. Above-ground placement, construction, modification or replacement of lines shall be allowed in residential and commercial areas where the Board of Commissioners, following consideration and recommendation by the Planning Board, finds that:

1. Underground placement would place an undue financial burden upon the landowner or the utility company or deprive the landowner of the preservation and enjoyment of substantial property rights; or,
2. Underground placement is impractical or not technically feasible due to topographical, subsoil or other existing conditions which adversely affect underground utility placement.
3. Notwithstanding any other provision of this Ordinance, existing or future infrastructure (which shall include, but not be limited to poles, wire, cables, transformers and other equipment) of Atlantic City Electric Company, its successor and assigns, along public streets and rights of way shall be exempt from the requirement of this ordinance.

12-10.3 Temporary Service. Above-ground placement of temporary service lines shall only be allowed:

1. During the new construction or major renovation of any project.
2. During any emergency to safeguard lives or property within the Borough.

12-10.4 Placement. All utility lines shall be placed within appropriate easements or dedicated public ways so as to cause minimum conflict with other underground services. Whenever feasible or required under State law and any regulations promulgated thereunder, all utilities shall be placed within the same trench.

12-10.5 Repair and Maintenance of Existing Utilities. Nothing in this Section shall be construed to prevent repair, maintenance, replacement or modification of existing overhead utility lines.

(Ord. No. 2009-06 § 1)

CHAPTER XIII

ZONING

13-1 TITLE, PURPOSE AND INTERPRETATION.

13-1.1 Title. This chapter shall be known as "The Zoning Ordinance of the Borough of Harvey Cedars." (Ord. No. 2001-02 § 1)

13-1.2 Interpretation.

a. For the purpose of consolidation, codification and revision, the Zoning Ordinance of the Borough, the title of which is set forth in the title hereof, and the various amendments thereof and supplements thereto, are further amended, consolidated and revised as herein provided.

b. In their interpretation and application, the provisions of this chapter shall be held to be the minimum requirements, adopted for the promotion of the public health, safety, morals, comfort, prosperity and general welfare. It is not intended by this chapter to repeal, abrogate, annul or in any way impair or interfere with any existing provisions of law or ordinance or with any rules, regulations or permits previously adopted or issued or which shall be adopted or issued pursuant to law relating to the uses of building or land, or with any private restrictions placed upon a property by covenant or deed; provided that where this chapter requires a greater width of size, or yards, courts or other open spaces, or requires a greater percentage of lot to be left unoccupied, or imposes restrictions more extensive than are required by any other statute or local ordinance or regulation, the provisions of the regulations in this chapter shall govern. (Ord. No. 2001-02 § 1)

13-1.3 Purpose. This chapter is adopted for the purpose of promoting health, safety, morals, general welfare, securing safety from fire, flood, and other dangers, preventing the overcrowding of land or buildings, and with the view of conserving the value of property and encouraging the most appropriate use of land and buildings within the Borough. (Ord. No. 2001-02 § 1)

13-2 ZONING MAP.

13-2.1 Adopted by Reference. The Borough is hereby divided into zones, or districts, as shown on the Official Zoning Map which, together with all explanatory matter thereon, is hereby adopted by reference and declared to be a part of this chapter. (Ord. No. 2001-02 § 1)

13-2.2 Official Zoning Map. The official zoning map shall be identified by the signature of the Mayor attested by the Borough Clerk, and bearing the seal of the Borough under the following words: "This is to certify that this is the Official Zoning Map referred to in Ordinance Number 66-4 of the Borough of Harvey Cedars, New Jersey", together with the date, July 16, 1966. (Ord. No. 2001-02 § 1)

13-2.3 Changes in Zoning Map. If, in accordance with the provisions of this ordinance and R.S. 40-55-30, supplements thereto and amendments thereof, changes are made in district boundaries or other matter portrayed on the Official Zoning Map, such changes shall be made of the Official Zoning Map promptly after the amendment has been approved by the Mayor and Commissioners, together with an entry on the Official Zoning Map as follows: "On (date), the official action of the Mayor and Commissioners, the following change(s) were made in the Official Zoning Map; (brief description of nature of change(s)," which entry shall be signed by the Mayor and attested by the Borough Clerk. The amending ordinance shall provide that such changes or amendments shall not become effective until they have been duly entered upon the Official Zoning Map. No amendment to this ordinance which involves matter portrayed on the Official Zoning Map shall become effective until after such change and entry has been made on the Map.

No changes of any nature shall be made in the Official Zoning Map or matter shown thereon except in conforming with the procedures set forth in this chapter. Regardless of the existence of purported copies of the Official Zoning Map, which may be made or published, the Official Zoning Map which shall be located in the office of the Borough Clerk shall be the final authority as the current zoning status of land and water areas, buildings, and other structures in the Borough. (Ord. No. 2001-02 § 1)

13-2.4 Replacement of Official Zoning Map. In the event that the Official Zoning Map becomes damaged, destroyed, lost, or difficult to interpret because of the nature or number of the changes and additions, the Borough Commissioners may by resolution adopt a new Official Zoning Map which shall supersede the prior Official Zoning Map. The new Official Zoning Map may correct drafting or other errors or omissions in the prior Official Zoning Map but no such correction shall have the effect of amending the original zoning ordinance or any subsequent amendment thereof. The new Official Zoning Map shall be identified by the signature of the Mayor attested by the Borough Clerk, and bearing the seal of the Borough under the following words: This is to certify that this Official Zoning Map supersedes and replaces the Official Zoning Map adopted (date of adoption of map being replaced) as part of Ordinance Number 66-4 of the Borough of Harvey Cedars, New Jersey. (Ord. No. 2001-02 § 1)

13-3 DEFINITIONS.

Whenever a term used in this chapter is defined in R.S. 40:55D-1 et seq., the term is intended to have the meaning set forth in the definition of such term in that statute. However, the following terms, as used in this chapter, shall be defined as follows:

The words "used" or "occupied" shall include the words "intended," "designed," or "arranged to be used or occupied". The word "lot" shall include the words "plot" or "parcel."

Accessory use or *accessory building* shall mean a subordinate use or subordinate building the purpose of which is incidental to that of the main use or main building and on the same lot. (Ord. No. 2007-13 § 3)

Addition shall mean an increase in the footprint area of a building, an increase in the height, or an increase in the number of stories of a building. (Ord. No. 2007-13 § 3)

Alteration shall mean the rearrangement of any space by the construction of walls or partitions or by a change in ceiling height, the addition or elimination of any door or window, the extension or rearrangement of any system, the installation of any additional equipment or fixtures and any work which reduces the loadbearing capacity of or which imposes additional loads on a primary structural component. (Ord. No. 2001-02 § 1)

Attic shall mean area between ceiling joists of top story and the roof rafters above. An attic area shall not be finished nor heated and not used for anything but storage or mechanical equipment. (Ord. No. 2007-13 § 3)

Buildable Lot Area shall mean the portion of a lot remaining after required yard areas have been set aside. (Ord. No. 2007-13 § 2)

Building shall mean any structure having a roof supported by columns, piers, or walls including tents, lunch wagons, trailers, dining cars, camp cars, or other structures on wheels or having other supports and any unroofed platform, terrace or porch having a vertical face higher than twelve (12) inches above the level on the ground from which the height of the building is measured.

Building Footprint Area shall mean the sum of the areas enclosed by the principal and accessory building lines, including any porches and decks. Building footprint area shall exclude:

- air conditioner platforms twenty-four (24) square feet in area and under;
- bay windows not extending down to finish floor, twelve (12) square feet or less in area; outdoor shower enclosures, roofed or unroofed, thirty-two (32) square feet or less;

(Ord. No. 2007-13 § 2)

- chimneys twelve (12) square feet or less in area and not projecting more than two (2) feet from the structure. (Ord. No. 2010-22 § 1)

If the above areas are exceeded, the portion of area exceeding shall be included in the building footprint area.

(Ord. No. 2007-13 § 2)

Building Height shall mean the difference in elevation from the crown of the established road, street, or easement grade at the center of the front yard to the highest point of the building or structure. Eastward of Long Beach Blvd., the established grade shall be the higher elevation of either the existing street or easement, or the established street profile. The height of properties fronting the eastward side of Long Beach Blvd. shall be based on the closest east/west easement or street on the eastward side of Long Beach Blvd. See Section 12-8.11.

Building line shall mean a line formed by the intersection of a horizontal plane that coincides with the exterior surface of the building on any side. In case of a cantilevered or projected section of a building, the vertical plane will coincide with the most projected surface, except for roof overhangs projecting two (2) feet or less, or chimneys projecting two (2) feet or less and bay windows not extending to finish floor less than twelve (12) square feet in area. All yard requirements are measured to the building line. (Ord. No. 2007-13 § 3)

Certificate of occupancy shall mean a certificate issued by the Borough Building Administrator and enforced by the Zoning Officer upon completion of construction and/or alteration of any building, or upon the sale, conveyance, transfer of ownership or change in the use of any building and/or structure which certified that all requirements of this chapter or such adjustments thereto which have been granted by the Board of Adjustment or Planning Board and all other applicable requirements have been complied with. (Ord. No. 2001-02 § 1)

Courtesy bench shall mean an outside bench and/or seat provided for patrons as a convenience to use while consuming takeout foods. (Ord. No. 2014-08 § 1)

Deck shall mean an exterior floor system supported on at least two opposite sides by an adjoining structure and/or posts, piers, or other independent supports. Any deck area with a deck or roof above shall be considered a porch. (Ord. No. 2007-13 § 3)

Dual Use shall mean a use of land where a single parcel, site, or property is used for two distinct uses, both of which are permitted uses in the zone and meet all other town and zoning requirements, specifically a residential use and a commercial use such as a business/professional office, a retail business or a personal/household service establishment, being conducted in a single structure or on a single lot.
(Ord. No. 2013-03 § 1)

Dwelling, single-family shall mean a detached residence designed for or occupied by one (1) family only.

Family shall mean one (1) or more persons occupying a single housekeeping unit and using common cooking facilities provided that unless all members are related by blood or marriage, no such family shall contain over five (5) persons.

Fill – see subsection 12-8.11 regarding lot fill, and subsection 16-7.3f regarding easements and lots. (Ord. No. 2007-13 § 3)

Habitable Areas shall be the heated and air conditioned areas of buildings utilized for living, sleeping, eating or cooking, including bathrooms, toilet compartments, closets, mezzanines, stairways, foyers, halls, storage, utility areas, and closed porches. Habitable Areas shall not include unheated attics, crawl spaces, basements or garages, decks, open porches, and floor space less than five (5) feet in height. Habitable Areas will be calculated from the exterior walls of the structure. (Ord. No. 2007-13 § 3)

Impervious Coverage shall mean the sum of the horizontal areas of generally impervious surfaces including roof areas, pools and hot tubs, roofed over decks and fiberglass decks, brick or concrete pavers, asphalt, concrete, and similar type pavements that cover the Lot. Timber or plastic decks having open joints, and gravel, shell or stone surfaces are not considered Impervious Coverage. (Ord. No. 2007-13 § 2)

Lot shall mean a parcel of land of at least sufficient size to meet minimum zoning requirements for use, coverage and area, and to provide such yards and other open spaces as herein required. Such lot shall have direct vehicular access to an improved public street as herein defined and may consist of:

a. A single lot of record;

b. A portion of a lot of record;

c. A combination of complete lots of record, of complete lots of record and portions of lots of record, or of portions of lots of record;

d. A parcel of land described by metes and bounds, provided that in no case of division or combination shall any residential lot or parcel be created which does not meet the requirements of this chapter.

Lot Coverage shall be the ratio of building footprint area to upland lot area.
(Ord. No. 2007-13 § 2)

Lot frontage shall mean on regular lots, the front shall be construed to be the portion nearest the public street. In determining yard requirements, all sides of any regular lot adjacent to the public street shall be considered frontage unless otherwise modified herein.

Lot width shall be determined by measurement across the rear of the required front yard, provided, however, that width between side lot lines at the points where they intersect the street line shall not be less than eighty (80%) percent of required minimum lot width, except in the case of lots on the turning circle of cul-de-sac or at points of street curvature where the radius at the right-of-way line of the street (or circle approximately following the right and intersection the foremost points of the side lot lines) is less than ninety (90) feet, in which case the eighty (80%) percent requirement shall not apply; however, the minimum width at the street line in the situation where the radius is less than ninety (90) feet, shall not be less than twenty-five (25) feet.

Parking space, off-street shall mean an off-street parking space comprising not less than one hundred eighty (180) square feet of parking stall plus necessary maneuvering space, shape for maneuvering incidental to parking or unparking shall not encroach upon any public way. Every off-street parking space shall be accessible from a public way.
(Ord. No. 2001-02 § 1)

Porch shall mean one of the following:

a. *Closed Porch* shall mean a deck area with a roof or deck entirely above and covering to the deck extents, and having solid or paneled railings, insert screening or storm panels.
b. *Open Porch* shall mean a deck area with a roof or deck above, and railing open in area for at least one half of the porch perimeter outside of the building wall. No additional enclosure materials or walls are permitted including screening, storm windows, drop curtains, or other temporary enclosures.

(Ord. No. 2007-13 § 3)

Reconstruction shall mean any project where the extent and nature of the work is such that the work area cannot be occupied while the work is in progress and where a new certificate of occupancy is required before the work area can be reoccupied. Reconstruction may include repair, renovation, alteration, or any combination thereof. For further clarification of such definitions reference shall be to the New Jersey Administrative Code, N.J.A.C. 5:23-6.4 et seq.

Restaurant, full service shall mean any establishment, however designated, at which food is sold for consumption on the premises, but normally to patrons seated within an enclosed building with table service. (Ord. No. 2014-08 § 1)

Restaurant, limited service shall mean any establishment where the majority of the patrons purchase food, soft drinks, ice cream and similar confections for takeout or consumption on the premises, inside or outside the enclosed building regardless of whether or not seats or accommodations are provided for the patrons. (Ord. No. 2014-08 § 1)

Retail food shall mean any establishment which food is sold for consumption off premises with no permitted table seating. (Ord. No. 2014-08 § 1)

Retail food/limited service shall mean any establishment which food and/or sundries are sold for use off premises with permitted table seating. (Ord. No. 2014-08 § 1)

Signs shall mean any device designed to inform or attract the attention of persons not on the premises on which the sign is located, provided however, that the following shall not be included in the application of the regulations herein.

a. Signs not exceeding one (1) square foot in area and bearing only property numbers, post box numbers, names of occupants or premises, or other identification of premises not having commercial connotations.

b. Flags and insignias of any government except when displayed in connection with commercial promotion.

c. Legal notices, identification, information, or directional signs erected or required by government bodies.

d. Integral decorative or architectural features of buildings, except letters, trademarks, moving parts, or moving lights.

e. Signs directing and guiding traffic and parking on private property but bearing no advertising matter.

Signs, numbers and surface area for the purpose of determining number of signs, a sign shall be considered to be a single display surface or display device containing elements organized, related and composed to form a unit. Where matter is displayed in a random manner without organized relationship of elements, each element shall be considered to be a single sign. The surface area of a sign shall be computed as including the entire area within a regular geometric form comprising all of the display area of the sign and including all of the elements of the matter displayed. Frames and structural members not bearing advertising matter shall not be included in computation of surface area.

Sign, on-site shall mean a sign relating in its subject matter to the premises on which it is located, or to products, accommodations, services, or activities on the premises.
(Ord. No. 2001-02 § 1)

Story shall be a vertical dimension and shall mean that portion of a building included between the upper surface of a floor and the upper surface of the floor or roof above it. A split-level story shall be considered a second story if its floor level is six feet or more above the level of the line of the finished floor next below it. (Ord. No. 2007-13 § 3)

Street line shall mean the right-of-way line of a street.

Structure shall mean anything constructed or erected with a fixed location on the ground, or attached to something having a fixed location on the ground. Among other things, structures include buildings, mobile homes, walls, fences, billboards, poster panels, and decks. (Ord. No. 2001-02 § 1)

Upland Lot Area shall mean the area of a lot exclusive of any open water, lagoon or wetland areas. Open water area shall be measured from the mean high water line established on the current property survey. (Ord. No. 2007-13 § 2)

Waiting bench shall mean an outside bench and/or seat provided for patrons as a convenience to use while waiting to be seated at a table. No consumption of food is permitted on waiting benches. (Ord. No. 2014-08 § 1)

Yard shall mean a required open space other than a court, unoccupied and unobstructed by any structure or portion of a structure from twelve (12) inches above the general ground level on the graded lot upward, provided, however, that fences, walls, poles, posts and other customary yard accessories, ornaments, and furniture may be permitted in any yard subject to height limitations and requirements limiting obstruction of visibility as indicated herein.

Yard abutting public streets shall mean required yard abutting public streets to be measured in the following manner. A straight line shall be drawn between two (2) points at which lot lines intersect street lines on any face of the lot. Where property corners are rounded, such points shall be plotted by projecting lot lines to the point where they would have met the street line without rounding. Depth of required yards abutting public streets shall be measured perpendicular to such straight lines, and the inner line of such required yards shall be parallel to the outer line so established.

In any such required yard abutting a public street, no fence, wall, or hedge shall be permitted which materially impedes visibility across such yard between a height of thirty (30) inches and eight (8) feet.

a. *Front yard~~s~~* shall mean a yard extending between side lot lines across the front of a lot adjoining a public street. On through lots, unless the prevailing lot pattern indicates otherwise, front yards shall be provided on all frontages in accordance with the general regulations of the district concerning minimum depth of front yards. This definition shall not apply to lots which are less than one hundred (100) feet in depth. In those cases, the property owner can choose which street will be considered the Front Yard. (Ord. No. 2007-13 § 4)
b. *Side yard* shall mean a yard extending from the rear line of the required front yard to the rear lot line, or in the absence of any clearly defined rear lot line to the point on the lot farthest from the intersection of the lot line involved with the public street.

   Width of a required side yard shall be measured in such a manner that the yard established is a strip of the minimum width required by district regulations with its inner edge parallel with the side lot line.
c. *Rear yard* shall mean a yard extending across the rear of the lot between inner side yard lines. In the case of through lots and corner lots, there will be no rear yards, but only front and side yards.

   Depth of required rear yard shall be measured in such manner that the yard established is a strip of the minimum width required by district regulations with its inner edge parallel with the rear lot line. (Ord. No. 2001-02 § 1)

13-4 ESTABLISHMENT OF DISTRICTS.

13-4.1 Interpretation of District Boundaries. Where uncertainty exists as to the boundaries of districts as shown on the Official Zoning Map, the following rules shall apply.

a. Boundaries indicated, as approximately following the centerlines of streets, highways, or alleys shall be construed to follow the centerlines.

b. Boundaries indicated, as approximately following platted lot lines shall be construed as following such lot lines.

c. Boundaries indicated as following ocean shorelines shall be construed to follow such shorelines, and in the event of change in the shoreline, shall be construed as moving with the actual shoreline; boundaries indicated as following shorelines other than along ocean shall be construed to follow the exterior pier headline established by the Bureau of Navigation of the State of New Jersey.

d. Boundaries indicated as parallel to or extensions of features indicated in paragraphs a. through c. above shall be so construed. Distances not specifically indicated on the Official Zoning Map shall be determined by the scale of the map.

e. Where physical or cultural features existing on the ground are at variance with those shown on the Official Zoning Map, or in other circumstances not covered by paragraphs a. through d. above, the Board of Adjustment shall interpret the district boundaries. (Ord. No. 2001-02 § 1)

13-4.2 Application of District Regulations. The regulations set by this chapter within each district shall be minimum regulations and shall apply uniformly to each class or kind of structure or land, and particularly, except as hereinafter provided:

a. No building, structure or land shall hereafter be used or occupied, and no building or structure or part thereof shall hereafter be erected, constructed, reconstructed, moved, or structurally altered unless in conformity with all of the regulations herein specified for the district in which it is located.

b. No building or other structure shall hereafter be erected or altered:

   1. To exceed the height;

   2. To accommodate or house a greater number of families;

   3. To occupy a greater percentage of lot area;

   4. To have narrower or smaller rear yards, front yards, side yards, or other open spaces; than herein required; or in any other manner contrary to the provisions of this chapter.

c. No part of a yard, or other open space, or off street parking or loading space required about or in connection with any building for the purpose of complying with this chapter, shall be included as part of a yard, open space, or off street parking or loading space similarly required for any other building.

d. No yard or lot existing on July 16, 1966 shall be reduced in dimension or area below the minimum requirements set forth herein. Yards or lots created after July 16, 1966 shall meet at least the minimum requirements established by this chapter.

e. All territory which may hereafter be annexed to the Borough shall be considered to be zoned in the same manner as the contiguous territory inside previous Borough limits until otherwise classified.
(Ord. No. 2001-02 § 1)

13-5 NONCONFORMING LOTS, NONCONFORMING USES OF LAND, NONCONFORMING STRUCTURES, AND NONCONFORMING USES OF STRUCTURES AND PREMISES.

13-5.1 Intent. Within the districts established by this chapter or amendments that may later be adopted there exist lots, structures, and uses of land and structures which were lawful before this chapter was passed or amended, but which would be prohibited, regulated, or restricted under the terms of this chapter or future amendment.

It is the intent of this chapter to permit these nonconformities to continue until they are removed, but not to encourage their survival. Such uses are declared by this chapter to be incompatible with permitted uses in the districts involved. It is further the intent of this chapter that nonconformities shall not be enlarged upon, expanded or extended, not be used as grounds for adding other structures or uses prohibited elsewhere in the same district.
(Ord. No. 2001-02 § 1)

13-5.2 Extension. A nonconforming use of a structure, a nonconforming use of land, or a nonconforming use of a structure and land shall not be extended or enlarged after July 16, 1966 by attachment of a building or premises of additional signs intended to be seen from off premises, or by the addition of other uses of a nature which would be prohibited generally in the district involved. (Ord. No. 2001-02 § 1)

13-5.3 Construction Previously Approved. To avoid undue hardship, nothing in this chapter shall be deemed to require a change in the plans, construction, or designation use of any building on which actual construction was lawfully begun prior to July 16, 1966 or date of amendment of this chapter and upon which actual building construction has been diligently carried on. Actual construction is hereby defined to include the placing of construction materials in permanent position and fastened in a permanent manner; except that where demolition or removal of an existing building has been substantially begun preparatory to rebuilding, such demolition or removal shall be deemed to be actual construction, provided that work shall be diligently carried on until completion of the building involved. (Ord. No. 2001-02 § 1)

13-5.4 Nonconforming Lots of Record. In any district in which single-family dwellings are permitted, notwithstanding limitations imposed by other provisions of this chapter, a single-family dwelling and customary accessory buildings may be erected on any single lot of record on July 16, 1966, or date of amendment of this chapter. Such lot must be in separate ownership and not of continuous frontage with other lots in the same ownership. This provision shall apply even though such lot fails to meet the requirements for area or width, or both, that are generally applicable in the district, provided that yard dimensions and other requirements not involving area or width, or both, of the lot shall conform to the regulations for the district in which such lot is located. Variance of area, width, and yard requirements shall be obtained only through action of the Board of Adjustment. (Ord. No. 2001-02 § 1)

13-5.5 Nonconforming Lots of Single Ownership. If two (2) or more lots or combinations of lots and portions of lots with continuous frontage in single ownership are of record on July 16, 1966 or date of amendment of this chapter, and if all or part of the lots do not meet the requirements for lot width and area as established by this chapter, the lands involved shall be considered to be an undivided parcel for the purposes of this chapter, and no portion of the parcel shall be used or sold which does not meet lot width and area requirements established by this

chapter, nor shall any division of the parcel be made which leaves remaining any lot with width or area below the requirements stated in this chapter. (Ord. No. 2001-02 § 1)

13-5.6 Nonconforming Uses of Land. Where, on July 16, 1966, or date of amendment of this chapter, lawful use of land exists that is made no longer permissible under the terms of this chapter as enacted or amended, such use may be contained so long as it remains otherwise lawful, subject to the following provisions.

a. No such nonconforming use shall be enlarged or increased, nor extended to occupy a greater area of land that was occupied on July 16, 1966 or the date of amendment of this chapter;

b. No such nonconforming use shall be moved in whole or in part to any other portion of the lot or parcel occupied by such use on July 16, 1966 or date of amendment of this chapter;

c. If any such nonconforming use of land ceases for any reason for a period of more than twelve (12) months, any subsequent use of such land shall conform to the regulations specified by this chapter for the district in which the land is located.
(Ord. No. 2001-02 § 1)

13-5.7 Nonconforming Structures. Where a lawful structure exists on July 16, 1966 or the date of amendment of this chapter that could not be built under the terms of this chapter by reason of restrictions on area, lot coverage, height, yards, or other characteristics of the structure or its location on the lot, such structure may be continued so long as it remains otherwise lawful, subject to the following provisions:

a. No such structure may be enlarged or altered in a way which increases its nonconformity;

b. Should the structure be destroyed by an act of God, or a natural disaster, it may be rebuilt to the extent it existed prior to its destruction, otherwise, it shall not be reconstructed except in conformity with the provisions of this chapter; subject, however, to the further provision that any such structure must be so reconstructed within one (1) year from the date of its destruction. If a nonconforming structure is demolished purposely then any replacement structure shall conform to all current zoning ordinances.

c. Should the structure be moved for any reason for any distance whatsoever, it shall thereafter conform to the regulations for the district in which it is located after it is moved. (Ord. No. 2001-02 § 1)

13-5.8 Nonconforming Uses of Structures. If a lawful use of a structure, or of structure and premises in combination, existed on July 16, 1966, or on the date of amendment of this chapter, that would not be allowed in the district under the terms of this chapter, the lawful use may be continued so long as it remains otherwise lawful, subject to the following provisions:

a. No existing structure devoted to a use not permitted by this chapter in the district in which it is located shall be enlarged, extended, constructed, reconstructed, moved or structurally altered except in changing the use of the structure to a use permitted in the district in which it is located;

b. Any nonconforming use may be extended throughout any parts of a building which were manifestly arranged or designed for such use on July 16, 1966 or of amendment of this chapter, but no such use shall be extended to occupy any land outside such building;

c. If no structural alterations are made, any nonconforming use of a structure, or structure and premises, may be changed to another nonconforming use provided that the Board of Adjustment, either by general rule or by making findings in the specific case, shall find that the proposed use is equally appropriate or more appropriate conditions and safeguards in accord with the provisions of this chapter;

d. Any structure, or structure and land combination, in or on which a nonconforming use is superseded by permitted use, shall thereafter conform to the regulations for the district in which such structure is located, and the nonconforming use may not thereafter be resumed;

e. When a nonconforming use of a structure, or structure and premises in combination, is discontinued or abandoned for twelve (12) consecutive months or twenty-four (24) months during any three (3) year period, the structure, or structure and premises in combination, shall not thereafter be used except in conformance with the regulations of the district in which it was located;

f. Where nonconforming use applies to a structure and premises in combination, removal or destruction of the structure shall eliminate the nonconforming status of the land. (Ord. No. 2001-02 § 1)

13-5.9 Repairs and Maintenance. On any building devoted in whole or in part to any nonconforming use, work may be done in any period of twelve (12) consecutive months on ordinary repairs, or on repair or replacement of nonbearing walls, fixtures, wiring, or plumbing, provided that the cubic content of the building as it existed on July 16, 1966 or amendment of this chapter, shall not be increased.

Nothing in this chapter shall be deemed to prevent the strengthening or restoring to a safe condition of any building or part thereof declared to be unsafe by any official charged with protecting the public safety, upon order of such official. (Ord. No. 2001-02 § 1)

13-5.10 Uses Under Exception Provisions Not Nonconforming Uses. Any use for which a special exception is permitted as provided in this chapter shall not be deemed a nonconforming use, but shall without further action be deemed a conforming use in such district.
(Ord. No. 2001-02 § 1)

13-6 ESTABLISHMENT OF ZONES.

For the purpose of this chapter, the Borough of Harvey Cedars is hereby divided into the following districts:

Symbol	*Name*
R-A	Single-Family, Residential District
R-AA	Single-Family, Residential District
GB	General Business District
LC	Limited Commercial District
MC	Marine Commercial District

(Ord. No. 2001-02 § 1)

13-7 GENERAL REGULATIONS.

13-7.1 Zoning Affects Every Use and Structure.

a. Except as previously or hereinafter provided, it shall be unlawful to locate, relocate, erect, construct, reconstruct, enlarge or structurally alter any building or structure except in conformity with the regulations of the district in which such building or structure is located.

b. Except as previously or hereinafter provided, it shall be unlawful to use any land or building for any purpose other than is permitted in the district in which such land or building is located.
(Ord. No. 2001-02 § 1)

13-7.2 Height Limits.

a. No building or structure shall be built or enlarged to exceed three (3) stories from grade.
(Ord. No. 2007-13 § 5)

b. No building or structure may exceed two (2) stories of habitable areas, excluding an entry foyer and stairway not exceeding one hundred (100) square feet in area.
(Ord. No. 2014-14 § 1)

c. No building or structure shall exceed a maximum sloped-roof height of thirty-two (32) feet. When existing setbacks do not meet or exceed the required setbacks of the district, the height shall not exceed thirty (30) feet. A flat-roofed building with a pitch less than one in twelve, or other structure, shall not exceed twenty-eight (28) feet. Deck railings shall not exceed thirty-one (31) feet in height. (Ord. No. 2007-13 § 5)

d. No building or structure on a lot with thirty (30) feet or less of frontage shall be built or enlarged to exceed twenty-four (24) feet in height. Lots exceeding thirty (30) feet in frontage may exceed the twenty-four (24) foot height limit at a rate of one (1) additional foot for every two (2) feet of additional lot width. (Ord. No. 2003-10 § 1)

e. Exceptions to the height limit may be found in Section 13-8. (Ord. No. 2007-13 § 5)

13-7.3 Coverages.

a. Lot coverage in the R-A, R-AA, GB and LC districts shall not be greater than thirty-three (33%) percent. Lot coverage by building footprint area exclusive of decks or open Porches shall not exceed twenty-nine (29%) percent.

b. The ratio of the area of habitable areas to the upland lot area shall not exceed fifty (50%) percent.

c. The ratio of the impervious coverage area to the upland lot area shall not exceed seventy-five (75%) percent.

d. The ratio of the sum of the building footprint area and the areas of a swimming pool taken with adjacent at-grade walkways (timber or other material) and patios within three (3) feet of the pool to the upland lot area shall not exceed forty-eight (48%) percent.

(Ord. No. 2007-13 § 6)

13-7.4 Easements.

a. No building or structure shall be erected on a lot of less than five thousand (5,000) square feet and having a frontage of less than fifty (50) feet upon a dedicated or approved street, road, or public or private way not less than fifty (50) feet wide, except that in that portion thereof lying southeastwardly of Long Beach Boulevard and between the southerly boundary line of the Borough and Cumberland Avenue, a building may be erected on a lot fronting on a private way not less than twenty-five (25) feet wide provided that the lot is at least six thousand (6,000) square feet in area and has a frontage on the private way of at least sixty (60) feet and has a front yard setback of at least fifteen (15) feet.

b. Each lot must front upon an approved street at least fifty (50) feet in width, except lots fronting the "beach-dune protective facility" as shown on the map entitled "Ocean Front Building Line and Bulkhead Line for the Borough of Harvey Cedars" prepared by Thomas J. Taylor Associates, Borough Engineers, dated March 5, 1965 and on file in the office of the Borough Clerk or any revision thereof. Such lot may front the facility provided an easement, right-of-way, or a portion of the lot is provided giving access from the lot to a street or an existing easement at least twenty-five (25) feet wide. The easement, right-of-way, or portion of the lot shall not exceed one hundred fifty (150) feet in length, shall extend the entire length of any lot to which it gives access, shall be at least twenty (20) feet in width along its entire length, and shall be maintained in such a manner as to provide vehicular access to the lot and so as not to be a blighting or deteriorating influence on neighboring property. No building or structure, whether principal or accessory, shall be closer than eight (8) feet to the easement line.

c. *A Lot May Also Front on Barnegat Bay*. Lots fronting on Barnegat Bay shall have access to a street at least fifty (50) feet wide by way of an easement or right-of-way at least fifteen (15) feet wide. Said easement shall extend the entire length of any lot to which it gives access, and shall not give access to more than one (1) lot, and shall be maintained in such a manner so as to provide vehicular access to the lot, and so as not to be a blighting or deteriorating influence on neighboring property. No building or structure, principal or accessory, shall be closer than three (3) feet to the easement line.

d. Every lot created pursuant to this subsection shall have a minimum area of five thousand (5,000) square feet. In computation of such area, no portion of a street or easement shall be included. (Ord. No. 2001-02 § 1)

e. Any private easement established for the purpose of ingress and egress for the benefit of properties on that easement shall be maintained by the owners thereof in such a manner as to be level, unobstructed, free of depressions, potholes and the like. They shall be of a material so as to ensure that any emergency vehicles, such as, but not limited to, fire, police and first aid, may obtain uninhibited access through said easement and further shall ensure that said emergency vehicles will not be damaged thereby and emergency personnel and/or occupants are not injured thereby.

Easements developed for the purpose of ingress and egress shall remain clear and unobstructed by trees, hedges, bushes, branches or any other growth for a minimum of fifteen (15) feet wide and unlimited height clearance so as to ensure that any emergency vehicle may obtain uninhibited access, nor shall they have any other material obstructions such as but not limited to stone walls, landscaping devices, fences, buildings or other materials on or within the easement area. See Section 13-15.4(c) regarding trash rack placement for easements. Temporary structures of any kind shall not be permitted on or within the easement area.
(Ord. No. 2011-14 § 2)

13-7.5 Area and Yard Requirements. All area and yard requirements are based on the district in which the lot lies. (Ord. No. 2001-02 § 1)

13-7.6 Required Yards Cannot Be Reduced or Used by Another Building. No open space provided around any building for the purpose of complying with the provisions of this chapter shall be considered as providing open space for any other building.
(Ord. No. 2001-02 § 1)

13-7.7 Accessory Buildings in All Districts. An accessory building shall be subject to the following requirements:

a. All accessory buildings must meet the area and yard requirements of the district.

b. They shall not be located in any required front yard space.

c. Such buildings shall not exceed one (1) story or fifteen (15) feet in height.

d. The minimum distance of any accessory building from an adjoining building shall be five (5) feet.

e. Accessory buildings may be erected as a part of the principal building provided that all yard requirements of this chapter for the principal building are complied with.
(Ord. No. 2001-02 § 1)

13-7.8 Yards Adjacent to Barnegat Bay, Lagoons, Coves, and Other Bodies of Water. There shall be an open, unoccupied space between the shoreline at mean high water and a line drawn parallel thereto of not less than fifteen (15) feet with the exception of any structure or portion of a structure less than twelve (12) inches above the general ground level.
(Ord. No. 2001-02 § 1)

13-7.9 Lots Adjacent to the Beach-Dune Facility. All lots adjacent to the beach-dune protective facility as shown on the map entitled "Ocean Front Building Line and Bulkhead Line for the Borough of Harvey Cedars" prepared by Thomas J. Taylor Associates, Borough Engineers, dated March 5, 1965, and on file in the office of the Borough Clerk, or any revision thereof. Any residential structure built on one of these lots shall have the bottom of the first floor joist at a minimum elevation of sixteen (16) feet above mean sea level or three (3) feet above the center line elevation of the existing street grade, whichever is higher.
(Ord. No. 2001-02 § 1)

13-7.10 Delineated Wetlands Line. There shall be a minimum setback in all zones of eight (8) feet from the delineated wetlands line for all structures or buildings. (Ord. No. 2001-02 § 1)

13-7.11 Lighting. Wherever outdoor lighting or illumination of any type is to be used to illuminate any structure or use, application shall first be made to the Zoning Officer for a permit. In determining whether or not to permit the lighting or illumination, the Zoning Officer shall give due consideration to the following factors:

a. The direct source of illumination shall not be visible from any public street.

b. The direct source of illumination shall not reflect into or upon any structure or use not on the same lot as the source of illumination. (Ord. No. 2001-02 § 1)

13-7.12 Second Dwelling – Prohibited. There shall not be more than one principal structure or dwelling on any lot of record. (Ord. No. 2007-13 § 7)

13-7.13 Flood Zone. Habitable areas shall be constructed in accordance with applicable FEMA Flood Zone Regulations. However, entry foyers and stairways may be constructed below the mapped flood plain elevation up to a maximum of three hundred (300) square feet in area. (Ord. No. 2007-13 § 8)

13-8 PERMITTED MODIFICATIONS AND EXCEPTIONS.

13-8.1 Exceptions to the Height Limits. The following exceptions to the height limit are permitted:

a. Roof structures for the housing of stairways, tanks, ventilating fans, air conditioning equipment, or similar equipment required to operate and maintain the building, and fire or parapet walls, towers and steeples, are permitted only on commercial structures which are located in the Limited Commercial District, General Business District and Marine Commercial District.

   1. Spires, belfries, cupolas and domes are permitted on churches only.
   2. Chimneys venting fossil burning devices may exceed the height limit by not more than two (2) feet. (Ord. No. 2002-14 § 4)

b. Existing ocean front dwellings directly fronting the Atlantic Ocean beach front may, under the following circumstances, exceed the current height limitations. Those circumstances are:

   1. The dwellings were constructed and occupied prior to the effective date of this subsection "b." of the Zoning Ordinance.
   2. The first floor habitable living area has a finished floor elevation lower than 23.
   3. The dwelling owner may then apply to raise the dwelling so that the existing first floor habitable living area does not exceed elevation 23.
   4. This exception shall only apply to the existing homes hereinabove described and shall not apply to current structures where demolition is planned or proposed. It also shall not apply or allow a dwelling owner to add another level to the current structure but is restricted to raising the current structure as above described. Additions to the raised structure will be permitted provided they meet all zoning ordinance requirements including maximum building height as specified in 13-8.1.c below. (Ord. No. 2014-01 § 1)

c. New ocean front dwellings fronting the Atlantic Ocean beach front:
   1. The first floor living area shall be set at a maximum elevation of 23 feet, 1988 NAVD.
   2. The height above the new first floor elevation shall not exceed 23 feet. A flat-roofed building with a pitch less than one in twelve shall not exceed twenty (20) feet.
   3. Deck railings shall not exceed twenty-three (23) feet in height above the first floor elevation.

   (Ord. No. 2014-01 § 2)

13-8.2 Exceptions to Setbacks in R-A Single Family, Residential District. If a structure is to be located on a corner lot with an area of six thousand (6,000) square feet or less it shall be permitted to have one (1) front yard setback of twenty (20) feet and one (1) front yard setback of ten (10) feet at the property owners choice, provided that the location of the structure does not encroach on the site triangle as set forth in subsection 13-15.3 herein. The front yard setback of twenty (20) feet may be decreased to fifteen (15) feet for the construction of decks or open porches (see definitions). (Ord. No. 2004-21 § 1)

13-8.3 Permitted Exceptions to Setbacks in All Zones. The following shall be exempt from setback requirements in all zones:

1. Bay windows provided they do not exceed 18 inches into the required setback and do not extend downward to the finished floor
2. Roof overhangs projecting two (2) feet or less
3. Chimneys projecting two (2) feet or less

(Ord. No. 2010-22 § 2)

13-8.4 Exceptions to Houses Being Raised.

1. Construction of landings and stairs in connection with a house being raised to above the base flood elevation (BFE) level shall be allowed an additional 60 square feet for reconfigured entry and stairs and shall not be considered building coverage.
2. Construction of landings and stairs in connection with houses being raised as defined in Subsection 13-8.1b above shall be allowed an additional 200 square feet for reconfigured entry and stairs and shall not be considered in building coverage. In addition, reconfigurement of entry stairs and landings may encroach into front, side and rear yard setbacks.
3. House raises defined in Subsection 13-8,1b shall be permitted to maintain existing non-conforming setbacks.
4. All house raised under this section shall be subject to a review and approval by the Borough Engineer.

(Ord. No. 2011-14 § 3)

13-9 R-A, SINGLE-FAMILY, RESIDENTIAL DISTRICT.

The following regulations shall apply to all R-A Districts. (Ord. No. 2001-02 § 1)

13-9.1 Principal Uses and Buildings Permitted.

a. Dwelling, single-family;

b. Churches and other places of worship, and Sunday School buildings and parish houses;

c. Public, parochial and private schools;

d. Public museums and libraries;

e. Public utilities structures;

f. Model homes maintained in connection with real estate developments will be permitted at the discretion of the Planning Board. (Ord. No. 2001-02 § 1)

13-9.2 Accessory Uses and Buildings Permitted.

a. Customary home occupations conducted only by members of a family residing in a dwelling unit plus not more than one (1) person not a resident of the dwelling unit, and conducted entirely within the dwelling or accessory building, provided that no article is sold or offered for sale except such as may be produced by members of the immediate family residing in dwelling and others as herein provided, and provided that no machinery or equipment is used which will cause electrical or other interference with radio and television reception in adjacent residences;

b. Model homes, if permitted at the discretion of the Planning Board, shall be occupied by no more than the owner and one (1) person employed in such office;

c. Professional occupations including the office of a physician, surgeon, dentist, minister, architect, engineer, attorney or similar professional person when located within his dwelling, provided that not more than one (1) person not a resident of the dwelling is employed in such office;

d. Private garages provided that no more than two (2) commercial vehicles, not exceeding two (2) tons each, shall be parked or stored inside. (Ord. No. 2001-02 § 1)

13-9.3 Area and Yard Requirements.

a. Every lot in the R-A District shall have a minimum width of fifty (50) feet.

b. Every lot in the R-A District shall have a minimum area of five thousand (5,000) square feet subject to the following requirements:

    1. A front yard of twenty (20) feet shall be provided.

A rear yard of ten (10) feet shall be provided.

2. Two (2) side yards, each ten (10) feet shall be provided.

3. The front yard setback of twenty (20) feet may be decreased to fifteen (15) feet for the construction of decks or open porches (see definitions). (Ord. No. 2002-14 § 6)

4. The front yard setback of twenty (20) feet may be decreased to 15 feet for oceanfront properties. (Ord. No. 2004-12 § 2)

c. Where a structure which does not meet the requirements of this section existed prior to the effective date thereof, the structure can be altered or enlarged, provided the nonconformity is not enlarged, and further provided the alteration or addition does not exceed fifty (50) percent of the replacement value of the existing structure.
(Ord. No. 2010-22 § 3)

13-9.4 Prohibited Uses and Buildings. Any uses and buildings not listed above in subsections 13-9.1 and 13-9.2. Motels, hotels, condominiums, cooperative apartments, garden apartments, Bed and Breakfast establishments, and other multifamily uses and buildings are specifically prohibited. Dual use is prohibited. (Ord. No. 2013-03 § 2)

13-9.5 Off-Street Parking Requirements. There shall be provided at the time of erection or enlargement of any principal building or structure, minimum off-street parking space with adequate provision for ingress and egress as follows:

a. Two (2) exterior spaces for each dwelling unit. (Ord. No. 2004-21 § 3)

b. One space for each five (5) seats provided in school or church auditoriums or other places of public assembly. (Ord. No. 2001-02 § 1)

c. No driveway shall exceed eighteen (18) feet in width at the street line, clearly designated by striping, paving, or otherwise delineating the selected eighteen (18) feet of driveway area. Only one (1) driveway shall be permitted for each fifty (50) feet of lot width.

The provisions of this section shall not apply in the General Business, Limited Commercial and Marine Commercial Districts. (Ord. No. 2003-11 § 1)
(Ord. No. 2010-22 § 4)

13-9.6 Minimum Floor Area Requirements. Every new single-family building shall have a minimum first floor area of seven hundred twenty (720) square feet exclusive of porches.
(Ord. No. 2001-02 § 1)

13-10 R-AA, SINGLE-FAMILY, RESIDENTIAL DISTRICT.

13-10.1 General Regulations. All regulations applicable to R-A Residential Districts shall be applicable to the R-AA Single-Family Residential District except that area and yard requirements shall be revised as follows. (Ord. No. 2001-02 § 1)

13-10.2 Reserved.

13-10.3 Area and Yard Requirements. Some of the area within this district is still unsubdivided and unimproved acreage. It is the intention of the section to maintain a low density area ratio and at the same time afford the owners thereof flexibility in the development of this district.

a. 1. Every lot in the R-AA District shall have a minimum width of fifty (50) feet.

   2. Every lot in the R-AA District shall have a minimum depth of seventy-five (75) feet.

b. The lots on each subdivision in the R-AA District shall have a minimum area of seven thousand five hundred (7,500) square feet exclusive of streets and water areas, subject to the following minimum requirements:

   1. A front yard of at least twenty-five (25) feet shall be provided.

   2. A rear yard of at least fifteen (15) feet shall be provided.

   3. Two (2) side yards, each at least ten (10) feet shall be provided.

c. Existing lots within the R-AA District on July 16, 1966 shall be deemed to conform with the area provisions herein notwithstanding they have an average area of less than seven thousand five hundred (7,500) square feet provided the same comply with the minimum requirements set forth in paragraph b. above. (Ord. No. 2001-02 § 1)

d. Where a structure which does not meet the requirements of this section existed prior to the effective date thereof, the structure can be altered or enlarged, provided the nonconformity is not enlarged, and further provided the alteration or addition does not exceed fifty (50) percent of the replacement value of the existing structure.
(Ord. No. 2010-22 § 5)

13-10.4 Prohibited Uses and Buildings. Any uses and buildings not permitted in the R-A District are also prohibited in the R-AA District. (Ord. No. 2001-02 § 1)

13-11 GB, GENERAL BUSINESS DISTRICT.

13-11.1 General Regulations. The following regulations shall apply to all GB Districts. (Ord. No. 2001-02 § 1)

13-11.2 Principal Uses and Buildings Permitted.

a. All uses permitted in the R-A District.

b. Any retail shopping facility or service establishment which supplies commodities or performs a service primarily for residents of the community, such as grocery store, delicatessen, meat market, drug store, variety store, antique and gift shop, furniture store, bakery shop, restaurant, luncheonette, tavern, package liquor store, barber shop, beauty parlor, clothes cleaning and laundry pickup establishment, bank, real estate office, business or professional office.

c. Gasoline or oil stations, automobile service stations and public garages may be permitted provided the following standards and conditions are complied with:

1. A set of plans, specifications and plot plans shall be submitted to the appropriate approving authority together with an application for a conditional use permit in accordance with the provisions of the Borough Land Use Procedure Ordinance and the Municipal Land Use Law, R.S. 40-55D-1 et seq., as amended and supplemented. Said plans and specifications shall show all structures, pumps, storage tanks, parking areas and driveways for ingress and egress.

2. All pumps shall be located outside of buildings and on private property and in no case, within twenty (20) feet of any street line, and subject to such conditions and safeguards as the Board of Adjustment may impose with respect to, among other matters, the location and adequacy of entrances and exits.

3. All automobile parts, dismantled vehicles and similar articles are stored within a building; all fuel oil or similar substances are stored at least thirty-five (35) feet from any street or lot line.

4. In no event shall a permit be granted for such a use located within two hundred (200) feet of a school, hospital, infirmary, church, museum, public library or institution, or theater, club or place of public assembly having a capacity of over one hundred (100) persons.

5. Furthermore, the granting of such a permit shall not be detrimental to the health, safety and general welfare of the community, and shall be reasonably necessary for the convenience of the community in the judgment of the Board of Adjustment.

6. The appropriate approving authority shall grant or deny the application for a conditional use permit in accordance with the provision of this chapter, the Borough Land Use Procedure Ordinance and the Municipal Land Use Law, R.S. 40-55D-1 et seq.
(Ord. No. 2001-02 § 1)

13-11.3 Area and Yard Requirements.

a. The minimum width of a business lot in the GB District shall be determined by the off-street parking and loading provisions of this section.

b. The minimum area of a business lot in the GB District shall be determined by the off-street parking and loading provisions of this section and be subject to the following requirements:

   1. Front yards shall have a minimum depth of fifteen (15) feet from the street line.

   2. Rear yards shall have a minimum depth of ten (10) feet.

   3. Side yards shall have a minimum width of ten (10) feet each from the side lot lines.

c. Every lot used for residential purposes or other uses permitted in the R-A District, or uses partly for residence and partly for business purposes, shall conform to the area and yard requirements of the R-A District.

d. An attached group of stores may be considered as one (1) building in applying the above yard space requirements. (Ord. No. 2001-02 § 1)

13-11.4 Prohibited Uses and Buildings.

a. Carousels, roller coasters, merry-go-rounds, Ferris wheels or other mechanical rides, pony tracks, miniature golf course, golf driving ranges, wild animal exhibits, trampolines and similar jumping or bounding devices and amusement centers in general.

b. Any type of business using jukeboxes, record players with external speakers, or other noise making devices designed to attract attention to the business being conducted within the premises.

c. Any business using sidewalk displays.

d. Any process of assembly and/or manufacture using power in excess of twenty-five (25) horsepower or constituting a nuisance by reason of odor, smoke and noise.
(Ord. No. 2001-02 § 1)

13-11.5 Off Street Parking Requirements.

a. For residential and other R-A uses – same as R-A District.

b. For other permitted uses:
   1. Retail Business Use and Personal Service Establishments
      One (1) off-street parking space for each two hundred (200) square feet of gross floor area
   2. Retail Food
      - One (1) off-street parking space for each two hundred (200) square feet of gross floor area
      - No seating
      - Courtesy benches permitted

3. Retail Food/Limited Service
   - One (1) off-street parking space for each two hundred (200) square feet of retail store area
   - One (1) off-street parking space for each 3 seats of limited service area
   - Courtesy benches permitted
4. Restaurants, Limited Service
   - One (1) off-street parking space for each three (3) seats
   - Courtesy benches permitted
5. Restaurants, Full Service
   - One (1) off-street parking space for each three (3) seats
   - Waiting benches permitted
6. Business and Professional Offices, Banks and Fiduciary Institutions
   One (1) off-street parking space for each two hundred (200) square feet of gross floor area
7. Employee Parking
   In addition to the above off-street parking requirements, one (1) off-street parking space shall be provided for each person now employed or expected to be employed in the business.

   This requirement shall not apply under the following conditions:

   i. An operating restaurant that has an established and approved employee parking space or spaces may add that number of parking spaces to their total customer required spaces and increase their seating accordingly if they establish and file a plan to have their employees park upon a Borough approved parking area. The plan must be filed annually by May 1st of each year with the Zoning Department and the restaurant shall supply one (1) windshield placard for each employee. It will be the restaurant's responsibility to transport the employees to and from their vehicles. If it is determined that the restaurant is in violation of this requirement they will lose the benefit of said seats.
   ii. Compliance will be monitored from Memorial Day through Labor Day.
   iii. Any change in location of seating must be approved by the Land Use Board.

8. The off-street parking area may be located on the same lot as the business building or within a distance of not more than two hundred (200) feet therefrom; providing said lot is within the general business district. Leasing of off-street parking is permitted for the exclusive use of the lessee and shall cease upon termination of lease. (Ord. No. 2013-03 § 3)

(Ord. No. 2014-08 § 2)

c. Violations and penalties.

   Any person, corporation, occupant, or entity that violates or fails to comply with this section or any of the rules and regulations promulgated hereunder shall, upon conviction thereof, be punishable by a fine of five hundred ($500.00) dollars for the first offence. Each day for which a violation of this section occurs after the first offence shall be considered a separate offence and shall be punishable by a fine of twelve hundred fifty ($1,250.00) dollars.

(Ord. No. 2015-05 § 1)

13-11.6 Minimum Floor Area of Residential Buildings. The minimum floor area shall be the same as in the R-A District. (Ord. No. 2001-02 § 1)

13-11.7 Off-Street Loading Space Requirements. Each business use shall provide off-street loading space at the rear of the building at the rate of one (1) space (10 feet X 25 feet) with adequate ingress and egress for each five thousand (5,000) square feet of floor area or fraction thereof in each building.
(Ord. No. 2001-02 § 1)

13-12 MC, MARINE, COMMERCIAL DISTRICT.

13-12.1 Regulations. The following regulations shall apply to all MC Districts. (Ord. No. 2001-02 § 1)

13-12.2 Principal Use and Building Permitted.

a. All uses permitted in the R-A District subject to the regulations set forth therein.

b. Marine services primarily designated to meet the needs of the residents of this community, such as:

1. Dockage, minor boat repairs, and marine gasoline pumps on docks or bulkheads. In the event dockage facilities are provided, on-shore rest room facilities must be available at all times for use by boat owners and their guests.

2. Boat sales, provided, however, that the same are limited to the sale of boats not exceeding twenty-one (21) feet in length.

3. Marine engine sales and repairs.

4. Marine supplies and equipment sales.

5. Bait and tackle sales.

6. Outside storage of boats in conjunction with marine operations provided, however, that the storage shall be limited to boats not exceeding twenty-five (25) feet in length and subject, nevertheless, to further provisions of this section.

7. Any accessory uses and structures customarily associated with a permitted use or structure and clearly incidental to the principal use or structure permitted on the lot.

8. Sailing schools, including the sale and rental of sailboats.
(Ord. No. 2001-02 § 1)

c. Haberdashery and apparel stores
(Ord. No. 2007-14 § 1)

d. Antique and gift shops
(Ord. No. 2007-14 § 1)

e. Hardware and household supply stores
(Ord. No. 2007-14 § 1)

f. Barber and beauty shops
(Ord. No. 2007-14 § 1)

g. Business and professional offices including banks and real estate offices
(Ord. No. 2007-14 § 1)

13-12.3 Area and Yard Requirements.

a. All buildings including accessory buildings shall not cover more than twenty-five (25%) percent of the lot.

b. Lot area shall not be less than five thousand (5,000) square feet and lot width not less than fifty (50) feet, subject to the following minimum requirements:

1. A front yard with a depth of not less than fifteen (15) feet. (Ord. No. 2010-22 § 6)

2. A rear yard with a depth of not less than ten (10) feet.

3. Two (2) side yards, each with a depth of no less than ten (10) feet. (Ord. No. 2001-02 § 1)

13-12.4 General Regulations and Prohibitions.

a. No gasoline pump, gasoline storage tank nor any structure used for storing any fuel or oil shall be situated nearer than one hundred (100) feet to adjacent residential districts.

b. Commercial boat launching ramps designed primarily for the launching of transient boats for a fee are prohibited.

c. The use of marine toilet facilities or the discharge of waste from boats of any type is specifically prohibited in waters within the jurisdiction of the Borough. (Ord. No. 2001-02 § 1)

13-12.5 Off-Street Parking. At least one and one-half (1 l/2) spaces for each boat slip excluding space used for staging areas for boats, lifts or gasoline pumps shall be provided. (Ord. No. 2001-02 § 1)

13-13 LC, LIMITED COMMERCIAL DISTRICT.

13-13.1 Intent. It is recognized that the area encompassed by this district is suitable for commercial development by virtue of its existing development characteristics predominantly commercial. The high density of population in this section of the community and the frontage of the district on Long Beach Boulevard further contribute to its suitability for commercial development. However, it is also recognized that the land immediately to the east of that fronting the boulevard is ideal for residential development due to its proximity to the ocean and, for the same reason, there is considerable pedestrian traffic moving to and from the beach along the streets lying east of the boulevard. This district is being created in order to permit commercial uses to develop fronting the boulevard but not to encourage them to generate traffic along the streets leading to the ocean, which will pose a potential danger to pedestrian traffic and which could devalue residential properties lying east of this district. (Ord. No. 2001-02 § 1)

13-13.2 Principal Uses and Buildings Permitted.

a. All uses permitted in the R-A District subject to the regulations of that district.

b. Retail shopping facilities, including but not necessarily limited to:

   1. Grocery stores, meat markets and delicatessens

   2. Drug stores

   3. Bakery shops

   4. Haberdashery and apparel stores

   5. Antique and gift shops

   6. Hardware and household supply stores

c. Service establishments, including but not necessarily limited to:

   1. Barber and beauty shops

   2. Clothes cleaning and laundry pick-up establishments

   3. Business and professional offices including banks and real estate offices

   4. Restaurants and luncheonettes
      (Ord. No. 2001-02 § 1)

13-13.3 Area and Yard Requirements.

a. The minimum width of a lot used for a use permitted under subsection 13-13.2 above shall be determined by the off-street parking and loading provisions of this section.

b. The minimum area of a lot used for a use permitted under subsection 13-13.2 above shall be determined by the off-street parking and loading provisions of this section subject to the following minimum requirements.

1. Front yards shall have a minimum depth of fifteen (15) feet from the street line.

2. Rear yards shall have a minimum depth of ten (10) feet.

3. Side yards shall have a minimum width of ten (10) feet each from the side lot lines. (Ord. No. 2001-02 § 1)

13-13.4 Reserved.

13-13.5 Off-Street Parking Requirements. The off-street parking requirements shall be the same as required in subsection 13-11.5 subject to the following conditions:

a. Parking is not permitted in any required side yard.

b. Driveways are not permitted within ten (10) feet of any residential district. (Ord. No. 2001-02 § 1)

13-13.6 Reserved.

13-13.7 Off-Street Loading Space Requirements. The off-street loading requirements shall be the same as required under subsection 13-11.7. (Ord. No. 2001-02 § 1)

13-14 SIGNS.

13-14.1 Signs in R-A, R-AA and Residential Districts. No signs, billboards, advertising structures or similar items are permitted, except as follows:

a. One (1) lighted professional office announcement sign not over two (2) square feet in area for each office use.

b. One (1) unlighted home occupation announcement sign not over two (2) square feet in area for each dwelling conducting a home occupation.

c. One (1) lighted sign not to exceed twenty (20) square feet in area at each driveway to a church, public museum or similar use plus signs not to exceed four (4) square feet in area necessary to provide direction to a specific building or to off-street parking areas. Such sign cannot be in any right-of-way or sight triangle.

d. One (1) unlighted on-site sign not over four (4) square feet in size, advertising a dwelling or building located on the property for sale or rent, provided the same is in compliance with all side yard requirements of this chapter, is erected and set back a minimum of ten (10) feet from the street line and the bottom of said sign is no more than twenty (20) inches from the ground.

e. No more than one (1) sign advertising vacant land for sale or rent, not exceeding four (4) square feet in area, may be placed on the property to be rented or sold. In the case of housing development projects, as a part of the Planning Board application, the developer may receive permission to maintain on his tract not more than two (2) signs, limited to advertising his development, with the total area of each sign not exceeding thirty-two (32) square feet. Such permit shall be issued by the Zoning Officer at the current rate for sign permits.

f. During the construction, repair or remodeling of a single building, one (1) sign may be maintained on the construction site by each of the contractors and subcontractors working thereon, provided each sign does not exceed six (6) square feet, and further provided that all signs are removed prior to the issuance of a certificate of occupancy or within forty-eight (48) hours of termination of the work or construction as determined by the Building Inspector or Code Enforcement Officer.

g. Directional signs are permitted for churches, boat yards and marinas, and public buildings where the foregoing are permitted uses, provided, however, that:

   1. Each sign shall not be greater than twenty (20) square feet in area, not over five (5) feet in length and the top of the sign shall not be more than six (6) feet above the street grade. These directional signs may be lighted.

   2. Each use shall be permitted no more than one (1) sign per driveway.
   (Ord. No. 2001-02 § 1)

13-14.2 GC, General Commercial District; MC, Marine Commercial District; and LC, Limited Commercial District.

a. Any sign permitted under subsection 13-14.1.

b. In places of business, two (2) of the following three (3) types and locations of signage may be chosen:

1. A sign not exceeding thirty-two (32) square feet in area may be erected as accessory to the business on the lot, provided the same is placed on the same lot, or extended from the building wherein the business to be advertised is located.

2. The proprietor of a business may maintain on the exterior wall of the building wherein the business is to be conducted, one (1) sign not exceeding thirty-two (32) square feet in area.

3. In addition to such signs, lettering having a maximum height of twelve (12) inches and limited to the name of the business and a "one (1) word" description may be maintained on the exterior wall of the building wherein the business is to be conducted.

c. These signs may be lighted during hours of operation.

d. Prior to erecting any sign provided for in this subsection, a permit therefore shall be obtained from the Zoning Officer. (Ord. No. 2001-02 § 1)

13-14.3 Prohibited Features.

a. No advertisement, advertising structure, billboard, building structure or other object shall be erected, used or maintained which in any way simulates official, directional or warning signs erected or maintained by the State of New Jersey, by any county or municipality thereof, or by any public utility or similar agency concerned with the protection of the public health or safety.

b. Lighted signs, where permitted, exclude neon or flashing signs.

c. The following advertisements are specifically prohibited:

Any advertisement which uses a series of two (2) or more signs placed in a line parallel to the highway or in similar fashion all carrying a single advertising message, part of which is contained in each sign. (Ord. No. 2001-02 § 1)

13-14.4 Signs for Oversized Parcels – One Acre (43,560 SF) and Over.

a. Any sign permitted under subsection 13-14.1.

b. Two (2) signs not exceeding thirty-two (32) square feet in area may be erected as accessories to the lot provided the same is placed on the same lot, height no exceeding six (6) feet above grade.

(Ord. No. 2011-02 § 1)

13-15 FENCES, VEGETATION, LANDSCAPE, AND TRASH ENCLOSURES.

13-15.1 General Provisions.

a. The height of any improvement, excluding structures and accessory structures, shall be measured from the grade of the lot, provided said grade is no greater than eight (8) inches above the crown of the adjacent street or easement.

b. See Section 13-7.3 entitled "Coverages" for regulations pertaining to impervious coverage. (Ord. No. 2010-22 § 7)

c. A zoning permit shall be required for the installation of any material which increases coverage as herein before defined. The zoning permit application must be accompanied by a calculation of total lot coverage. (Ord. No. 2004-08 § 2)

13-15.2 Fence Permit.

a. No fences shall be hereafter erected, which exceed forty-eight (48) inches above the established grade of the lot and which exceed sixty (60) inches above the center of the crown of the road. If this provision prevents the construction of a fence in accordance with the Uniform Construction Code for the enclosure around pools, then the provisions of the Uniform Construction Code shall prevail. The post may exceed the fence height limit by not more than ten (10%) percent.

   Fences abutting commercially used properties may be erected not to exceed seventy-two (72) inches. (Ord. No. 2005-08 § 1)

b. Any fence erected, regardless of design or zone, shall have an unrestricted opening therein of a minimum of twelve (12) feet, which opening shall front on a street or vehicular easement as defined in this chapter.

c. A fence permit is required for new fences from the zoning office.
   (Ord. No. 2002-14 § 7)

d. Properties fronting Long Beach Boulevard shall comply with the regulations as set forth in Section 13-16.2 paragraph d.5 entitled "Properties fronting Long Beach Boulevard". (Ord. No. 2014-14 § 2)

13-15.3 Vision Clearance on Corner Lots. In any district on any corner lot, no fence, sign, or other structure, planting or other obstruction to vision, higher than twenty four (24) inches above the existing grade at the centerline, shall be erected or maintained within the line connecting points on the two (2) street lot lines at a distance of twenty-five (25) feet from the corner. This shall be known as the sight triangle.

In addition, the area within the right of way of the roadways adjoining the sight triangle area shall have no obstructions and shall consist of a level walkable surface, i.e. grass, gravel, maximum ½ inch stone or other level surface. No uneven surfaces will be permitted.
(Ord. No. 2014-14 § 3)

13-15.4 Use of Contiguous Borough Right of Way.

a. Any improvement located in the Borough of Harvey Cedars or Ocean County right of way placed there by a property owner shall be the sole responsibility of said property owner, and may be removed or relocated by the Borough or County for improvement or maintenance with no liability to the Borough or County.

b. Designated driveways shall conform to the requirements in Section 13-9.5(c).

c. Trash location and enclosures.

1. Any trash enclosure placed in the Borough right of way shall be located a minimum of five (5) feet from the edge of the pavement.

2. Trash enclosures shall not exceed 4' in height, and be no higher than 18" from grade on the pickup side.

3. Trash and recycling receptacles on private easements shall be located where the property owners have a common pickup location, which is acceptable to all property owners on said easement. In all other events trash and recycling pickup shall be located on the property owner's lot, provided the Borough and or its waste collectors agree that the location is accessible to its collection vehicles. (Ord. No. 2010-22 § 8)

4. No improvement, i.e., landscaping, etc. shall be placed closer than five (5) feet from the edge of the pavement, with the exception of mailboxes.
(Ord. No. 2004-08 § 5)

13-15.5 Retaining Walls. Any retaining wall fronting the ocean dunes shall first receive a permit or letter of "no interest" from the New Jersey Department of Environmental Protection before a zoning permit can be obtained. (Ord No. 2004-08 § 6)

13-16 ADMINISTRATION.

13-16.1 Enforcement. The provision of this chapter shall be administered and enforced by the zoning office of the Borough. In no case shall a permit be granted for the construction or alteration of any building where the proposed construction, alteration or use thereof would be in violation of any provision of this chapter. It shall be the duty of the Zoning Officer or his duly authorized assistants to cause any building plans or premises to be inspected or examined and to order in writing the remedying of any conditions found to exist in violation of any provision of this chapter, and he shall have the right to enter any building or premises during reasonable daylight hours in the course of his duties. (Ord. No. 2001-02 § 1)

13-16.2 Certificates and Permits.

a. *Zoning Permits*.

1. If a building permit is needed, then a zoning permit is also required.

2. The following is a list of fees for permits:

(a) Maintenance, sheds, air conditioning platforms & other minor work	$25.00
(b) All new structures and relocation of existing structures	$150.00
(c) Major enlargements or renovations increasing habitable area by 25% or more.	$150.00
(d) Additions and/or renovations increasing habitable area by 24% or less	$75.00
(e) Fence permit (for new or replacement fences)	$25.00
(f) Resale C/Os (for all new owners) per living unit	$50.00
(g) Reinspection fee (at the discretion of the Zoning Officer)	$25.00
(h) Sign permits:	
Permanent signs (per application)	$25.00
Development signs (as authorized by Planning Board)	$50.00 for two
(i) Construction trailer permit	$25.00
(j) Paver/impervious coverage permit	$35.00
(k)Work approved by Zoning Board or Planning Board variance	$25.00

(Ord. No. 2010-22 § 9 & 10)

b. *Conditional Use Permits*. Applications for conditional uses as permitted by this chapter shall be made to the appropriate approving authority in accordance with the provisions of the Borough Land Use Procedure Ordinance and the Municipal Land Use Law, RS 40:55D-1 et seq. The approving authority may grant such permit if, in its judgment, the proposed use will not be detrimental to the health, safety and general welfare of the Borough and is deemed necessary for its convenience.

In approving any such application, the approving authority may impose any condition that it deems necessary to accomplish reasonable compliance with the provisions of intent of this chapter and may deny any such application, but only if such compliance cannot be achieved.

In approving such applications, the Board of Adjustment may impose any conditions that it deems necessary to accomplish the reasonable application of application, but only in accordance with the standards.

In the event that the decision of the Board of Adjustment does not correspond with the recommendation of the Planning Board, the question shall be resolved by the Board of Commissioners in accordance with the procedure outlines in the New Jersey Statutes.

c. *Temporary Use Permits.*

It is recognized that it may be in accordance with the purpose of the chapter to permit temporary activities for a limited period of time, which activities may be prohibited by other provisions of this chapter. If such uses are of such a nature and are so located that at the time of the petition, they will:

1. In no way exert a detrimental effect upon the uses of land and activities normally permitted in the zones.

2. Contribute materially to the welfare of the Borough, particularly in a state of emergency, under conditions peculiar to the time and place involved.

   Then the approving authority may, subject to compliance with all regulations for the issuance of a conditional use permit, direct the Zoning Officer to issue a permit for a period not to exceed six (6) months. Such permits may be extended not more than once for an additional period of six (6) months.

d. *Certificate of Occupancy*.

1. New Uses. No building, structure or land shall be occupied or used until such time as a certificate of occupancy is issued by the building administrator.

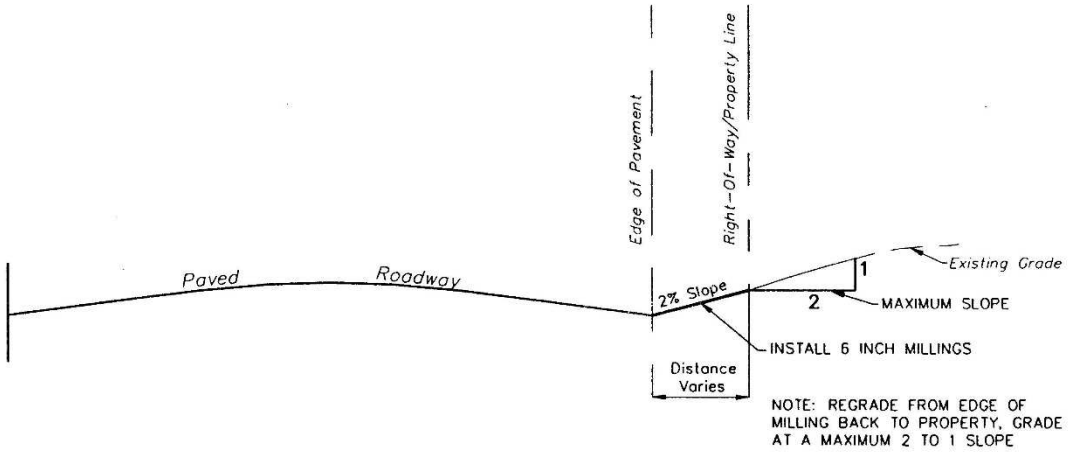
2. Change in Use. A new certificate of occupancy shall be obtained, whenever there occurs a change in the use of a building, structure or land to assure compliance with this chapter and all other applicable laws, codes, ordinances and regulations. For the purpose of this section, the term “change in use” shall be broadly construed.

3. Transfer of ownership. A new certificate of occupancy shall be obtained whenever there occurs a sale, conveyance, transfer of ownership or change in occupancy of a building or structure to assure compliance with the provisions of this chapter and all other applicable laws, codes, ordinances and regulations.

4. Requirements. Prior to issuance of a Certificate of Occupancy for new construction, major renovation, or the resale of property located within the Borough of Harvey Cedars, the property owners shall remove and/or relocate all obstructions, i.e. fences, etc., within the roadway Right-of-Way and re-grade the area. (Ord. No. 2014-14 § 5)

5. Properties fronting Long Beach Boulevard.

   a. When new construction or major renovations are undertaken on properties fronting Long Beach Boulevard, the owner shall install six (6) inches of road gravel (not fill) in accordance with the Pedestrian Walkway detail drawing, up to a maximum of ten (10) feet from the paved portion of Long Beach Boulevard.
   b. When new construction, major renovations or the resale of property are undertaken on properties fronting Long Beach Boulevard, all fences shall be set back a minimum of two (2) feet from the property line along Long Beach Boulevard. Further, the area between the edge of pavement on Long Beach Boulevard and a distance of two (2) feet into the property shall be maintained as a level surface with no other obstructions within the area, i.e. no mailboxes, decorative ornaments, landscape etc. Installation of a walkable surface within this area will be required, i.e. grass, gravel, maximum ½ inch stone or other level surface. No uneven surfaces will be permitted. (Ord. No. 2014-14 § 6)



PEDESTRIAN WALKWAY AREA DETAIL
N.T.S.

6. It shall be unlawful to use or occupy or to permit the use or occupancy of any building, structure, land or part thereof until all the certificate of occupancy requirements of this section are met. No such certificate shall be issued unless the land, building or structure and use thereof comply with the provisions of this chapter and all other applicable laws, codes, ordinances and regulations.
(Ord. No. 2001-02 § 1)

7. Any property owner who undertakes new construction or a major renovation on an Ocean County road must post a five hundred ($500.00) dollar cash bond, which shall be returned upon the issuance of a certificate of occupancy. (Ord. No. 2005-16 § 1)

8. Major renovation is defined as any construction which exceeds fifty percent (50%) of the replacement value of the structure on the property. (Ord. No. 2010-22 § 11)

13-16.3 Records.

It shall be the duty of the Zoning Officer to keep a record of all permits issued and a record of all certificates of occupancy which he countersigns, together with a notation of all special conditions involved. He shall file and safely keep copies of all plans submitted and the same shall form a part of the records of his office and shall be available for the use of the Board of Commissioners.

The Zoning Officer shall prepare a monthly report for the Board of Commissioners summarizing for the period since his last previous report all zoning permits issued and certificates countersigned by him and all complaints of violations and the action taken by him consequent thereon. A copy of each such report shall be filed with the Borough Tax Assessor at the same time it is filed with the Board of Commissioners.

The above reports and records are declared to be public records and shall be made available to the public for its examination during reasonable business hours. (Ord. No. 2001-02 § 1)

13-16.4 Construction Trailers.

a. A zoning permit shall be required for the use of a construction trailer located within the Borough, which permit shall be good for one (1) year, renewable for one (1) year periods after expiration.

b. During the months of June, July and August construction trailers may not be located on any street, easement or right of way.

c. No construction trailer may remain on a street, easement, or right of way, when permitted, after the structure is framed or after six months of the issuance of a permit, whichever occurs sooner.
(Ord. No. 2004-08 § 7)

13-17 SWIMMING POOLS AND HOT TUBS.

13-17.1 General. Pools used for swimming or bathing shall be in conformity with requirements of this chapter, provided, these regulations shall not be applicable to any pool less than twenty-four (24) inches deep or having a surface area of less than two hundred fifty (250) square feet, except when such pools are permanently equipped with a water recirculating system or involve structural materials. For purposes of this chapter, pools are classified as private swimming pools or public and semi-public swimming pools as defined hereafter.
(Ord. No. 2001-02 § 1)

Hot tubs shall be defined as follows:

A self contained spa or hot tub: A factory-fabricated unit consisting of a spa or hot tub vessel with all water-circulating heating, and control equipment integral to the unit. Equipment may include pumps, air blowers, heaters, lights, controls, sanitizers, etc. (Ord No. 2004-02 § 2)

13-17.2 Classification. Any swimming pool or hot tub which is used or intended to be used as a swimming pool or hot tub in connection with a single family residence and available only to the family of the householder and his private guest shall be classified as a private swimming pool or hot tub. (Ord. No. 2004-02 § 4)

Any swimming pool other than a private swimming pool shall be classified as a public or semi-public swimming pool. (Ord. No. 2001-02 § 1)

13-17.3 Compliance with Building Code. Pools and hot tubs used for swimming or bathing shall be in conformity with the requirements of this chapter and current with the New Jersey U.C.C. regulations. (Ord. No. 2004-02 § 3)

13-17.4 Permits. Swimming pools and hot tubs must receive permits from the Borough, County, and/or State authorities having jurisdiction prior to applying for a permit from the construction official for installing, altering, enlarging, or constructing a pool or hot tub. Certified copies of these approvals shall be filed as part of the data for the application for the permit.

A building permit shall be required for the installation, alteration or enlargement of any hot tub which exceeds twenty-four (24) inches in depth or to be installed on an elevated deck.
(Ord. No. 2004-02 § 5)

13-17.5 Swimming Pools.

a. *Plan Requirements.* Plans shall accurately show dimensions in construction of pools and appurtenances and properly establish distances to property lines, buildings, walks and fences; details of water supply system, drainage and water disposal systems, and all appurtenances pertaining to the swimming pool. Detailed plans of structures, vertical elevations, and sections through the pool showing depth shall be included.

b. *Structural Design.* The pool structure shall be engineered and designed to withstand the expected forces to which it will be subjected. Pools shall be constructed in conformity with construction codes of the State of New Jersey and the Borough of Harvey Cedars, and shall be supported by pilings in conformity with said building codes.

c. *Locations.* Swimming pools no higher than twelve (12) inches from grade shall not be any closer than ten (10) feet from any side yard, and shall not be any closer than ten (10) feet from either the rear property line or the bulkhead line from Barnegat Bay, lagoons, coves, and other bodies of water, and there shall be a minimum distance of eight (8) feet between a pool and a primary structure. (Ord. No. 2014-11 § 1)

Swimming pools shall be prohibited between a primary structure and any street or easement. (Ord. No. 2004-02 § 6)

d. On raised deck pool installations which are considered part of the primary structure, the pool shall maintain a distance of 8 feet from any portion of the remaining primary structure or deck above the pool elevation except overhangs other than decks. See Section 13-7.8, yards adjacent to bodies of water. (Ord. No. 2014-11 § 2)

13-17.6 Hot Tubs.

a. *Plan Requirements.* A plan for the installation of a hot tub shall accurately show dimensions, location in relation to setbacks, primary and accessory structures on the lot. All proposed or existing decks or walkways above twelve (12) inches from grade shall be shown.

b. *Structural Design.* Any hot tub other than a factory-fabricated self-contained unit shall abide by 13-17.5.

c. *Locations.* A hot tub shall not be placed any closer than ten (10) feet from any side yard and shall not be any closer than four (4) feet from Barnegat Bay, lagoons, coves, and other bodies of water. No minimum distance from a primary structure is required. Hot tubs on elevated decks must be approved by the construction official if a permit is required and may not be closer than two (2) feet from any exterior railing on such deck. Hot tubs in the front of a structure must meet front yard setbacks.
(Ord. No. 2004-02 § 7)

13-17.7 Reserved. (Ord. No. 2004-02 § 8)

13-17.8 Zoning Requirements and Lot Coverage.

See Section 13-7.3d, permitted coverage with a swimming pool. (Ord. No. 2014-11 § 3)

This chapter of the Borough provides that the total square footage of all structures above twelve (12) inches above grade on a given building lot may not exceed thirty-three (33%) percent of the total square footage of that building lot. The primary structure, all accessory buildings, the swimming pool, and walkways and patios three (3) feet wide (even if such walkway is under twelve (12) inches above grade) around the pool shall not cover more than forty-eight (48%) percent of the total square footage of the lot. (Ord. No. 2010-22 § 12)

13-18 VIOLATIONS AND PENALTIES.

Unless another penalty is expressly provided in a section of this Chapter, any person who shall violate any of the provisions of the chapter or fail to comply therewith or with any of the requirements thereof, or who shall erect, structurally alter, enlarge, rebuild or move any building or buildings or any structure or who shall put into use any lot or land in violation of any detailed statement of plan submitted and approved hereunder, or who shall refuse reasonable opportunity to inspect any premises, shall upon conviction thereof be liable to a fine as stated in Chapter III, Section 3-9. (Ord. No. 2014-08 § 3)

The owner of any building or structure, lot or land, or part thereof, where anything in violation of this chapter shall be placed or shall exist and any architect, builder, contractor, agent, person or corporation employed in connection therewith and who may have assisted in the commission of any such violation shall each be guilty of a separate violation, and upon conviction thereof shall be liable to a fine as stated in Chapter III, Section 3-9.
(Ord. No. 2001-02 § 1)

CHAPTER XIV

LAND USE PROCEDURES

14-1 PREAMBLE.

The Municipal Land Use Law known as N.J.S.A. 40:55D-1 et seq. has been promulgated into law; and

Said statute requires the adoption of this chapter to implement certain changes in the Planning Board, Boards of Adjustment and the ordinances affecting same.

14-2 DEFINITIONS.

The definitions set forth in this chapter shall be construed and defined in accordance with the definitions set forth in N.J.S.A. 40:55D-3, 4, 5, 6 and 7 of the Municipal Land Use Law more particularly described above.

14-3 PLANNING BOARD.

14-3.1 Establishment. Pursuant to N.J.S.A. 40:55d-23, et. seq. a Municipal Planning Board or Land Use Board of nine (9) members is hereby established consisting of the following four (4) classes:

Class I – The Mayor, or his designee in his absence, who shall not participate in the consideration of applications for development which involve relief pursuant to N.J.S.A. 40:55d-70.

Class II – One of the officials of the Borough other than a member of the Board of Commissioners appointed by the Mayor.

Class III – A member of the Board of Commissioners to be appointed by majority of the same. However, the Class III member shall not participate in consideration of applications for development which involve relief pursuant to N.J.S.A. 40:55d-70.

Class IV – Six (6) other citizens of the Borough to be appointed by the Mayor. The members of Class IV shall hold no other Borough Office, except one (1) member may be a member of the Board of Education.
(Ord. No. 2011-01 § 1)

14-3.2 Terms. The term of the member composing class one shall correspond to his official tenure. The terms of the members composing classes two and three respectively shall be for one year or terminate at the completion of their respective terms of office, whichever occurs first. The term of a class four member who is also a member of the environmental commission shall be for three years or terminate at the completion of his term of office as a member of the environmental commission, whichever occurs first. The terms of all class four members first appointed under this act shall be so determined that to the greatest practicable extent, the expiration of such terms shall be distributed evenly over the first four years after their appointment as determined by resolution of the board of commissioners provided, however, that the initial term of a class four member shall not exceed four years and further provided that nothing herein shall affect the term of any present member of the planning board, all of whom shall continue in office until the completion of the terms for which they were appointed. Thereafter, all appointments to class four membership shall be for a term of four years. The term of a class four member shall run from January 1 of the year in which the appointment was made for a period of four years.

14-3.3 Vacancies. If any vacancy in any class shall occur otherwise than by the expiration of the term, it shall be filled by appointment for the unexpired term in the same manner and by the same appointing authority as the original appointment.

14-3.4 Organization of the Board. The planning board shall elect a chairman and vice-chairman from the members of class four. The planning board shall also select a secretary who may or may not be a member of the planning board or a borough employee and fill such other offices as established by ordinance.

14-3.5 Planning Board Attorney, Experts and Staff. The planning board may employ or contract for and fix the compensation of legal counsel, who shall be an attorney other than the borough attorney, and such other experts and staff as it may deem necessary. The board shall not authorize expenditures which exceed, exclusive of gifts or grants, the amount appropriated by the board of commissioners for its use. The appointments of all staff members, including that of the planning board attorney and planning board engineer, shall be made at the organization meeting of the planning board and shall continue for one year until the next organization meeting of the planning board at which time the appointments shall expire.

14-3.6 Powers and Duties Generally. The planning board is authorized to adopt bylaws governing its procedural operation which shall be consistent with statute and other ordinances of this borough. It shall also have the following powers and duties:

a. To prepare, adopt and, from time to time, revise or amend a master plan, or component parts thereof, for the physical development of the borough in accordance with the provisions of N.J.S.A. 40:55D-28.

b. To administer the provisions of the Development Regulations of the Borough of Harvey Cedars in accordance with the provisions of those regulations and the Municipal Land Use Law of 1975, N.J.S.A. 40:55D-1 et seq. In the event that any such regulation is inconsistent with the terms of any portion of N.J.S.A. 40:55D-1 et seq., the regulation is hereby repealed to the extent of such inconsistency but the remainder of the regulation shall remain in full force and effect as if more fully set forth herein.

c. To participate in the preparation and review of programs or plans required by State or Federal law or regulations.

d. To assemble data on a continuing basis as part of a continuous planning process.

e. To consider and make reports to the board of commissioners within 35 days after the referral to the planning board of any proposed development regulation or revision or amendment thereto, pursuant to the provisions of N.J.S.A. 40:55D-26(a), and also to pass upon other matters specifically referred to the planning board by the board of commissioners pursuant to the provisions of N.J.S.A. 40:55D-26(b).

f. When reviewing applications for approval of subdivisions, plats, site plans or conditional uses, to grant to the extent and subject to the same restrictions as the zoning board of adjustment:

    1. Variances pursuant to N.J.S.A. 40:55D-70(c) from lot area, lot dimensional, setback and yard requirements, provided that such relief from lot area requirements shall not be granted for more than one lot.

    2. Direction pursuant to N.J.S.A. 40:55D-34 for issuance of a permit for a building or structure in the bed of a mapped street or public drainage way, flood control basin or public area reserved pursuant to N.J.S.A. 40:55D-32.

    3. Direction pursuant to N.J.S.A. 40:55D-36 for issuance of a permit for building or structure not related to a street.

Whenever relief is requested pursuant to this subsection, notice of a hearing on the application for development shall include reference to the request for a variance or direction for issuance of a permit, as the case may be.

g. To perform such other advisory duties as are assigned to it by ordinance or resolution of the board of commissioners for the aid and assistance of the board of commissioners other agencies or officers not inconsistent with the purposes and intent of N.J.S.A. 40:55D-1 et seq. and such other applicable general law.

14-3.7 Procedure for Submission of Matters and Consideration of Same by Planning Board.

a. Minor subdivision. Minor subdivision approval shall be granted or denied within 45 days of the date of submission of a complete application to the planning board or within such further time as may be consented to by the applicant. Approvals of a minor subdivision shall expire 190 days from the date of the planning board approval unless within such period a plat in conformity with such approval and the provisions of the "Map Filing Law," N.J.S.A. 46:23-9.9 et seq., or a deed clearly describing the approved minor subdivision is filed by the developer with the county recording officer, the borough engineer and the borough tax assessor. Any such plat or deed must be signed by the chairman and secretary of the planning board before it will be accepted for filing.

Whenever review or approval of the application by the county planning board is required by other law, the planning board shall condition any approval that it grants upon timely receipt of a favorable report on the application by the county planning board or approval by the county planning board by its failure to report thereon within the required time period of that statute.

b. Preliminary approval of major subdivisions. The developer shall submit to the administrative officer a plat and such other information as is required in the land subdivision ordinance of this borough. If the application for development is found to be incomplete, the developer shall be notified thereof within 45 days of its submission of such application or it shall be deemed to be properly submitted. If the planning board requires any substantial amendment in the layout of improvements proposed by the developer that have been subject of a hearing, an amended application shall be submitted and proceeded upon as in the case of the original application for development. The planning board shall, if the proposed subdivision complies with the land subdivision ordinance and statute, grant preliminary approval to the subdivision.

Upon the submission to the administrative officer of a complete application for a subdivision of ten or fewer lots, the planning board shall grant or deny preliminary approval within 45 days of such submission or within such further time as may be consented to by the developer. Upon the submission of a complete application for a subdivision of more than ten lots, the planning board shall grant or deny preliminary approval within 95 days of the date of such complete submission or within such further time as may be consented to by the developer.

c. Preliminary approval of site plans. The developer shall submit to the administrative officer a site plan and such other information as is required in the site plan ordinance of this borough. If the application for development is found to be incomplete, the developer shall be notified thereof within 45 days of its submission of such application or it shall be deemed to be properly submitted. If the planning board requires any substantial amendment in the layout of improvements proposed by the developer that have been subject of a hearing, an amended application shall be submitted and proceeded upon as in the case of the original application for development. The planning board shall, if the proposed development complies with the site plan ordinance and statute, grant preliminary site plan approval.

   Upon the submission to the administrative officer of a complete application for a site plan of ten acres of land or less, the planning board shall grant or deny preliminary approval within 45 days of such submission or within such further time as may be consented to by the developer. Upon the submission of a complete application for a site plan of more than ten acres, the planning board shall grant or deny preliminary approval within 95 days of the date of such complete submission or within such further time as may be consented to by the developer.

d. Final approval of site plans and major subdivisions. The planning board shall grant final approval if the detailed drawings, specifications and estimates of the application for final approval conform to the standards established by ordinance for final approval, the conditions of preliminary approval and, in the case of a major subdivision, the standards prescribed by the "Map Filing Law," N.J.S.A. 46:23-9.9 et seq. Application for final site plan or subdivision approval shall be granted or denied within 45 days of submission of a complete application or within further time as may be consented to by the applicant.

   Final approval of a major subdivision shall expire 95 days from the date of signing of the plat unless within such period the plat shall have been duly filed by the developer with the county recording officer. The planning board may, for good cause shown, extend the period for recording for an additional period not to exceed 190 days from the date of the signing of the plat.

   Wherever review or approval of the application by the county planning board is required by other law, the planning board shall condition any approval that it grants upon timely receipt of a favorable report on the application by the county planning board or approval by the county planning board by its failure to report thereon within the required time period of that statute.

e. Ancillary powers. Whenever the planning board is called upon to exercise its ancillary powers for the granting of relief as set forth in subsection 14-3.6f of this chapter, the planning board shall grant or deny approval of the application within 95 days after submission by the developer a complete application or within such further time as may be consented to by the applicant. Failure of the planning board to act within the period prescribed shall constitute approval of the application in question and a certificate from the secretary of the planning board as to the failure of the planning board to act shall be issued on the request of the applicant.

Wherever review or approval of the application by the county planning board is required by other law, the planning board shall condition any approval that it grants upon timely receipt of a favorable report on the application by the county planning board or approval by the county planning board by its failure to report thereon within the required period of that statute.

14-3.8 Alternate Members. There shall be four (4) alternate members to the nine (9) member Planning Board known as Alternate Number "1", Alternate Number "2", Alternate Number "3", and Alternate Number "4". Alternate Members shall be appointed by the Mayor, and shall serve for two (2) years except the terms of Alternate Members shall be such that the term of not more than two (2) Alternate Members shall expire in any one (1) year and provided further that in no instance shall the terms of the Alternate Members first appointed exceed two (2) years.

A vacancy occurring otherwise than by expiration of term shall be filled by the Mayor for the unexpired term only.

Alternate Members may participate in discussion proceedings unless they have a direct or indirect personal or financial in same, but may not vote except in the absence or disqualification of a regular member of any Class. A vote shall not be delayed in order that the regular member may vote instead of an alternate member. In the event that a choice must be made as to which alternate member is to vote, alternate number 1 shall vote, or in their absence, the lowest alternate number shall vote.
(Ord. No. 2011-01 § 2)

14-3.9 Rules and Regulations. The planning board shall adopt such rules and regulations as may be necessary to carry into effect the provisions and purposes of this chapter.

14-4 ZONING BOARD OF ADJUSTMENT.

14-4.1 Powers, Duties and Responsibilities to be Transferred to Planning Board or Land Use Board. From and after the effective date of the within Ordinance all powers, duties, responsibilities, fees and application requirements of the Zoning Board of Adjustment shall be transferred to or applied to the Planning Board or Land Use Board of the Borough of Harvey Cedars pursuant to the provisions of N.J.S.A. 40:55d-25c. All references in the within Chapter XIV of the Administrative Code and within the Administrative Code referring to the Zoning Board of Adjustment of the Borough of Harvey Cedars shall hereafter apply to the Planning Board or Land Use Board of the Borough.
(Ord. No. 2011-01 § 3)

14-4.2 Reserved. (Ord. No. 2011-01 § 3)

14-4.3 Reserved. (Ord. No. 2011-01 § 3)

14-4.4 Reserved. (Ord. No. 2011-01 § 3)

14-4.5 Powers of the Zoning Board of Adjustment. The board of adjustment shall have the following powers:

a. To hear and decide by majority vote appeals where it is alleged by the appellant that there is an error in any order, requirement, decision or refusal made by an administrative officer based on or made in the enforcement of the zoning ordinance;

b. To hear and decide by majority vote requests for an interpretation of the zoning map or ordinance;

c. To grant, by majority vote, a variance from the strict application of the zoning regulations of the borough where by reason of exceptional narrowness, shallowness or shape of a specific piece of property, or by reason of exceptional topographic conditions, or by reason of other extraordinary and exceptional situation or condition of such piece of property the strict application of the zoning regulations would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardship upon the developer of such property, except that no variance shall be granted under this subsection to allow a structure or use in a district restricted against such structure or use; and provide further that if the proposed development requires subdivision, site plan or conditional use approval by the planning board, the request for a variance under these circumstances shall be acted on by the planning board in conjunction with the subdivision, site plan or conditional use application;

d. To grant a variance to allow a structure or use in the district restricted against such structure or use in particular cases and for special reasons, but only by an affirmative vote of at least two-thirds of the full authorized membership of the board;

e. To direct the issuance of a permit pursuant to N.J.S.A. 40:55D-34 for a building or structure in the bed of a mapped street or public drainage way, flood control basin or public area reserved pursuant to N.J.S.A. 40:55D-32;

f. To direct the issuance of a permit for a building or structure not related to a street pursuant to N.J.S.A. 40:55D-36.

Whenever an applicant shall request a variance to allow a structure or use in a district restricted against such structure or use pursuant to subsection 14-4.5d of this chapter, the board of adjustment shall have the power to grant subdivision, site plan or conditional use approval in conjunction with its action on the use variance and may impose restrictions on the subdivision, site plan or conditional use application in the same manner as the planning board.

No variance or other relief may be granted under the terms of this section unless such variance or other relief can be granted without substantial detriment to the public good and will not substantially impair the intent and purpose of the zone plan and zoning ordinance. An application under this section may be referred to any appropriate person or agency, including the planning board for its report; provided that such reference shall not extend the period of time within which the zoning board of adjustment shall act.

14-4.6 Expiration of Variance. Any variance from the terms of this chapter granted by the zoning board of adjustment or planning board shall expire by limitation unless such construction or alteration shall have been actually commenced on each and every structure permitted by the variance or unless such permitted use has actually been commenced within twelve (12) months from the date of entry of the determination of the board of adjustment or planning board except, however, that the running of the period of limitation herein provided shall be tolled from the date of filing an appeal from the decision of the board of adjustment to the board of commissioners or to a court of competent jurisdiction until the termination in any manner of such appeal or proceeding. (Ord. No. 2003-12 § 1)

14-4.7 Appeals and Applications.

a. Appeals to the board of adjustment may be taken by any interested party affected by any decision of an administrative officer of the borough based on or made in the enforcement of the zoning ordinance or official map. Such appeal shall be taken within 65 days by filing a notice of appeal with the officer from whom the appeal is taken specifying the grounds of such appeal. The officer from whom the appeal is taken shall immediately transmit to the board all the papers constituting the record upon which the action appealed from was taken.

b. The board of adjustment may reverse or affirm, wholly or in part, or may modify the action, order, requirement, decision, interpretation or determination appealed from and to that end have all the powers of the administrative officer from whom the appeal is taken.

c. An appeal to the board of adjustment shall stay all proceedings in furtherance of the action in respect to which the decision appealed from was made unless the officer from whose action the appeal is taken certifies to the board of adjustment, after the notice of appeal shall have been filed with him, that by reason of facts stated in the certificate a stay would, in his opinion, cause imminent peril to life or property. In such case, proceedings shall not be stayed other than by an order of the Superior Court upon notice to the officer from whom the appeal is taken and on due cause shown.

d. A developer may file an application for development with the board of adjustment for action under any of its powers without prior application to an administrative officer.

e. Time for decision. The board of adjustment shall render a decision not later than 120 days after the date (1) an appeal is taken from the decision of an administrative officer or (2) not later than 120 days after the submission of a complete application for development to the board of adjustment. Failure of the board to render a decision within such 120 day period, or within such further time as may be consented to by the applicant shall constitute a decision favorable to the applicant.

Whenever an application for development shall request a variance pursuant to subsection 14-5.4d of this chapter, the board of adjustment shall grant or deny approval of the application within 120 days after submission by a developer of a complete application to the administrative officer or within such further time as may be consented to by the applicant.

14-4.8 Board of Adjustment Fees. At the time of filing an application for a variance with the land use board, the applicant shall pay the following nonrefundable fee to the Borough of Harvey Cedars:

a. Per variance and per appeal pursuant to NJSA 40:55D-70 (a) (b) (c) $500.00.

b. Variances pursuant to NJSA 40:55D-70 (d) $400.00

c. In addition to the above-mentioned fees, the applicant shall further guarantee to reimburse the land use board for any and all expert expenses, engineering services, legal review or other expenses needed to evaluate the application. The applicant shall pay a fee to the Borough of Harvey Cedars at the time of

the filing of an application which shall be refundable, in whole or in part, if said expert expenses do not equal the deposit.

1. Minimum Escrow for Variance and Site Plans $ 650.00
2. Minimum Escrow for Minor Sub-division $1,000.00

Any additional expert expenses over and above the deposit amount shall be due and payable to the Borough of Harvey Cedars.

d. If the necessity arises for an additional meeting to conclude or continue the hearing of an application, then and in that event, the applicant shall pay an additional fee of three hundred ($300.00) dollars, which fee may be waived or adjusted by the land use board.

(Ord. No. 2011-05 § 1)

14-4.9 Applications for Variances Accompanied by Subdivision and/or Site Plan Application. An applicant for a zoning variance (whose application is accompanied by a minor subdivision application and/or site plan application) shall pay the following nonrefundable fee to the Borough of Harvey Cedars:

a. Applications for minor subdivisions (including consolidation and resubdivision) $400.00. (Ord. No. 2011-01 § 2)

b. Applications for major subdivisions:

1. Preliminary plat – 0-30 lots $80.00 per lot, minimum $300.00; more than 30 lots $2,400.00 plus $30.00 per lot over 30 lots.

2. Final plat – 0-30 lots $80.00 per lot, minimum $300.00; more than 30 lots $2,400.00 plus $30.00 per lot over 30 lots.

c. Minor site plan $300.00

d. Major site plan - $80.00 per lot, minimum of $500.00

e. In addition to the above-mentioned fees, the applicant shall further guarantee to reimburse the zoning board of adjustment for any and all expert expenses, engineering services, or other expenses needed to evaluate the application.
(Ord. No. 2005-05 § 2)

14-5 PROVISION PERTAINING TO THE PLANNING BOARD AND ZONING BOARD OF ADJUSTMENT AND THE INTERRELATIONSHIP BETWEEN SAID BOARDS.

14-5.1 Prohibited Uses. All uses not expressly permitted by the development regulations of this borough are hereby expressly prohibited.

14-5.2 Use Variance Applications Forwarded to the Planning Board. Any application and all supporting documents for a variance to allow a structure or use in a district restricted against such structure or use pursuant to subsection 14-5.4d of this chapter shall be filed in triplicate with the appropriate official of the zoning board of adjustment. One copy shall be forwarded to the planning board by said official, together with a notice of the hearing date. The planning board shall review the material and may make recommendations to the board of adjustment at the public hearing on the application. The planning board's recommendation may contain, among other things, the planning board's opinion as to the compatibility of the proposal with the master plan; applications which may have been or are currently being processed by the planning board for similar uses elsewhere in the borough; land use, traffic and other data relevant to the application which the planning board has in its files; and what conditions, if any, the planning board would recommend to improve the compatibility of the proposal with the master plan and zoning ordinance should the board of adjustment decide to grant the variance.

14-5.3 Vacating a Street or Other Public Way. Where a street or public way serves as the zoning district line and it is lawfully vacated, the former center line shall be considered the zoning district line.

14-5.4 Conflicts of Interest. No member of the planning board or zoning board of adjustment shall act on any manner in which he has either directly or indirectly any personal or financial interest. Whenever any such member shall disqualify himself from acting on a particular matter, he shall not continue to sit with the board on the hearing of such matter nor may he participate in any discussion or decision relating thereto.

14-5.5 Meetings.

a. Regular meetings of the planning board and zoning board of adjustment shall be scheduled no less than once a month and any meeting so scheduled shall be held as scheduled unless canceled for lack of applications for development to process. Further, all meetings shall conform with the Open Public Meeting Act of the State of New Jersey, N.J.S.A. 10:4-6 et seq.

b. Special meetings may be provided for at the call of the chairman or on the request of any two board members which shall be held on notice to its members and the public in accordance with all applicable legal requirements.

c. No action shall be taken at any meeting without a quorum being present.

d. All regular meetings and all special meetings shall be open to the public except as authorized as by the provisions of the Open Public Meeting Act, N.J.S.A. 10:4-6 et seq.

14-5.6 Minutes. Minutes of every regular or special meeting of the planning board and zoning board of adjustment shall be kept and shall include the names of the persons appearing and addressing the boards and of the persons appearing by attorney, the action taken by the board, the findings, if any, made by it and reasons therefore.

14-5.7 Transcripts. A verbatim transcript or recording shall be made of all hearings before the planning board or the zoning board of adjustment.

14-5.8 Records. The minutes and transcripts of all proceedings shall thereafter be made available for public inspection during the normal business hours at the office of the planning board or the zoning board of adjustment, as the case may be. Any interested party shall have the right to compel production of the minutes for use as evidence in any legal proceeding concerning the subject matter of such minutes. Such interested party may be charged a fee for reproduction of the minutes for his or her use as provided for in the rules of the board concerning same.

14-5.9 Fees. Fees for applications or for the rendering of any service by the planning board or zoning board or adjustment or of any special service rendered by the administrative staff may be provided for by ordinance. Copies of the ordinance shall be available to the public upon request.

14-5.10 Hearings. The planning board and zoning board of adjustment shall make rules governing the conduct of hearings before such bodies which rules shall not be inconsistent with the provisions of N.J.S.A. 40:55D-1 et seq. or of this chapter or any amendments thereto.

14-5.11 Oaths. The presiding official at the hearing shall have the power to administer oaths and issue subpoenas to compel the attendance of witnesses and the production of relevant evidence, including witnesses and documents presented by the parties and the provisions of the "County and Municipal Investigations Law," P.L. 1953 c. 1938 N.J.S.A. 2A:67A-1 et seq., shall apply.

14-5.12 Testimony. Testimony of all witnesses relating to an application for development shall be taken under oath or affirmation by the presiding officer and the right of cross-examination shall be permitted to all interested parties through their attorneys if represented or directly if not represented subject to the discretion of the presiding officer and to reasonable limitations as to time and number of witnesses.

14-5.13 Appearance by Corporation. In accordance with law, no corporation shall appear before either the planning board or the zoning board of adjustment without being represented by an attorney authorized to practice law in the State of New Jersey.

14-5.14 Notice Requirements for Hearing. Whenever a hearing is required on an application for development pursuant to N.J.S.A. 40:55D-1 et seq., the applicant shall give notice thereof as follows:

a. Public notice shall be given by publication in the official newspaper of the borough at least ten days prior to the date of the hearing.

b. Notice shall be given to the owners of all real property as shown on the current tax duplicate or duplicates located within 200 feet in all directions of the property which is the subject of such hearing and whether located within or without the municipality in which applicant's land is located. Such notice shall be given by: (1) serving a copy thereof on the owner as shown on the current tax duplicate or his agent in charge of the property, or (2) mailing a copy thereof by certified mail to the property owner at his address as shown on the current tax duplicate. A return receipt shall not be required. Notice to a partnership owner may be made by service upon any partner. Notice to a corporate owner may be made by service upon its president, its vice-president, secretary or other person authorized by appointment or by law to accept service on behalf of the corporation.

c. Notice of all hearings on applications for development involving property located within 200 feet of an adjoining municipality shall be given by personal service or certified mail to the clerk of the municipality which notice shall be in addition to the notice required to be given to the owners of lands in the adjoining municipality which are located within 200 feet of the subject premises.

d. Notice shall be given by personal service or certified mail to the county planning board of a hearing on an application for development of property adjacent to an existing county road or proposed county road shown on the official county map or on the county master plan, adjoining other county land or situated within 200 feet of a municipal boundary or where the construction of a bridge is contemplated.

e. Notice shall be given by personal service or certified mail to the commissioner of transportation of a hearing on an application for development of a property adjacent to a State highway or where drainage waters shall be deposited onto a State highway.

f. Notice shall be given by personal service or certified mail to the Director of the Division of State and Regional Planning in the Department of Community Affairs of a hearing on an application for development of property which exceeds 150 acres or 500 dwelling units. This notice shall include a copy of any maps or documents required to be on file with the borough clerk pursuant to this chapter or under the terms of statute.

g. All notices hereinabove specified in this subsection shall be given at least ten days prior to the date fixed for hearing and the applicant shall file an affidavit of proof of service with the attorney for the board holding the hearing on the application for development.

h. Any notice made by certified mail as hereinabove required shall be deemed to be complete upon mailing in accordance with the provisions of N.J.S.A. 40:55D-14.

i. Form of notice. All notices required to be given pursuant to the terms of this chapter shall state the date; time and place of the hearing; the nature of the matters to be considered; the identification of the property proposed for development by street address, if any, and by reference to lot and block numbers as shown on the current tax duplicate in the borough tax assessor's office; and the location and times at which any maps and documents for which approval is sought are available for public inspection as required by N.J.S.A. 40:55D-10(b). The planning board and zoning board of adjustment may prepare forms and require applicants to utilize the forms in accordance with the terms of this section.

j. List of property owners furnished. Pursuant to the provisions of N.J.S.A. 40:55D-12c, the tax assessor of the borough shall, within seven days after receipt of request therefore and upon receipt of a payment of a fee of ten ($10.00) dollars, and certify a list from the current tax duplicate of names and addresses of owners to whom the applicant is required to give notice pursuant to subsection 14-5.14b of this chapter.

14-5.15 Decisions. Decisions of the planning and zoning board of adjustment on any application for development shall be set forth in writing as a resolution of the board which shall include findings of fact and legal conclusions based thereon in accordance with the terms of this chapter and appropriate statutory and case law.

a. A copy of a certified resolution which shall include the decision of the board shall be mailed by the board within ten days of the date of the decision to the applicant or if represented by an attorney, then to his attorney without separate charge. A copy of the decision shall be mailed to all persons who have requested it and paid the fee prescribed by the board for such service. A copy of the decision shall also be filed in the office of the borough clerk who shall make a copy of such filed decision available to any interested party upon payment of the fee for the reproduction of said copy as set forth in the general fee schedule of the borough concerning this service.

14-5.16 Publication of Decision. A brief notice of every final decision shall be published in the official newspaper of the borough. Such publication shall be arranged by the secretary of the planning board or the zoning board of adjustment as the case may be without separate charge to the applicant. The notice shall be sent to the official newspaper for publication within ten days of the date of any such decision.

14-5.17 Payment of Taxes. Pursuant to the provisions of N.J.S.A. 40:55D-39 and 40:55D-65, every application for development submitted to the planning board or zoning board of adjustment shall be accompanied by a certification from the tax collector of the borough that no taxes or assessments for local improvements are due or delinquent on the property which is the subject of such application. If taxes are due or in the alternative, if no certification is presented, the planning board or zoning board of adjustment shall not consider the application for processing and the application shall not be deemed to be complete.

14-5.18 Conditional Approvals.

a. Pursuant to the provisions of N.J.S.A. 40:55D-22, an application for development proposing a development that is barred or prevented, directly or indirectly, by a legal action instituted by any State agency, political subdivision or other party to protect the public health and welfare or by a directive or order issued by any State agency, public subdivision or court of competent jurisdiction, shall be processed in accordance with N.J.S.A. 40:55D-1 et seq. and this chapter, and, if such application for development complies with the development regulations of this borough, the zoning board of adjustment or planning board shall approve such application conditioned on removal of such legal barrier to development. In that event, the requirement that construction actually commence on the project nine months subsequent to the final approval by the borough agency would be tolled subject to the removal of such legal barrier to development.

b. In the event the development proposed by an application for development requires approval by a governmental agency other than the borough planning board or the zoning board of adjustment, the boards shall, in appropriate instances, condition their approval upon the subsequent approval of the governmental agency; provided that the borough boards shall make their decision on any application for development within the time periods provided in this chapter or within an extension of such period as has been agreed upon the applicant and the borough board. However, the borough planning board or board of adjustment shall have the right to withhold signature on the final plat or map to be filed until such time as all other governmental agencies have approved the application.

14-6 RESERVED.

14-7 MISCELLANEOUS PROVISIONS.

14-7.1 Definition of Terms. Whenever a term used in this chapter is defined in N.J.S.A. 40:55D-1 et seq., the term is intended to have the meaning set forth in the definition of such term in that statute unless a contrary intention is clearly and explicitly expressed from the context of this chapter.

14-7.2 Repeals. All sections of the land subdivision ordinance, zoning ordinance, site plan ordinance or any other ordinance of the borough which contains provisions clearly contrary to the provisions of this chapter shall be and hereby are repealed to the extent of any such inconsistency.

14-7.3 Ordinances Continued. The substantive provisions of the existing land subdivision ordinance, zoning ordinance and site plan ordinance of the borough shall continue in full force and effect for a period of one year unless extended by further amendments to this chapter for a longer period as permitted by law. The purpose of this interim provision is to provide a reasonable period of time for the adoption of a new or substantially revised master plan and a new or substantially revised series of development regulations.

14-7.4 Pending Applications. All applications for development filed prior to the effective date of this chapter may be continued in accordance with pre-existing ordinances, but any appeals arising out of decisions made on any such application shall be governed by the provisions of this chapter.

14-7.5 Title. This chapter shall be known and may be cited as the "Land Use Procedure Ordinance of the Borough of Harvey Cedars."

14-7.6 Effective Date. This chapter shall take effect upon its adoption and publication as provided by law but shall be effective no later than February 1, 1977.

14-7.7 Copy Filed with County Planning Board. Immediately upon the adoption of this chapter, the borough clerk shall file a copy of same with the county planning board as required by law. The clerk shall also file with the county planning board copies of all other ordinances of the borough relating to land use, including but not limited to the subdivision ordinances, zoning ordinance and site plan review ordinance and any revision or amendment thereto.

14-7.8 Severability. If any article, section or paragraph, clause or provision of this chapter shall be adjudged invalid by a court of competent jurisdiction, such adjudication shall apply only to that article, section, paragraph, clause or provision so adjudged and the remainder of this chapter shall be deemed valid and effective.

CHAPTER XV

SITE PLAN

15-1 SHORT TITLE.

This chapter shall be known as the Borough of Harvey Cedars Site Plan Ordinance.

15-2 DEFINITIONS.

As used in this chapter.

a. Whenever a word or phrase used in this chapter is defined in R.S. 40:55D-1 et seq., the Municipal Land Use Law, such term is intended to have the meaning set forth in the definition of such term in that statute unless a contrary intention is clearly and explicitly expressed from the context of this chapter.

b. The following words and phrases when used herein shall be defined as follows:

Approving authority shall mean the borough planning board unless a different agency is acting pursuant to the authority of the Municipal Land Use Law, Chapter 291, Laws of New Jersey 1975, as amended and supplemented.

Land Use Procedure Ordinance shall mean chapter XIV of the Revised General Ordinances of the Borough of Harvey Cedars, 1975, entitled "Land Use Procedures", as amended and supplemented.

Major site plan shall mean all site plans other than minor site plans as defined herein.

Minor site plan shall mean a site plan for the development of not more than one lot and one building located thereon with a minimum ground floor area not in excess of 2,500 square feet and not otherwise classified as an exempt site plan.

15-3 NECESSITY OF SITE PLAN REVIEW.

Except as hereinafter provided, no building permit, zoning permit, or certificate of occupancy shall issue for any new construction nor for any change in use as hereinafter defined in paragraph a. for any commercial, industrial, office building, garden apartment building, high-rise apartment building, low-rise apartment building, or multi-family use; provided however, that single family detached dwellings are exempt from the requirements herein imposed; or any recreational use, unless a site plan is first submitted to and approved by the planning board of the borough in accordance with the terms of this chapter. No certificate of occupancy, or final approval to occupy or use any lands in the borough, which have been the subject of site plan application, shall issue or be given until all of the conditions imposed by the planning board upon such site plan application have been complied with. Enlargements or alterations of existing structures or uses as described above shall be subject to the terms of this chapter. However, site plan approval shall not be required if a building permit is to be obtained in order to perform interior or exterior cosmetic changes not affecting the use of the property, and in conformity with the zoning ordinances of the borough.

a. The change of use requiring site plan submission and approval pursuant to this chapter shall be any change of use which shall impose, pursuant to the terms of the zoning ordinance of the borough, stricter or more stringent controls, requirements or burdens on the lands where such use is to be conducted.

b. The provisions of this chapter shall not limit the requirements for submission of subdivision plans for subdivision approval as may otherwise be required by any other ordinance of the Borough of Harvey Cedars, either now or hereinafter enacted.

c. The provisions of this chapter shall not limit the requirements for submission of any application for variance or conditional use to the planning board or zoning board of adjustment as may be required by any other ordinance of the Borough of Harvey Cedars now or hereinafter enacted.

d. All development resulting from site plan approval shall comply with the zoning and subdivision requirements of the borough as well as all borough design and performance standards, including conditions imposed by the approving authority, as shown on the approval plat, and as included in the resolution adopted by the approving authority.

15-4 PROCEDURE FOR PRELIMINARY SITE PLAN APPROVAL.

15-4.1 Filing Procedure. The applicant shall file with the borough clerk at least 14 days prior to the next public meeting of the approving authority:

a. Six copies of the completed preliminary site plan;

b. Six copies of the completed application for preliminary site plan approval;

c. A certification from the borough tax collector that no taxes or assessments for local improvements are due or delinquent on the property which is the subject of the application;

d. Six copies of a list of all permits required for development of the site plan, including a notation as to those permits which have been applied for and received;

e. The appropriate review fee as determined in section 15-13 for preliminary site plan approval.

15-4.2 Approving Authority to Review: Grant or Deny Approval.

a. The approving authority shall review the application for its completeness and accept or reject the submission as a complete application in accordance with the provisions of the land use procedure ordinance.

b. If the submission is accepted as complete, the approving authority shall grant or deny preliminary site plan approval in accordance with the provisions of this chapter, the land use procedure ordinance and all other applicable laws and ordinances.

c. All preliminary site plans shall be submitted in accordance with the provisions and details set forth in section 15-8 of this chapter.

15-5 PROCEDURE FOR FINAL SITE PLAN APPROVAL

15-5.1 Filing Procedure. The applicant shall file with the borough clerk at least 14 days prior to the next public meeting of the approving authority:

a. Six copies of a completed application for final site plan approval;

b. Six copies of a completed final site plan, one of which shall consist of an original mylar for signature by the approving authority;

c. The appropriate review fee as determined in section 15-13 of this chapter for final site plan approval;

d. The appropriate inspection fee as determined by the borough engineer in accordance with section 15-11 of this chapter;

e. Certification from the borough tax collector that no taxes or assessments for local improvements are due or delinquent on the property which is the subject of the application;

f. Six copies of a list of all permits required for development of the site plan, including a notation as to those permits which have been applied for and received;

g. All required performance and maintenance guarantees.

15-5.2 Approving Authority to Review: Grant or Deny Approval. The approving authority shall review the application for its completeness and accept or reject the submission as a complete application in accordance with the provisions of the land use procedure ordinance.

b. If the submission is accepted as complete, the approving authority shall grant or deny final site plan approval in accordance with the provisions of this chapter, the land use procedure ordinance and all other applicable laws and ordinances.

15-6 SIGNATURE UPON FINAL APPROVAL.

Upon final approval of a site plan, the chairman and secretary of the approving authority shall sign the mylar original and one paper print. The signed mylar original shall be filed with the borough clerk and the paper print shall be retained by the approving authority for its files. Immediately upon final approval, the secretary of the approving authority shall forward a copy of the approved final site plan to the borough tax assessor, tax collector and zoning officer, respectively.

15-7 PRELIMINARY SITE PLAN DETAILS.

All site plans and supporting documents shall comply with the requirements hereinafter set forth and shall contain the following information and data:

a. Site plans shall be of a size no more than 30 inches by 48 inches.

b. Site plans shall be drawn to a scale of not less than 50 feet to the inch. All distances to be in feet and decimals of a foot and all bearings shall be given to the nearest ten seconds. The error of closing shall not exceed one to ten thousand.

c. The names of all owners of record of all adjacent properties and the lot and block numbers of the property as shown on the current tax map of the borough.

d. Existing school, zoning and special district boundaries. Such features shall be shown on a separate map or as a key map on a special detailed map itself.

e. Boundaries of the property; building or setback lines; and the lines of existing streets, lots reservations, easements and areas dedicated to public use.

f. A copy of any covenants of deed restrictions that are intended to cover all or any part of the tract.

g. Location of existing buildings which shall remain and all other structures such as walls, fences, culverts, bridges, roadways, electric telephone or cable T.V. lines, etc., with spot elevations of such structures. The outline of such structures shall be indicated by a dash line and those that shall remain shall be shaded.

h. Location of all storm drainage structures and utility lines, whether publicly or privately owned, with pipe sizes, grades, and direction of flow; and if any existing utility lines are underground, the estimated location of the already existing underground utility line shall be shown.

i. Existing contours with intervals of two feet where slopes are less than five percent and five feet where slopes are five percent or more, refer to as a datum as provided by the approving authority engineer to be indicated by a dash line. Where any change in contours are proposed, finish grades should be shown as solid lines.

j. Location of existing high points, watercourses, depressions, ponds, marshes, single trees with a diameter of six inches or more as measured three feet above the base of the trunk and other significant existing features, including previous flood elevations of watercourses, pond and marsh areas as determined by survey.

k. Title of development, north point, scale, name and address of record owner, engineer, architect, land planner or surveyor preparing the site development plan.

l. A survey prepared by a licensed surveyor of the State of New Jersey shall accompany the site plan and shall show the boundaries of the parcel and the limits of all proposed streets, recreation areas, and other property to be dedicated to public use. The site plan may be accompanied by such other exhibits of an architectural or planning nature submitted by the applicant or as may be required by the approving authority pursuant to any ordinance now in existence or any ordinance hereinafter enacted in the borough.

m. All proposed easements and public community areas. All proposed streets with subsection A profiles indicating grade and B cross-sections showing width of roadways, location and width of sidewalks and location and size of utility lines, according to the standards and specifications of the borough.

n. The proposed use or uses of land and buildings and proposed location of building, including proposed grades. Such features should be indicated on a separate drawing where deemed desirable and necessary by the approving authority.

o. All means of vehicular access and egress to and from the site onto public streets showing size and location of driveways, curb cuts and sidewalks.

p. The location and design of any off-street parking areas or loading areas showing size and location of bays, isles and barriers.

q. The location of all proposed waterlines, valves, and hydrants and of all sewer lines or alternative means of water supply or sewerage disposal and treatment in conformance with the applicable standards of the borough.

r. The proposed location, direction of illumination, amount of illumination expressed in average horizontal foot candles, hour and time of proposed outdoor lighting in conformance with applicable standards of the borough and as may be applied by the approving authority.

s. The proposed screening and landscaping, including planting plan, in conformance with the applicable standards of the borough and the approving authority.

t. Proposed storm water drainage system in conformance with the applicable standards of the borough and the approving authority.

u. Such other information or data as may be required by the approving authority in order to determine that the details of the site plan are in accordance with the standards of the ordinances of the borough and all other general law.

15-8 FINAL SITE PLAN DETAILS.

The final site plan plat shall include all data required on the preliminary site plan plat drawn to incorporate all changes required as a condition of preliminary approval. The information and design on the final site plan plat shall be in final design condition.

15-9 EXCEPTIONS.

The approving authority when acting upon an application for preliminary site plan approval may grant such exceptions from the preliminary site plan details and design and performance standards set forth in this chapter or any other ordinance of the borough as may be reasonable and within the general purpose and intent of the provisions for site plan review and approval, if the literal enforcement of one or more of the provisions will result in exceptional practical difficulties to or exceptional and undue hardship to the applicant because of peculiar conditions pertaining to the land in question.

15-10 STANDARD REGULATIONS.

Approving authority approval of a site plan shall be guided by the fact that the site plan conforms with the following standards and regulations:

a. The applicant has submitted a complete site plan containing all of the information and data as provided for in this chapter.

b. The details of the site plan are in accordance with the standards of the zoning ordinance, subdivision ordinance and any and all other ordinances of the borough which may be in existence at the time of the application, and in harmony with any officially adopted comprehensive master plan of the borough.

c. All parking and traffic problems shall be kept at a minimum by the use of engineering design features such as acceleration and deceleration lanes, jug handles, and marginal access streets.

d. Adequate provisions are made to prevent drainage problems and to provide adequate water supply, drainage, shade trees, sewerage facilities and other utilities necessary for essential services to residents and occupants of the property subject to the application.

e. All playgrounds, parking and service areas are reasonably screened from view of adjacent properties and streets at all seasons of the year where necessary for the purpose of protecting the health, safety, general welfare, comfort and convenience of the public.

f. The location, power, directions and time of any proposed outdoor lighting will not have an adverse effect upon any properties in any adjoining residential districts by impairing the established character or potential use of the properties in such districts.

g. The details of the site plan for the authorized use will be such that the operation will not offend the public interest.

15-11 GUARANTEES AND INSPECTIONS.

15-11.1 Final Plat Approval. No final plat shall be approved by the approving authority until all required on-site and off-site improvements, including but not limited to those improvements set forth in the Borough of Harvey Cedars Subdivision Ordinance, as amended and supplemented, have been installed, inspected, certified and approved by the borough engineer and accepted by the governing body and maintenance guarantee has been filed and accepted by the governing body in accordance with the requirements of this chapter or their installation shall have been provided for by a performance guarantee accepted and approved by the governing body in accordance with the requirements of this chapter.

15-11.2 Borough Attorney to Approve Performance Bond. The performance guarantee shall consist of a performance bond in a form approved by the borough attorney, in which the applicant shall be principal and an acceptable surety company licensed to do business in the State of New Jersey shall be surety, or cash or certified check which shall be deposited with the borough by payment to the municipal treasurer.

15-11.3 Amount of Performance Guarantee. The total performance guarantee shall be an amount equal to 120 percent of the estimated cost of the necessary improvements as determined by the borough engineer. Ninety percent of this total shall be in either cash, certified check or surety bond of a bonding company approved by the governing body. The remaining ten percent shall be in cash and shall be paid in a like manner and under the same conditions as is the security aforesaid.

15-11.4 Term; Extension. Performance guarantees shall run for a term not to exceed 18 months; provided, however, such guarantees with the consent of the principal and surety, if any, may be extended by the governing body by resolution for an additional period not to exceed 18 months.

15-11.5 Borough Engineer to Inspect; Developer to Pay Cost. At least one week prior to the beginning of construction or installation of any required improvements, the developer shall notify the borough engineer in writing of the developer's intention to commence such work. All improvements and utility installations shall be inspected during the time of their installation by the borough engineer or his designee to insure satisfactory completion and no underground installation shall be covered until inspected by the borough engineer or his designee. The cost of all inspections shall be the responsibility of the developer and he shall deposit the necessary inspection fee with the borough clerk upon making application for final approval under this chapter or prior to the start of any construction, whichever shall first occur. The inspection fee shall be in addition to the amount of any required performance or maintenance guarantee and shall consist of six percent of the estimated cost of the improvements to be constructed as determined by the borough engineer. This fee shall be held in reserve by the borough and used to pay the cost of inspecting the construction. It shall be the obligation of the developer to pay for the actual cost of inspecting the construction. Any excess money shall be remitted to the developer upon approval of all improvements as provided herein. Any additional inspection costs shall be paid by the developer prior to the approval of the improvements by the governing body, as provided for herein.

15-11.6 Inspection Procedures. After completing the construction of the improvements covered by the performance guarantee, the developer shall make application to the governing body in writing by certified mail addressed to the borough clerk, with a copy sent by certified mail to the borough engineer for final inspection of such improvements. The borough engineer shall, within 30 days after his receipt of the application, inspect the improvements in question and report in writing to the governing body indicating either approval, partial approval or rejection of the improvements with a statement of reasons for any rejection. If partial approval is indicated, the cost of the improvements rejected shall be set forth.

15-11.7 Governing Body to Approve; Notify. The governing body shall either approve, partially approve or reject the improvements on the basis of the report of the borough engineer and shall notify the developer in writing, by certified mail, of the contents of the report and the action of the approving authority not later than 65 days after receipt of the notice from the developer of the completion of the improvements. Where partial approval is granted, the obligor shall be released from all liability pursuant to its performance guarantee, except for that portion adequately sufficient to secure provision of the improvements not yet approved. Failure of the governing body to send or provide such notification to the obligor within 65 days shall be deemed to constitute approval of the improvements and the obligor and surety, shall be released from all liability, pursuant to said performance guarantee.

15-11.8 Rejection Procedures. If any portion of the required improvements are rejected, the approving authority may require the obligor to complete such improvements and, upon completion, the same procedure of notification, as set forth in this section shall be followed.

15-11.9 Approval Does Not Obligate Borough. The approval of any plat under this chapter by the approving authority shall in no way be construed as an acceptance of any street, drainage system or other improvement required by this chapter nor shall such plat approval obligate the borough in any way to maintain or exercise jurisdiction on over such street and drainage system or other improvement. Acceptance of any street, drainage system or other improvement shall be implemented only by favorable action of the governing body.

15-12 MAINTENANCE GUARANTEE.

No improvement shall be accepted, approved or partially approved by the governing body unless and until all of the following conditions have been met:

a. The borough engineer shall have certified in writing that the improvement is complete and that it complies fully with the requirements of this chapter and all other applicable laws and ordinances.

b. A maintenance guarantee is posted with the governing body for a period of two years after final acceptance of the improvement, in an amount equivalent to 15 percent of the cost of the improvement, as determined by the borough engineer. In the event that other governmental agencies or public utilities automatically will own the utilities to be installed or where the improvements are covered by a performance or maintenance guarantee to another governmental agency, no performance or maintenance guarantee, as the case may be, shall be required by the borough for such utilities or improvements.

15-13 FEES.

The applicant shall, at the time of filing an application for site plan approval, pay the following nonrefundable fee to the Borough of Harvey Cedars by certified check, cash or bank money order;

a. Minor Site Plan - $300.00

b. Major Site Plan - $80.00 per lot with a minimum of $500.00

c. In addition to the above-mentioned fees, the applicant shall further guarantee to reimburse the planning board for any and all expert expenses, engineering services, or other expenses needed to evaluate the application.

15-14 SEVERABILITY.

If any section, subsection or paragraph of this chapter shall be declared to be unconstitutional, invalid or inoperative, in whole or in part, by a court of competent jurisdiction, such section, subsection or paragraph shall, to the extent that it is not unconstitutional, invalid or inoperative, remain in full force and effect, and no such determination shall be deemed to invalidate the remaining sections, subsections or paragraphs of this chapter.

15-15 INCONSISTENT ORDINANCES REPEALED.

All ordinances or parts of ordinances which are inconsistent with the provisions of this chapter are hereby repealed to the extent of such inconsistency.

15-16 SPECIFIC REPEALER.

Section 14-3.8 of the Revised General Ordinance of the Borough of Harvey Cedars, 1969, entitled "Applications – Procedures for Filing Before Planning Board," is hereby repealed in its entirety.

15-17 VIOLATIONS AND PENALTIES.

a. In addition to any liability or penalty imposed by law or this chapter, any person violating any provision of this chapter shall, upon conviction thereof, pay a penalty of not less than five ($5.00) dollars, nor more than five hundred ($500.00) dollars for each offense.

b. Each and every day in which a violation of any of the provisions of this chapter exist shall constitute a separate violation.

15-18 EFFECTIVE DATE.

This ordinance shall take effect upon final adoption after publication as provided by law.

15-19 COPY TO BE FILED WITH THE COUNTY PLANNING BOARD.

Immediately, upon the adoption of this ordinance, the borough clerk shall file a copy of the same with the county planning board as required by law.

CHAPTER XVI

LAND SUBDIVISION

16-1 SHORT TITLE.

This chapter shall be known and may be cited as: "The Land Subdivision Ordinance of the Borough of Harvey Cedars."

16-2 PURPOSE.

The purpose of this chapter shall be to provide rules, regulations and standards to guide land subdivision in the borough in order to promote the public health, safety, convenience and general welfare of the municipality. It shall be administered to insure the orderly growth and development, the conservation, protection and proper use of land and adequate provision of circulation, utilities and services.

16-3 GENERAL PROVISIONS.

16-3.1 Administration. The provisions of this chapter shall be considered the minimum requirements for the protection of the public health, safety and welfare of the citizens of the borough. Any action taken by the planning board or board of adjustment under the terms of this chapter shall give primary consideration to the requirements of this chapter and to the welfare of the entire community.

16-3.2 Amendments. All provisions of this chapter may be amended in accordance with applicable laws in effect at the time of the amendment.

16-3.3 Conditional Approval. Regulation of the development of land and the attachment of reasonable conditions to the development applications is an exercise of valid police power delegated by the State to this borough. The applicant has the duty of compliance with reasonable conditions laid down by the approving authority for design, dedication, improvements, and the use of the land so as to conform to the physical and economical development of the borough and to the safety and general welfare of the future residents and owners in the development and in the community at large. Where county planning board review or approval is required on a subdivision, the approving authority shall condition any approval it grants upon either timely receipt of a favorable report by the county planning board or approval by the county planning board due to its failure to submit a report within the required time period. If the county's report is negative or attaches conditions, the original action by the borough approving authority shall be null and void and a new resolution shall be adopted which considers the county planning board's report.

16-3.4 Effective Date. This chapter shall take effect upon its final passage and publication according to law.

16-3.5 Exceptions. The approving authority, when acting upon applications for preliminary or minor subdivision approval, shall have the power to grant such exceptions from the "Design and Performance Standards" in section 16-7 of this chapter as may be reasonable and within the general purpose and intent of the provisions for subdivision review and approval if the literal enforcement of one or more provisions of this chapter will result in exceptional and practical difficulties to or exceptional undue hardship to the developer because of peculiar conditions pertaining to the land in question.

16-3.6 Exemptions from Subdivision Regulations. Divisions of land not considered a subdivision as defined in this chapter shall be exempt from compliance with the requirements of this chapter only after affirmative action by the approving authority. Such action shall be taken following submission of documentation to the approving authority showing a division of land for agricultural purposes where all resulting parcels are five acres or larger in size; a division by testamentary or interstate provisions; a division of property by court order; or a conveyance so as to combine existing lots by deed or other instrument, as the case may be. Until exempted from the subdivision regulations by the approving authority, no person can transfer, sell or agree to transfer or sell, as owner or agent, any land which forms a part of a subdivision for which approval is required.

16-3.7 Fees. The developer shall, at the time of filing an application for subdivision, pay the following nonrefundable fee to the Borough of Harvey Cedars by certified check or bank money order:

a. Subdivision.

1. Application for determination of exempt status - $50.00

2. Applications for minor subdivisions (including consolidation and resubdivision) - $200.00

3. Applications for major subdivisions:

(a) Preliminary Plat:
0-30 lots $80.00 per lot, minimum $300.00; more than 30 lots $2,400.00 plus $30.00 per lot over 30 lots.

(b) Final Plat:
0-30 lots $80.00 per lot, minimum $300.00; more than 30 lots $2,400.00 plus $30.00 per lot over 30 lots.

4. In addition to the above-mentioned fees, the applicant shall further guarantee to reimburse the planning board for any and all expenses, engineering services, legal services or other expenses needed to evaluate the application.

b. Miscellaneous

1. Conditional uses: $150.00

2. Hardship variance in conjunction with subdivision approval: $50.00

3. Application for building permit in conflict with official map or building permit for lot not related to a street in conjunction with subdivision approval: $75.00

c. Application for Site Plan, Minor or Major Subdivision with Application for Zoning Variance:

1. An application for a site plan, minor subdivision, or major subdivision, which is accompanied by an application for a zoning variance, shall pay the following nonrefundable fee to the Borough of Harvey Cedars:

(a) Variances and appeals pursuant to N.J.S.A. 40:55-D-70 (a) (b) (c): $150.00

(b) Variances pursuant to N.J.S.A. 40:55-D-70 (d): $300.00

16-3.8 Guarantees and Inspections.

a. No final plat shall be approved by the approving authority until all required on-site, off-site and off-tract improvements have been installed, inspected, certified and approved by the borough engineer and accepted by the governing body and a maintenance guarantee has been filed and accepted by the governing body in accordance with the requirements of this chapter or their installation shall have been provided for by a performance guarantee accepted and approved by the governing body in accordance with the requirements of this chapter. No maintenance bond shall be accepted nor shall any partial facility be accepted for any item which has further stages of work to be completed 7or which will need to be altered or reworked in any manner due to the installation or connection of any other facility. Any improvements installed prior to final plat application that do not meet the standards of this chapter or other regulations shall be added to the performance guarantee.

b. A performance guarantee cost estimate shall be submitted to the approving authority by its engineer as part of his report on preliminary and final plat review. The approving authority may request its engineer to review and update this estimate from time to time as required.

c. The proposed performance guarantee required for final plat approval shall be submitted to the approving authority engineer and attorney for recommendations as to accuracy and form and then to the governing body for approval and acceptance by resolution. Submission for final plat approval shall not be made until the performance guarantee has been accepted and approved by the governing body.

    1. The performance guarantee shall consist of the performance guarantee cost estimate and a performance bond, in which the developer shall be principal and an acceptable surety company licensed to do business in the State of New Jersey shall be surety, or cash or certified check which shall be deposited with the borough by payment to the municipal treasurer. The treasurer shall issue a receipt for such deposits and shall retain the deposits as security for completion of all requirements to be returned to the developer on completion of all required work or, in the event of default on the part of the developer, to be used by the borough to pay the costs of completing the requirements. If the required improvements have not been completed or corrected in accordance with the standards of the borough or within the stipulated time, the obligor and surety for any bond shall be liable thereon to the borough for the reasonable cost of the improvements not completed or corrected, and upon authorization by the governing body, the borough attorney shall take the necessary steps to obtain such costs from the obligor and surety. The borough may, either prior to or after receipt of the proceeds thereof, complete such improvements.

    2. The total performance guarantee shall be an amount equal to 120 percent of the performance guarantee cost estimate. 90 percent of this total shall be in either cash, certified check or surety bond of a bonding company approved by the governing body. The remaining ten percent shall be in cash and shall be paid in like manner and under the same conditions as set forth in subsection 16-3.8c,1.

In the event of default, the ten percent cash fund herein mentioned shall be first applied to the completion of the requirements and the cash, certified check, or surety bond shall thereafter be resorted to, if necessary, for the completion of the requirements. The cash or surety bond may recite the foregoing provision. The borough engineer's certification that the principal has satisfactorily installed or has defaulted in meeting the required standards of construction shall be the basis for governing body action which accepts or rejects the improvements, withholds approval, or may extend the time allowed for installation of the improvements.

3. Performance guarantees shall run for a term not to exceed 18 months; provided however, such guarantees with the consent of the principal and surety, if there be a surety, may be extended by the governing body by resolution for an additional period not to exceed 18 months.

d. The administrative officer shall immediately notify the approving authority and the borough engineer when the performance guarantee has been approved and accepted by the governing body.

e. At least 48 hours prior to the beginning of construction or installation of any required improvements, the developer shall notify the borough engineer in writing of the developer's intention to commence such work. All improvements and utility installations shall be inspected during the time of their installation by the borough engineer or his designee to insure satisfactory completion and no underground installation shall be covered until inspected by the borough engineer or his designee. The cost of all inspections shall be the responsibility of the developer and he shall deposit the necessary inspection fee with the borough clerk upon making application for final approval under this chapter or prior to the start of any construction, whichever shall first occur. The inspection fee shall be in addition to the amount of any required performance or maintenance guarantees and shall consist of six percent of the estimated cost of construction as determined by the borough engineer. This fee shall be held in reserve by the borough and used to pay the costs of inspecting the construction. It shall be the obligation of the developer to pay for the actual costs of inspecting the construction. Any excess monies shall be remitted to the developer upon approval of all improvements as provided herein. Any additional inspection costs shall be paid by the developer prior to the approval of the improvements by the governing body, as provided for herein.

f. If, during installation of the required improvements, the developer fails to meet specification requirements or to correct unacceptable work, the borough engineer shall either issue a stop work notice in person or send notification in writing by certified mail, return receipt requested, that the developer has failed to comply with specifications or to correct unacceptable work properly and said notice shall set forth in detail what has not been properly installed.

If within ten days after the stop work notice is served or after the certified date of receipt of such written notice, the developer has failed to correct the work or perform in accordance with the notice, the borough shall then cause the notice of default to be served upon the developer and copy shall be sent to the governing body and planning board.

g. Electrical, gas, telephone and all other utility installations installed by utility companies shall also be subject to the inspection requirements contained herein.

h. No certificate of occupancy shall be issued for any lot or structure within a subdivision or approved section thereof until the borough engineer certifies that all improvements required under this chapter applicable to such lot or structure, including curbs, utilities, functioning water supply and sewage treatment facilities, storm drainage necessary to insure proper drainage of the lot and surrounding land, grading of lots, soil stabilization, base course for the street and driveway, and sidewalks, have been installed to his satisfaction.

i. After completing the construction of the improvements covered by the performance guarantee, the developer shall prepare two sets of improvements and utility plans and profiles amended to read “as constructed” and make application to the governing body in writing, by certified mail, addressed to the borough clerk with a copy sent by certified mail to the borough engineer for final inspection of such improvements. The borough engineer shall, within 30 days after his receipt of said application, inspect the improvements in question and report in writing to the governing body indicating either approval, partial approval or rejection of the improvements with a statement of reasons for any rejection. If partial approval is indicated, the cost of the improvements rejected shall be set forth.

j. The governing body shall either approve, partially approve or reject the improvements, on the basis of the report of the borough engineer and shall notify the obligor in writing, by certified mail, of the contents of the report and the action of the approving authority with relation thereto, not later than 65 days after receipt of the notice from the obligor of the completion of the improvements. Where partial approval is granted, the obligor shall be released from all liability pursuant to its performance guarantee, except for that portion adequately sufficient to secure provision of the improvements not yet approved. Failure of the governing body to send or provide such notification to the obligor within 65 days shall be deemed to constitute approval of the improvements and the obligor and surety, shall be released from all liability, pursuant to such performance guarantee.

k. If any portion of the required improvements are rejected, the approving authority may require the obligor to complete such improvements and, upon completion, the same procedure of notification, as set forth in this section shall be followed.

l. The approval of any plat under this chapter by the approving authority shall in no way be construed as acceptance of any street, drainage system, or other improvement required by this chapter, nor shall such plat approval obligate the borough in any way to maintain or exercise jurisdiction over such street, drainage system or other improvement shall be implemented only by favorable action by the governing body.

m. Maintenance guarantee. No improvement shall be accepted, approved or partially approved by the governing body unless and until all of the following conditions have been met:

1. The borough engineer shall have certified in writing that the improvement is complete and that it complies fully with the requirements of this chapter and of all other applicable local ordinances.

2. A maintenance guarantee is posted with the governing body for a period of two years after final acceptance of the improvement, in an amount equivalent to 15 percent of the cost of the improvement. In the event that other governmental agencies or public utilities automatically will own the utilities to be installed or the improvements are covered by a performance or maintenance guarantee to another governmental agency, no performance or maintenance guarantee, as the case may be, shall be required by the borough for such utilities or improvements.

16-3.9 Inconsistent Ordinances Repealed. All ordinances or parts of ordinances which are inconsistent with the provisions of this chapter are hereby repealed to the extent of such inconsistency.

16-3.10 Interpretation. The provisions of this chapter shall be held to be minimum requirements. Where any provision of this chapter imposes restrictions different from those imposed by any other provision of this chapter or any other ordinance, rule or regulation, or other provision of law, whichever provision(s) are more restrictive or impose higher standards shall control.

16-3.11 Validity. If any section, paragraph, clause or other provision of this chapter shall be adjudged by the courts to be invalid, such adjudication shall apply only to the section, paragraph, clause or provision so adjudged and the remainder of this chapter shall be deemed valid and effective.

16-3.12 Violations and Penalties.

a. In addition any other liability or penalty imposed by law on this chapter, any person violating any provision of this chapter shall, upon conviction thereof, pay a penalty of not less than five ($5.00) dollars nor more than five hundred ($500.00) dollars for each offense.

b. Each and every day in which a violation of any of the provisions of this chapter exists shall constitute a separate violation.

16-4 DEFINITIONS.

16-4.1 As Used in this Chapter. Whenever a word or phrase used in this chapter is defined in R.S. 40:55D.1 et seq., the Municipal Land Use Law, such term is intended to have the meaning set forth in the definition of such term in that statute unless a contrary intention is clearly and explicitly expressed from the context of this chapter. The following words or phrases when used herein shall be defined as follows:

a. *Administrative officer* shall mean the clerk of the borough.

b. *Approving authority* shall mean the borough planning board unless a different agency is designated in the text of this chapter or the land use procedure ordinance and is acting pursuant to the authority of the Municipal Land Use Law R.S. 40-55D-1 eq seq.

c. *Governing body* shall mean the board of commissioners of the borough.

d. *Land use procedure ordinance* shall mean the Land Use Procedure Ordinance of the Borough of Harvey Cedars adopted November 19, 1976, as amended and supplemented.

e. *Plat, final* shall mean the plat of all or a portion of a subdivision prepared in accordance with the standards set forth in subsection 16-5.8 of this chapter, which is submitted to the approving authority for final approval in accordance with subsection 16-5.7 of this chapter.

f. *Plat, preliminary* shall mean the plat prepared in conformity to the standards of subsection 16-5.6 of this chapter which is submitted to the approving authority as a part of the application for preliminary approval in accordance with subsection 16-5.5 of this chapter.

g. *Plat, minor subdivision* shall mean the plat prepared in accordance with the standards set forth in subsection 16-5.2 of this chapter, which is submitted to the approving authority as a part of the application for minor subdivision approval in accordance with subsection 16-5.1 of this chapter.

h. *Subdivision Committee* shall mean a committee of at least three planning board members appointed by the chairman of the planning board with the approval of the majority of the board for the purpose of classifying subdivision in accordance with the provisions of this chapter, and such other duties relating to land subdivision which may be conferred on the committee by the planning board.

i. *Minor subdivision* shall mean any subdivision of land which does not involve the creation of more than three lots, including the original lots; any new street or road; the extension of water lines and/or municipal facilities; and which does not adversely affect the development of the remainder of the parcel or adjoining property or conflict with any provisions or portion of the master plan, official map, zoning ordinance or this chapter; provided further that the proposed subdivision is not adjacent to any other tract or part of a tract of vacant or unsubdivided land under the same ownership.

j. *Major subdivision* shall mean all subdivisions not classified as minor subdivisions.

k. *Owner* shall mean any individual, firm, association, syndicate, co-partnership or corporation having sufficient proprietary interest in the land sought to be subdivided to commence and maintain proceedings to subdivide the same under this chapter.

l. *Streets* shall mean for the purpose of this chapter, as follows:

1. Controlled access highways are those used by heavy through traffic and which permit no access from abutting property.

2. Arterial streets are those which are used primarily for fast or heavy volumes of through traffic.

3. Major streets are those which are used primarily for heavy local and through traffic.

4. Collector streets are those which carry traffic from minor streets to the major street, including the principal entrance streets of a residential development and streets for circulation within such a development.

5. Minor streets are those which are used primarily for access to the abutting properties.

6. Marginal service streets are those which are parallel or adjacent to controlled access highways or major streets; and which provide access to abutting properties and protection from through traffic.

7. Alleys are minor ways which are used primarily for vehicular service access to the back or side of properties otherwise abutting on a street.

m. *Drainage right-of-way* shall mean the land required for the installation of storm water sewers or drainage ditches, or required along a natural stream or watercourse for preserving the channel and providing for the flow of water therein to safeguard the public against flood damage in accordance with Chapter One of Title 58 of the Revised Statutes.

16-5 SUBDIVISION REVIEW AND APPROVAL.

Any applicant wishing to subdivide or resubdivide land within the borough shall apply for and obtain the approval of the approving authority in accordance with the following procedure.

16-5.1 Minor Subdivision Procedure.

a. Filing procedure. The applicant for minor subdivision approval shall file with the borough clerk at least three weeks prior to the next public meeting of the approving authority:

   1. Six copies of the complete minor subdivision plat for distribution as follows: borough clerk, one copy; approving authority, five copies.

   2. Two copies of the completed application for minor subdivision.

   3. Two copies of the completed technical checklist.

   4. Two copies of a list for all permits required for construction on the subdivided lots.

   5. The appropriate review fee as determined in subsection 16-3.7 for minor subdivision approval.

   6. Two copies of a receipted tax bill or a certification from the borough tax collector showing that no taxes or assessments for local improvements are due or delinquent on the property which is the subject of the application.

b. The secretary of the approving authority shall ascertain whether any applications for development within the jurisdiction of the approving authority have been filed with the borough clerk and shall have the responsibility of forwarding copies of the same together with any supporting documentation to the approving authority and the borough engineer for their consideration and action within the time limits prescribed by law.

c. The approving authority engineer shall review the plat prior to the next public meeting of the approving authority and recommend approval as a minor subdivision with or without conditions for approval, or recommend disapproval because it: does not meet the definition of a minor subdivision; or is improperly prepared; or is detrimental to the health, welfare and safety of the borough. Should the approving authority engineer determine that the application should be classified as a major subdivision, the applicant should be advised to follow major subdivision procedures of preliminary and final application.

d. The approving authority shall review the submission for its completeness and accept or reject the submission as a complete application in accordance with the provisions of the land use procedure ordinance. If complete, the approving authority shall approve or deny such application in accordance with the provisions of this chapter and the land use procedure ordinance within the time limits prescribed by law.

e. The approving authority or its subdivision committee may waive notice and public hearing requirements for an application for development if it determines that the application for development conforms to the definition of "minor subdivision" in section 16-4 of this chapter.

16-5.2 Minor Subdivision Plat Details.

a. All minor subdivision plats submitted to the approving authority shall be drawn in conformance with the Map Filing Law (N.J.S.A. 46:23-9.9 to 23-11) as amended or supplemented and the following standards:

1. Clearly and legibly drawn.

2. Graphic scale not less than 1 inch = 100 feet.

3. Based on actual survey and certified by land surveyor licensed in New Jersey.

4. Sheet sizes of 30 inches x 42 inches; 24 inches x 36 inches; 18 inches x 24 inches; or 15 inches x 21 inches.

5. Existing and proposed lot lines with bearings and dimensions.

6. Existing lot lines to be eliminated.

7. Area of original tract to one square foot.

8. Area of each proposed lot to one square foot.

9. Existing structures and uses.

10. Shortest distance between any existing building and a proposed or existing lot line.

11. All streams, lakes and drainage rights-of-way within the limits of the tract being subdivided and within 200 feet thereof including the location and dimensions of all drainage structures; existing features to be removed or relocated; and flood hazard areas and floodways, steep slopes, wetlands and swamps.

12. Existing and proposed rights-of-way and easements within and adjoining the tract with dimensions, existing driveways, street names, and the purpose for any easement. Sight triangles shall be shown. Copies of the text of any deed restrictions shall be included.

13. The name of the owner of the proposed tract and all adjoining property owners as disclosed by the most recent tax records.

14. The tax map sheet, block and lot number for the tract and all adjacent lots; title; graphic scale; north arrow; space for the subdivision application number; the date of the original drawing and the date and substance of each revision.

15. Zoning district. If the property lies in more than one zoning district, the plat shall indicate all the zoning district lines. All front, side, and rear yard setback lines shall be shown conforming to the zoning ordinance.

16. The name, address, signature and phone number of the owner, applicant and person preparing the plat, including the seal of person preparing the plat.

17. A key map with north arrow showing the entire development and its relation to surrounding areas at a scale of not less than 1 inch = 2,000 feet.

16-5.3 Major Subdivisions.

a. A subdivision of land which is not a minor subdivision is a major subdivision and shall comply with the provisions of subsections 16-5.5 and 16-5.7 of this chapter for preliminary and final plat approval. An applicant may at his own choice elect to have an informal discussion prior to submitting a preliminary plat application for major subdivision.

b. Informal discussion for major subdivision.

   1. An informal submission is optional. Any person may appear at a regular meeting of the approving authority for informal discussion with reference to an informally prepared plat of sufficient accuracy to be used for purpose of discussing a proposed major subdivision. The purpose of such a discussion will be to review overall development concepts in order to assist the applicant in the preparation of subsequent plans. No decisions will be made and no formal action taken on an informal discussion.

   2. The data included on an informal plat should include sufficient basic data to enable the approving authority and the applicant to comment upon design concepts of the proposed subdivision such as building location, ingress and egress, parking, major natural features that will have to be recognized or may influence certain design criteria, and the applicant's basic intent for water, sewerage, and storm drainage facilities. Informal plats are not binding on the borough or upon the developer and do not necessitate accurate engineered drawings.

c. Filing procedure for an informal discussion. The applicant shall file with the borough clerk at least three weeks prior to the next public meeting of the approving authority for distribution in accordance with subsection 16-5.1, a:

   1. Six copies of an informal plat.

   2. Two copies of the completed application for informal discussion.

   3. The appropriate review fee as determined in subsection 16-3.7 for an informal discussion.

16-5.4 Recommended Details for an Informal Plat For a Major Subdivision.

a. The informal plat shall be prepared to scale to enable the entire tract to be shown on one sheet. The scale of the map should be not less than 100 feet to the inch except where otherwise necessary due to the size of the tract and the map shall show or include the following information:

   1. The location of the property in relation to the entire tract and in relation to all properties adjoining the tract. The name of the owner or owners of the land being subdivided and if other than the owners, the name of the prospective developer. The names of all adjoining property owners.

   2. The location and dimension of all boundary lines of the property and the location of all structures and wooded areas within the tract.

   3. The tax map sheet, block and lot numbers.

   4. All existing streets, roads and streams adjoining or within 500 feet of the tract.

   5. Proposed connections with existing water supply or sanitary sewerage systems, or alternative means of providing for water supply and sanitary waste disposal systems. Proposed provisions for collecting and discharging surface water drainage.

   6. The approximate location of all streets, lots and public use areas.

   7. Sufficient elevations or contours as to determine the natural slope and drainage of the land and the high and low points.

16-5.5 Preliminary Plat Approval; Major Subdivisions. All applications for major subdivision approval shall follow the procedures for preliminary plat approval as set forth in this section and for final plat approval as set forth in subsection 16-5.7.

a. Filing procedure for preliminary plat approval. The applicant shall file with the borough clerk at least three weeks prior to the next public meeting of the approving authority for distribution in accordance with subsection 16-5.1, a:

   1. Six copies of the completed preliminary plat;

   2. Two copies of the completed preliminary plat application;

   3. Two copies of the completed preliminary plat technical checklist;

   4. Two copies of a list of all permits required for development of the subdivided lots.

   5. The appropriate review fee as determined in subsection 16-3.7 for preliminary subdivision approval.

6. Two copies of an affidavit of ownership or letter from owner authorizing submission of plat.

7. Two copies of the preliminary drainage plan.

8. Two copies of a receipted tax bill or a certification from the borough tax collector showing that no taxes or assessments for local improvements are due or delinquent on the property which is the subject of the application.

b. The approving authority engineer shall review the preliminary plat prior to the next public meeting of the approving authority and recommend approval or disapproval of the preliminary plat. If the approving authority engineer finds the application incomplete, he shall notify the applicant, borough clerk and approving authority.

c. The approving authority shall review the application for its completeness and accept or reject the submission as a complete application in accordance with the provisions of the land use procedure ordinance.

d. If the application is accepted as complete, the approving authority shall grant or deny preliminary subdivision approval in accordance with the provisions of this chapter, the land use procedure ordinance and all other applicable laws and ordinances.

16-5.6 Preliminary Plat Details; Major Subdivision. The preliminary plat shall be clearly and legibly drawn or reproduced at a scale of not less than one inch equals 100 feet. Preliminary plats shall be drawn by a licensed New Jersey professional engineer or land surveyor. Contour maps and preliminary development plans including road profiles and utility plans shall be submitted as part of the preliminary plat. Separate maps may be required by the approving authority for topography, utilities and road details. A soil erosion and sedimentation control plan shall be included. The plat shall be designed in compliance with the provisions of section 16-7 of this chapter and shall show or be accompanied by the following information:

a. General. All maps and plats required to be submitted by this chapter shall conform to one of the following size configurations: 15 inches x 21 inches; 18 inches x 24 inches; 24 inches x 36 inches.

b. Base map. A base map shall be prepared to show the general layout of the development with appropriate information to allow the approving authority to make a decision. The base map shall contain at least the following information:

1. Key map. A key map at a convenient scale showing the entire subdivision and its relation to surrounding areas of the subdivision and the zoning classification of the proposed subdivision and of adjacent lands within 1000 feet of the subject property.

2. Lots. Lot layout, lot dimensions and individual lot areas in square feet and acreage.

3. Other contents. The tract name, tax map sheet and date of revision, block and lot numbers, date of plat preparation, reference meridian, graphic scale and the following names and addresses:

   (a) Record owner or owners of property to be subdivided; if other than an individual, the corporate officers or partners or other statutory agent.

   (b) Applicant.

   (c) Person who prepared map, official seal and license numbers.

   (d) Owners of property within 200 feet of entire tract.

4. Acreage. Acreage of tract to be subdivided to nearest hundredth of an acre.

5. Existing and proposed locations. The location of existing and proposed property lines, streets, buildings, watercourses, railroads, bridges, culverts, drain pipes, and any natural features such as wooded areas, large trees over ten inches in diameter and rock formations. This data shall be determined by field or photo-grammetric survey.

6. Setback lines. All front, rear and sidelines shall be shown for all lots.

7. Deed restrictions. A copy of any protective covenants or deed restrictions applying to the land being subdivided shall be submitted with the preliminary plat.

8. Open space. Any open spaces proposed to be dedicated for public use or playgrounds or other public purposes and the location and use of all such property shall be shown on the plat.

9. Off-tract improvements. When the development of the subdivision or improvements within the subdivision is contingent upon improvements outside the boundaries of the subdivision, information shall be supplied by the applicant prior to approving authority consideration for preliminary approval that the improvements outside the subdivision are installed or will be installed and will be available for use by the applicant.

c. Drainage plan.

1. Plans and computations for any storm drainage systems include the following:

   (a) All existing or proposed storm sewer lines within or on lands or roads adjacent to the development and all required off-site and off-tract drainage improvements showing size, profile and slope of the lines, direction of flow, and the location of each catch basin, inlet, manhole, culvert and headwall.

   (b) The location and extent of any proposed dry wells, ground water recharge basins, detention basins, flood control devices.

2. Existing and proposed streams, lakes, ponds and marsh areas shall be shown on the plat accompanied by the following data:

   (a) When running stream with a drainage area of one-half square mile or greater is proposed for alteration, improvement, or relocation, or when a structure or fill is proposed over, under, in or along such a running stream, evidence of approval, required alterations, lack of jurisdiction, or denial of the improvement by the New Jersey Division of Water Resources shall accompany the plat.

   (b) Cross-sections and profiles of watercourses at an appropriate scale showing the extent of the flood fringe area, top of bank, normal water level and bottom elevations at the following locations:

      (1) Profile and cross-section of all watercourses within or adjacent to the development at any point where a watercourse crosses a boundary of the development.

      (2) Cross-sections at 50 foot intervals for a distance of 300 feet upstream and downstream of any existing or proposed culvert or bridge within the development.

      (3) Cross-sections at a maximum of 100 foot intervals, but at not less than two locations, along each watercourse which runs through or adjacent to the development.

      (4) When ditches, streams, brooks or water-courses are to be altered, improved or relocated, the method of stabilization slopes and measures to control erosion and siltation during construction as well as typical ditch sections and profiles shall be shown.

   (c) The total upstream acreage in the drainage basin of any watercourse running through or adjacent to a development. For flowing streams, small scale watershed maps developed from U.S.G.S. sheets shall be submitted.

   (d) The total acreage in the drainage basin to the nearest downstream drainage structure and the acreage in that portion of the development which drains to the structure.

   (e) The location and extent of all existing or proposed drainage and conservation easements, flood hazard areas and floodway lines.

   (f) The location and extent of all existing or proposed lakes or ponds on or within 300 feet of the development.

d. Grading plan.

1. Elevations, contours. Sufficient elevations and contours at five foot vertical intervals for slopes averaging ten percent or greater and at two foot vertical intervals for land of lesser slope to determine the general slope and natural drainage of the land and the high and low points. All elevations shall be related to a bench mark noted on the plan and be based on United States Geological Survey mean sea level datum.

2. Proposed grades. The grading plan shall show the existing contours and grades, and the finished or proposed contours and grades. The grades shall slope away from any proposed structure or dwelling.

e. Utility plan.

1. Preliminary plans and profiles at a scale of one inch equals 50 feet of all proposed and existing sanitary sewers, storm drains, drainage ditches, and streams within the subdivision, together with the locations, sizes, elevations, grades and capacities of any existing sanitary sewer, storm drains, drainage ditch or streams or water-courses to which the proposed facility shall be connected.

2. Plans for a typical individual or package sewage disposal system shall be shown where the same is proposed. Said plans shall be approved by the appropriate local and/or State health agency.

f. Street plans and profiles. Plans and profiles at a scale of not more than one inch equals 50 feet including cross-sections of all proposed streets and curbs within the subdivision and proposed connection with existing or future continuing streets.

g. Soil erosion and sedimentation control plan. Every submission for a preliminary plat approval shall contain a preliminary soil erosion and sedimentation control plan. This plan shall be prepared in accordance with the New Jersey Standards for Soil Erosion and Sedimentation Control and shall be submitted by the applicant to the Ocean County Soil Conservation District for preliminary comments.

16-5.7 Final Plat Approval; Major Subdivision.

a. Filing procedure for final plat approval. The applicant shall file with the borough clerk at least three weeks prior the next public meeting of the approving authority for distribution in accordance with subsection 16-5.1,a. or as otherwise indicated:

1. Six copies of the completed final plat.

2. Two copies of the completed final plat application.

3. Two copies of the completed final plat technical checklist.

4. Two copies of a list of all permits required for development of the subdivided lots.

5. The appropriate review fee as determined in subsection 16-3.7 for final subdivision approval.

6. Two copies of a receipted tax bill or a certificate from the borough tax collector showing that no taxes or assessments for local improvements are due or delinquent on the property which is the subject of the application.

7. Two copies of a certificate of title, and consent of owner.

8. Two copies of the street profiles.

9. Two copies of the drainage plan and calculations for both on-tract and off-tract drainage.

10. Two copies of the grading plan.

11. Two copies of the soil erosion and sedimentation plan.

12. Two copies of the landscaping plan.

13. Two copies of the utility plan.

14. Two copies of the sanitary sewerage plan.

15. Two copies of a certificate by the borough engineer that the applicant has either installed all improvements in accordance with the requirements of this chapter and the preliminary plat approval and has posted the required maintenance guarantee, or has posted all necessary performance guarantees in accordance with this chapter and the preliminary plat approval for all partially completed improvements or improvements not yet initiated. Items 1. through 15. shall have the same distribution as in subsection 16-5.6, f.

16. Two copies of all applicable performance and maintenance guarantees, including off-tract improvements.

17. One original mylar.

18. Two copies of cloth prints.

19. Assessment for off-tract improvements, if any, determined in accordance with the provisions of this chapter.

20. The applicable inspection fees as determined by the borough engineer in accordance with subsection 16-3.8 of this chapter.

b. The approving authority engineer shall review the final plat prior to the next public meeting of the approving authority and recommend approval or disapproval of the final plat. If the approving authority engineer finds the application incomplete, he shall notify the applicant, borough clerk and approving authority.

c. The approving authority shall review the application for its completeness and accept or reject the submissions as a complete application in accordance with the provisions of the land use procedure ordinance.

d. If the application is accepted as complete, the approving authority shall grant or deny final approval in accordance with the provisions of this chapter; the land use procedure ordinance and all other applicable laws and ordinances.

16-5.8 Final Plat Details; Major Subdivisions. The final plat shall be clearly and legibly drawn or reproduced at a scale of not less than one inch equals 100 feet. Final plats shall be drawn by a licensed New Jersey professional engineer or land surveyor and in accordance with the Map Filing Law (N.J.S.A. 46:23-9.9 to 23-11) as amended or supplemented. Contour maps and development plans including road profiles and utility plans shall be submitted as part of the final plat submission. Separate maps will be required for topography, utilities and road details. The final plat shall be designed in compliance with the provisions of section 16-7 and shall show or be accompanied by the following information:

a. Base map. A base map drawn in final form with all the information and certifications required by Map Filing Law and containing all the information required for preliminary plat approval in subsection 16-5.6 in final form.

b. Drainage plan. A drainage plan showing all the details and information required for preliminary plat approval but in final engineering design.

c. Grading plan. A grading plan showing the proposed final grading and contour lines of each lot as well as the existing grades and contour lines.

d. Utility plan. The final utility plan showing the proposed location of all utilities including, but not limited to, water, sewerage, storm drainage and electric.

e. Street plans and profiles. The final street plans and profiles showing the proposed final grade of all streets with the underground utilities.

f. Soil erosion and sedimentation control plan. The final soil erosion and sedimentation control plan shall be submitted with the final plat application. This final plan shall be prepared in accordance with the New Jersey Standards for Soil Erosion and Sedimentation Control and shall be previously approved by the Ocean County Soil Conservation District.

16-5.9 Procedure for Signature after Conditional Final Approval.

a. Where the approving authority has granted conditional approval, the applicant must complete all conditions of the approval, secure all other necessary approvals, post the necessary guarantees and submit to the borough clerk, those items set forth in subsection 16-5.7,a.

b. An approved final plat shall be signed by the chairman and secretary of the approving authority or the vice-chairman or assistant secretary in their absence, respectively. However, no such signatures shall be affixed until the developer has posted the required guarantees.

c. Immediately upon the granting of final approval, the secretary of the approving authority shall forward a copy of the approved final plat to the borough tax assessor, tax collector and zoning officer.

16-6 IMPROVEMENTS.

Prior to the granting of final approval, the applicant shall have installed or shall have furnished performance guarantees for the ultimate installation of such improvements as may be required by the approving authority and governing body, including but not limited to the following:

a. Streets

b. Bridges

c. Sanitary sewers and appurtenances

d. Storm sewers and appurtenances

e. Water mains and appurtenances

f. Street lighting

g. Street signs and other signs

h. Fire hydrants

i. Monuments

j. Native vegetation maintained

k. Lagoons

l. Bulkheads

m. Electric and telephone utilities

n. Seeding

o. Topsoil

All of the above listed improvements shall be constructed in accordance with the design standards of the borough as set forth in section 16-7 of this chapter and in a manner satisfactory to the borough engineer.

The time within which all improvements shall be installed, completed, and approved shall be no longer than two years from the date of the final resolution of approval by the Harvey Cedars Planning Board. Any requests for an extension of said period of time shall be made to the governing body of the Borough of Harvey Cedars, and any extension shall be in the sole discretion of the members of said governing body.

16-7 DESIGN STANDARDS.

Any application for development shall conform to design standards that will encourage good development patterns within the borough. The development shall conform to the proposals and conditions of the master plan and official map of the borough. The streets, drainage rights-of-ways, school sites, public parks and playgrounds shown on an officially adopted master plan or official map shall be considered in approval of subdivision plats. Every application for development shall comply with the following design standards:

16-7.1 Streets.

a. The arrangement of streets not shown on the master plan or official map shall be such as to provide for the appropriate extension of existing streets.

b. Minor streets shall be designed as to discourage through traffic.

c. Subdivisions abutting arterial streets, shall provide a marginal service road or reverse frontage with a buffer strip for planting, or some other means of separation of through and local traffic as the approving authority may determine appropriate.

d. The right-of-way width shall be measured from lot line to lot line, and shall not be less than 50 feet.

e. The right-of-way for internal roads and alleys in multi-family, commercial and industrial districts shall be on an individual basis, and shall in all cases be of sufficient width for loading needs and maximum access for firefighting equipment.

f. No subdivision showing reserve strips controlling access to streets shall be approved except where the control and disposal of land comprising such strips has been placed in the governing body under conditions approved by the approving authority.

g. Subdivisions that adjoin or include existing streets that do not conform to widths as shown on the master plan or official map or the street width requirements of this chapter shall dedicate additional width along either one or both sides of said road. If the subdivision is along one side only, one-half of the required extra width shall be dedicated.

h. Grades of arterial and collector streets shall not exceed five percent. Grades on other streets shall not exceed seven percent. The minimum grade of each street shall be set by the approving authority engineer.

i. Street intersections shall be as nearly at right angles as is possible and in no case shall be less than 60 degrees. The block corner at intersections shall be rounded at the curb line with a curve having a radius of not less than 20 feet.

j. Street jogs with center line offsets of less than 125 feet shall be prohibited.

k. A tangent at least 100 feet shall be introduced between reverse curves on arterial and collector streets.

l. When connecting street lines deflect from each other at any one point by more than ten degrees and not more than 45 degrees, they shall be connected by a curve with a radius of not less than 100 feet for minor streets and 300 feet for arterial and collector streets.

m. All changes in grade shall be connected by vertical curves of sufficient radius to provide a smooth transition and proper sight distance.

n. Dead-end streets (cul-de-sacs) shall provide a turn around at the end with a radius of not less than 50 feet and tangent whenever possible to the right side of the street. If a dead-end street is of a temporary nature, a similar turn-around shall be provided and provisions made for future extension of the street and reversion of the excess right-of-way to the adjoining properties.

o. No street shall have a name which will duplicate or so nearly duplicate as to be confused with the names of existing streets. The continuation of an existing street shall have the same name.

p. Any street which gives access to a lot fronting on the waters of the Atlantic Ocean, shall be provided with a pedestrian easement giving access to the waters aforesaid for owners of all lots fronting on such road. The pedestrian easement shall have a minimum width of five feet. Any road which gives access to a lot fronting on the waters of any bay lying generally westerly of Long Beach Island shall have the road, in its full width, extend to the waters of such bay giving public access thereto.

16-7.2 Blocks.

a. Block length and width or acreage within bounding roads shall be such as to accommodate the size of lot required in the area by the zoning ordinance and to provide for convenient access, circulation control and safety of street traffic.

b. In blocks over 800 feet long, pedestrian crosswalks may be required in locations deemed necessary by the approving authority. Such walkway shall be ten feet wide and be straight from street to street.

c. For commercial, group housing or industrial use, block size shall be sufficient to meet all area and yard requirements for such use.

16-7.3 Lots.

a. Lot dimensions and area shall not be less than the requirements of the zoning ordinance.

b. Insofar as is practical, side lot lines shall be at right angles to straight streets, and radial to curved streets.

c. Each lot must front upon an approved street at least 50 feet in width except lots fronting on streets described in subsection 16-7.1,e, and except lots fronting on private roadways or easements; provided, however, that no such private roadway or easement shall be less than 15 feet in width nor more than 100 feet in length.

d. Where extra width has been dedicated for widening of existing streets, lots shall begin at such extra width line, and all setbacks shall be measured from such line.

e. Where there is a question as to the suitability of a lot or lots for their intended use due to factors such as rock formation, flood conditions or similar circumstances, the approving authority may, after adequate investigation, withhold approval of such lots.

f. No building permit shall be issued for new construction on any land located east of Long Beach Boulevard when the elevation of such land is below the established Borough Street Profile as herein defined. Before any permit for construction shall issue, all land below the established Borough Street Profile must be filled with clean fill to an elevation of eight inches above the established Borough Street Profile.

In the event that the elevation of the existing street or streets (including easements) bordering said land is at a higher elevation than the established Borough Street Profile then the higher elevation shall govern and the land shall be filled to an elevation of eight inches above the street, streets or easements affected.

Established Borough Street Profile shall be a line drawn from a starting point at the east edge of the pavement thirty (30) feet east from the centerline of Long Beach Boulevard except as follows:

1. thirty five (35) feet east from the centerline of Long Beach Boulevard for 85th Street,
2. forty (40) feet east from the centerline of Long Beach Boulevard for 86th Street,

said starting point having an elevation established in 1988 (NAVD) Datum, the slope of the line shall be 2.1 percent extending eastwardly and perpendicular to Long Beach Boulevard. (Ord. No. 2005-14 § 1)

All lot grades shall be established in USC&GS datum.

No building permit shall be issued for new construction on any land west of Long Beach Boulevard when the elevation of such land is below the elevation of the street or streets which border said land. Before any permit for construction shall issue, all land below the improved municipal street or streets which border said land must be filled with clean fill to an elevation of eight inches above the street or streets affected. If any land referred to herein does not front on an improved municipal street, then the reference point for lot elevation purposes shall be taken from the nearest municipal improved street to said land as determined by the municipal engineer.

All applications for building permits shall include a plot plan drawing showing a profile of the established Borough Street Profile, the relationship of the property along said profile, and the existing and proposed grades in conformance with this paragraph. In the event the building department determines that the plot plan must be reviewed by the municipal engineer, then the cost of said review shall be borne by the applicant.

In the case of alterations or repairs to existing structures, the above requirements shall apply when:

1. In the case of alterations or repairs to existing structures, the above requirements shall apply when alterations or repairs are made within any 36 month period which costs exceed 50 percent of assessed value of the existing structure or structures on a given building lot.

2. When any structure on a building lot is moved from its existing foundation for the purpose of installing piling or to raise the structure to a higher elevation.

16-7.4 Grading and Paving of Streets. All streets shall be constructed in accordance with official grades established by the borough engineer and shall conform to the minimum specifications as commonly utilized by the borough and the county unless specifications for thicker or stronger streets shall be set by the borough engineer and be required by the approving authority and governing body due to special soil or other conditions in the area concerned. No street shall be approved unless all utilities available for each prospective lot have been installed to a point inside the curb line.

16-7.5 Bridges. Bridges shall meet with the approval of the borough engineer.

16-7.6 Sewers and Water Mains. Sanitary sewers and appurtenances, storm sewers and appurtenances and water mains and appurtenances shall meet with the approval of the borough engineer and shall conform with comprehensive plans for these facilities in the borough.

16-7.7 Street Lighting. Street lighting shall be installed in accordance with the "Recommended Practice of Street and Highway Lighting" of the Illumination Engineering Society (latest edition) or as required by the borough engineer along the streets within and abutting the subdivision.

16-7.8 Street Signs and Other Signs. Street signs, curve signs, school crossing signs, and other signs needed to regulate traffic or for warning purposes shall be installed as specified by the borough engineer and director of the public works department, of the same or equal quality, size and style as those being erected by the borough at the time of the approval of the subdivision.

16-7.9 Fire Hydrants. Fire hydrants and control valves shall be installed not more than 600 feet apart at proper locations to be determined by the borough engineer and shall be painted in such colors so as to conform with existing hydrants in the borough or as specified by the borough engineer. Fire hydrants shall be of the same type and design as currently in use by the borough fire department.

16-7.10 Monuments. Monuments to be the size and shape required by section 4 of Chapter 358 of the Laws of 1953, as amended and supplemented, and shall be placed in accordance with said statute.

16-7.11 Native Vegetation. Whenever any native vegetation such as bayberry bushes or trees, cedar trees, holly trees, beach plums, etc., exist at the time of application for a subdivision, such native vegetation will be left intact insofar as is possible consistent with the intended construction on or use of the tract following subdivision. This shall not be construed to prohibit the normal maintenance of the grounds so as to render the tract or portion thereof in a pleasing state of appearance to both owner and community.

16-7.12 Public Use and Service Areas.

a. In large-scale development, easements along rear property lines or elsewhere for utility installation may be required. Such easements shall be at least 15 feet wide and located in consultation with the companies or borough departments concerned.

b. Where a subdivision is traversed by a water course, drainage way, channel or street, there shall be provided a storm water easement or drainage right-of-way conforming substantially with the lines of such water course, and such further width or construction, or both, as will be adequate for the purpose.

16-7.13 Lagoons.

a. All lagoons shall have a minimum width of 100 feet.

b. All lagoons shall be entirely bulkheaded.

c. The materials and types of bulkheadings in any one lagoon shall be uniform throughout.

16-7.14 Bulkheads. Bulkheads shall be constructed in accordance with the standards of construction provided in applicable borough ordinances and State statutes and amendments thereto.

16-7.15 Electric and Telephone Utilities. For all major subdivisions, the applicant shall arrange with the serving utility for the underground installation of the utilities distribution supply lines and service connection in accordance with the provisions of the applicable standard terms and conditions incorporated as a part of its tariff as the same are then on file with the State of New Jersey Board of Public Utility Commissioners, and shall submit to the planning board and borough committee prior to the granting of final approval, a written instrument from each serving utility which shall evidence full compliance with the provisions of this paragraph; provided that in such subdivisions, lots which abut existing streets where overhead electric or telephone distribution supply lines have heretofore been installed on any portion of the streets involved may be supplied with electric and telephone service from such overhead lines or extensions thereof, but the service connections from the utilities overhead lines shall be installed underground.

16-7.16 Seeding

a. In all major subdivisions all subdivided lots and any required open space shall be seeded with a suitable stabilizing ground cover approved by the borough engineer. On any waterfront lots or open spaces the approving authority may allow suitable stabilizing ground cover other than seeding which is approved by the borough engineer.

b. The approving authority in appropriate cases may authorize a ground surface without seeding or living ground cover.

16-7.17 Topsoil. No topsoil shall be removed from the site or used as spoil. Topsoil moved during the course of construction shall be redistributed so as to provide at least four inches of spread cover to all seeding and planting areas of the subdivision and shall be stabilized by seeding or planting. In the event the quantity of topsoil at the site is insufficient to provide four inches of cover for all seeding and planting areas, the developer shall provide and distribute a sufficient quantity of topsoil to provide such a cover.

16-7.18 Fill Dirt.

a. No material, debris or substance other than clean fill dirt shall be deposited upon any lot within the borough nor shall the grade of any lot be raised or the lot filled in except with clean fill dirt as hereinafter defined.

b. For the purposes of this section, “clean fill dirt” shall be defined to mean earth, sand, clay, loam, gravel, humus or dirt of any nature whatsoever free from rocks, boulders, concrete, tree stumps, felled or uprooted trees or portions thereof, and all other incombustible debris.

CHAPTER XVII

UNIFORM FIRE SAFETY CODE

17-1 LOCAL ENFORCEMENT.

Pursuant to Section 11 of the Uniform Fire Safety Act (P.L. 1983 c. 383) the New Jersey Uniform Fire Code shall be locally enforced in the municipality.

17-2 AGENCY DESIGNATION.

The local enforcing agency shall be the Ocean County Bureau of Fire Safety under the supervision of the Ocean County Fire Marshal.

17-3 DUTIES.

The Ocean County Bureau of Fire Safety shall enforce the Uniform Fire Safety Act and the codes and regulations adopted under it in all buildings, structures and premises within the established boundaries of the municipality other than owner-occupied one and two family dwellings, and shall comply with the requirements of the Uniform Fire Safety Act and the Uniform Fire Code.

17-4 LIFE HAZARD USES.

The Ocean County Bureau of Fire Safety shall carry out the periodic inspections of life hazard uses required by the Uniform Fire Code.

17-5 ORGANIZATION.

The Ocean County Bureau of Fire Safety shall be in the Office of the Ocean County Fire Marshal and shall be under the direct supervision and control of the Ocean County Fire Marshal who shall serve as the Fire Official. The Ocean County Bureau of Fire Safety shall consist of said fire official and such other inspectors and employees as may be necessary to enforce said code, being appointed by the Ocean County Board of Chosen Freeholders pursuant to the procedures set forth herein.

17-6 APPOINTMENTS.

a. Fire Official. The Ocean County Bureau of Fire Safety shall be under the supervision of the Ocean County Fire Marshal who shall be appointed by the Ocean County Board of Chosen Freeholders.

b. Inspectors and Employees. Such inspectors and other employees as may be necessary for the Ocean County Bureau of Fire Safety to properly carry out its responsibilities shall be appointed by the Ocean County Board of Chosen Freeholders.

17-7 BOARD OF APPEALS.

Pursuant to Sections 15 and 17 of the Uniform Fire Safety Act, any person aggrieved by a ruling, action, notice or order of the Ocean County Bureau of Fire Safety shall have the right of appeal to the Construction Board of Appeals of the County of Ocean.

17-8 PERMITS.

The permit fees shall be established pursuant to the Uniform Fire Code. They shall be as follows, unless modified by resolution of the Ocean County Board of Chosen Freeholders and ordinance of the municipality:

Type 1	$ 25.00
Type 2	$ 100.00
Type 3	$ 200.00
Type 4	$ 300.00
Type 5	$1,000.00

CHAPTER XVIII

RECYCLING

18-1 SHORT TITLE.

This chapter shall be known and may be cited as the Recycling Ordinance of the Borough of Harvey Cedars.

18-2 DEFINITIONS.

The words, terms and phrases used in this chapter shall have the following meanings:

Aluminum cans shall mean all empty aluminum beverage and food containers.

Brush shall mean tree limbs, branches and bushes no longer than 4 feet. Tree limbs and branches shall be no larger than 3" in diameter. (Ord. No. 2006-03 § 1)

Cardboard shall mean brown corrugated cardboard and brown paper grocery bags. (Ord. No. 2006-03 § 1)

Commercial establishments shall mean those properties used primarily for commercial purposes and those multiple dwelling residential buildings containing more than four dwelling units.

Commingle shall include all glass containers, aluminum cans, steel cans, plastic bottles, and empty aerosol cans. (Ord. No. 2006-03 § 1)

Containerized shall mean the placement of yard waste in a trash can, bucket, bag or other vessel, such as to prevent the yard waste from spilling of blowing out into the street and coming into contact with stormwater. (Ord. No. 2006-03 § 1)

Designated recyclable materials shall mean those materials designated within the Ocean County District Solid Waste Management Plan to be source separated for the purpose of recycling. (Ord. No. 2009-12 § 1)

Dual Stream – Commingled – all plastic bottles, aluminum and steel cans. Paper-magazines, catalogues, junk mail, used writing paper, newsprint, cardboard, office and school paper. No chipboard or pizza boxes. (Ord. No. 2010-06 § 1)

Ferrous containers shall mean empty steel or tin food or beverage containers.

Glass containers shall mean bottles and jars made of clear, green or brown glass. Expressly excluded are noncontainer glass, plate-glass, blue glass and porcelain and ceramic products.

Institutional establishments shall mean those facilities that house or serve groups of people, including but not limited to, hospitals, schools, nursing homes, libraries and governmental offices.

Junk Mail shall include junk mail, magazines, catalogs, and writing paper. (Ord. No. 2006-03 § 1)

Municipal Recycling Coordinator means the person or persons appointed by the municipal governing body and who shall be authorized to, among other things, enforce the provisions of this Ordinance, and any rules and regulations which may be promulgated hereunder. (Ord. No. 2009-12 § 1)

Municipal solid waste (MSW) stream means all solid waste generated at residential, commercial, and institutional establishments within the boundaries of the Borough of Harvey Cedars. (Ord. No. 2009-12 § 1)

Newspapers shall mean paper of the type commonly referred to as newsprint and distributed at fixed intervals, having printed thereon news and opinions, and containing advertisements and other matters of public interest. Expressly excluded, however, are newspapers which have been soiled. Newspapers shall be deemed soiled if they have been exposed to substances or conditions rendering them unusable for recycling.

Paper shall mean paper recyclables and paper stream recycling and shall include newspapers, junk mail and cardboard. Paper shall not include phonebooks. (Ord.No. 2008-04 § 1)

Person shall mean every owner, lessee and occupant of a residence, commercial or institutional establishment within the boundaries of the Borough of Harvey Cedars.

Recyclable materials shall mean those materials which would otherwise become municipal solid waste, and which may be collected, separated or processed, and returned to the economic mainstream in the form of raw materials or products.

Residence shall mean any occupied single or multi-family dwelling having up to four dwelling units per structure from which a municipal or private hauler collects solid waste.

Single Stream – The combination of commingled and paper listed above in one container. Do not include plastic bags, food waste, paper towels, paper napkins, pizza boxes, egg cartons, aluminum foil, plastic cups and utensils. No plastic other than bottles. No juice boxes or bags. No garbage. (Ord. No. 2010-06 § 1)

Solid waste shall mean garbage, refuse and other discarded solid material normally collected by a municipal or private hauler.

Source-separated Recyclable Materials means recyclable materials which are separated at the point of generation by the generator thereof from solid waste for the purposes of recycling. (Ord. No. 2009-12 § 1)

Source separation means the process by which recyclable materials are separated at the point of generation by the generator thereof from solid waste for the purposes of recycling. (Ord. No. 2009-12 § 1)

Street shall mean any street, avenue, boulevard, road, parkway, viaduct, drive, or other way, which is an existing State, county, or municipal roadway, and includes the land between the street lines, whether improved or unimproved, and may comprise pavement, shoulders, gutters, curbs, sidewalks, parking areas, and other areas within the street lines. (Ord. No. 2006-03 § 1)

Yard waste includes leaves, pine needles, pine cones and weeds. (Ord. No. 2006-03 § 1)

18-3 ESTABLISHMENT OF PROGRAM – MANDATORY RECYCLABLE MATERIALS.

a. There is hereby established a program for the mandatory separation of the following recyclable materials from the municipal solid waste stream by all persons within the Borough of Harvey Cedars, hereinafter referred to as the "municipality".

1. Aluminum cans
2. Ferrous containers
3. Glass containers
4. Newspapers
5. Junk mail
6. Automobile batteries
7. Motor oil
8. White goods
9. Tires
10. Cardboard
11. Brush and yard waste
(Ord. No. 2006-03 § 2)

b. In addition to items one through eleven above, all commercial, industrial and institutional properties shall be required to recycle the following:

1. Stumps, tree trunks and brush
2. Concrete
3. Cement blocks
4. Bricks
5. Asphalt
6. Ferrous scrap
7. Nonferrous scrap
8. Automobile batteries
9. Motor oil
10. White goods
11. Tires

(Ord. No. 2009-12 § 3)

18-4 SEPARATION OF RECYCLABLES AND PLACEMENT FOR DISPOSAL.

a. *Commingled Materials*. Commingled materials shall be put in a suitable container, separate from other solid waste, and placed at the curb or such other designated area for collection at such times and dates as may be hereinafter established in the municipality's recycling regulations. The container for commingle shall be clearly labeled and placed at the curb or such other designated area for each collection, regardless of whether any recyclable materials are available for collection. (Ord. No. 2006-03 § 3)

b. *Paper*. Newspapers, cardboard and junk mail shall be placed in a suitable clearly labeled container with a lid, separate from other solid waste, and placed at the curb or such other designated area for collection at such times and dates as may be hereinafter established in the municipality's recycling regulations. No phonebooks shall be placed with paper recyclables. Phonebooks shall be picked up separately. (Ord. No. 2008-04 § 2)

c. *Brush and Yard Waste*. All persons within the municipality shall separate brush and yard waste from other solid waste generated at their premises, and unless stored or recycled for composting or mulching on the premises, place the containerized yard waste and/or the bundled brush at the curb or other designated area for collection at such times and dates in the manner established by the municipality's recycling schedule. (Ord. No. 2006-03 § 4) (Ord. No. 2009-12 § 4)

   The owner or occupant of any property, or any employee or contractor of such owner or occupant engaged to provide lawn care or landscaping services, shall not sweep, rake, blow or otherwise place yard waste, unless it is containerized, in the street. If yard waste that is not containerized is placed in the street, the party responsible for placement of yard waste must remove the yard waste from the street or said party shall be deemed in violation of this ordinance. (Ord. No. 2006-03 § 4) (Ord. No. 2009-12 § 4)

d. It shall be unlawful for solid waste collectors to collect solid waste that is mixed with, or contains visible signs of, designated recyclable materials. It is also unlawful for solid waste collectors to remove for disposal those bags or containers of solid waste which visibly display a warning notice sticker or some other device indicating that the load of solid waste contains designated recyclable materials. (Ord. No. 2009-12 § 5)

e. It shall be the responsibility of the resident or occupant to properly segregate the uncollected solid waste for proper disposal or recycling. Allowing such unseparated solid waste and recyclables to accumulate will be considered a violation of this ordinance. (Ord. No. 2009-12 § 5)

18-5 COMMERCIAL ESTABLISHMENTS.

All commercial, institutional or industrial properties which provide outdoor litter receptacles shall also provide receptacles for designated recyclable materials in the location of the litter receptacle, and shall provide for separate recycling service for their contents.

Every business, institution, or industrial facility shall submit annually to the Municipal Recycling Coordinator, proof of removal of designated recyclable materials from their premises including the total weight and type of recycled material collected and recycled, and the vendor(s) providing said service.

All food service establishments, as defined by the Retail Food Establishment Code of New Jersey shall comply with all recycling and solid waste disposal requirements defined herein and shall recycle grease and/or cooking oil generated in the processing of food or food products, and maintain such records as may be prescribed for inspection by any code enforcement officer.
(Ord. No. 2009-12 § 6)

18-6 ALTERNATIVE COLLECTION OF RECYCLABLE MATERIALS.

Any person may donate or sell recyclable materials to individuals or organizations authorized by the municipality in its recycling regulations. These materials may either be delivered to the individual's or organization's site, or they may be placed at the curb for collection by said individual or organization on days not designated as recyclable material collection days in the municipality's recycling regulations. Said individuals or organizations may not collect recyclable materials on or within 24 hours immediately preceding a regularly scheduled curbside collection day and shall, prior to June 1st of each year, provide written documentation to the municipality of the total amount of material recycled during the preceding calendar year.

18-7 COLLECTION BY UNAUTHORIZED PERSONS.

It shall be a violation of this chapter for any unauthorized person or organization to collect, pick up or cause to be collected or picked up within the boundaries of the municipality any of the recyclable materials designated in section 18-3 of this chapter. Each such collection in violation of this chapter shall constitute a separate and distinct offense punishable as hereinafter provided.

18-8 ENFORCEMENT AND ADMINISTRATION.

The municipality and/or Municipal Recycling Coordinator and/or Superintendent of Public Works is hereby authorized and directed to establish and promulgate reasonable regulations detailing the manner, days and times for the collection of the recyclable materials designated in section 18-3 of this chapter and such other matters as are required to implement this chapter.

The Code Enforcement Official, Municipal Recycling Coordinator, Department of Health and/or Superintendent of Public Works is hereby authorized and directed to enforce the provisions of this chapter and any implementing regulations adopted hereunder. An inspection may consist of sorting through containers and opening of solid waste bags to detect, by sound or sight, the presence of any recyclable material.
(Ord. No. 2009-12 § 7)

18-9 VIOLATIONS AND PENALTIES.

Any person, corporation, occupant, or entity that violates or fails to comply with any provision of this Ordinance or any of the rules and regulations promulgated hereunder shall, upon conviction thereof, be punishable by a fine not less than two hundred fifty ($250.00) dollars, nor more than one thousand ($1,000.00) dollars. Each day for which a violation of this Ordinance occurs shall be considered a separate offence.

Fines levied and collected pursuant to the provisions of this chapter shall be deposited into a dedicated fund to be established by the Certified Financial Officer of the Borough of Harvey Cedars and shall be used to provide compensation for municipal recycling expenses.
(Ord. No. 2009-12 § 8)

18-10 EXEMPTIONS.

The Municipal Recycling Coordinator of the Borough of Harvey Cedars may exempt persons occupying commercial and institutional establishments from the source separation requirements of section 18-4 of this chapter, if those persons have otherwise provided for the recycling of recyclable materials designated in section 18-3 of this chapter. To be eligible for an exemption under this section, the person seeking the same shall, prior to June 1 of each year, provide written documentation to the Borough of Harvey Cedars of the total amount of materials recycled during the preceding calendar year. (Ord. No. 2009-12 § 9)

CHAPTER XIX

STREETS AND SIDEWALKS

19-1 EXCAVATION IN PUBLIC STREETS.

19-1.1 Definition. As used in this section "street" shall mean any road, highway, public way, public alley, easement or other right of way accepted or maintained by the borough as a public street, as well as any state or county road or highway over which the borough has acquired jurisdiction by agreement.

19-1.2 Permit Required.

a. No person shall make an excavation in or tunnel under any street without first obtaining a permit from the borough engineer.

b. A tunnel or excavation may be commenced without a permit where an emergency has arisen which makes it necessary to start work immediately; provided that the application for a permit is made simultaneously with the commencement of the work or as soon thereafter as is practical. When issued, the permit shall be retroactive to the date on which the work has begun.

19-1.3 Denial of Permit; Appeal. The borough engineer is authorized to refuse the issuance of any permit, if he ascertains that such refusal is in the interest of public safety, public convenience or public health.

If a permit is refused, an appeal may be taken to the board of commissioners. The board of commissioners, after hearing the applicant and such other evidence as may be produced, may either direct the issuance of the permit or sustain the refusal.

19-1.4 Application for Permit. An application for a permit shall contain the following information:

a. Name and address of the applicant.

b. Name of the street where the opening is to be made and the street number, if any, of the abutting property.

c. The borough tax map block and lot number of the property for the benefit of which the opening is to be made.

d. Nature of the surface in which the opening is to be made.

e. Character and purpose of the work proposed.

f. Time when the work is to be commenced and completed.

g. Each application shall be accompanied by a set of plans in quadruplicate showing the exact location and dimensions of all openings.

h. The name and address of the workman or contractor who is to perform the work, along with a 24 hour emergency phone number.

i. A statement that the applicant agrees to replace, at his own cost and expense, the street, curb, gutter, sidewalk, landscaping, etc., in the same state and condition satisfactory to the borough engineer within 48 hours of the commencement of same.

19-1.5 Contents of Permit; Filing. Each permit shall state the identity and address of the applicant, the name of the street and the location where the excavation or tunnel is to be made, the dimensions of the opening and the period during which the permit shall be valid. The original of each permit shall remain on file with the clerk.

19-1.6 Deposit. The application fee shall be one hundred fifty ($150.00) dollars.

The applicant shall also be required to deposit, in cash or by certified check, a sum determined by the borough engineer to be necessary to defray the expense of restoring the street to its pre-existing condition should the permittee fail to do so. In addition, the applicant will be responsible for payment of inspection fees billed by the borough engineer.

19-1.7 Insurance. No permit shall be issued until the applicant has furnished the borough with satisfactory proof that he is insured against injury to persons and damage to property caused by any act or omission of the applicant, his agents, employees or subcontractors done in the course of the work to be performed under the permit. The insurance shall cover all hazards likely to arise in connection with the work including, but not limited to, collapse and explosion, and shall also insure against liability arising from the completed operations. The limits of the policy of insurance shall be one hundred thousand ($100,000.00) dollars for injury to any one person, three hundred thousand ($300,000.00) dollars for property damage for a single incident. The borough may waive the requirements of this subsection in the case of public utilities upon the presentation of satisfactory proof that it is capable of meeting claims against it up to the amount of the limits of the insurance policy which would otherwise be required.

19-1.8 Rules and Regulations; Backfilling. All permits issued under this section shall be subject to the following rules and regulations:

a. All excavations shall be kept properly barricaded at all times and during the hours of darkness shall be provided with proper warning lights. This regulation shall not excuse the permittee from taking any other precaution reasonably necessary for the protection of persons or property.

b. All work shall be done in such a manner as to cause a minimum of interference with travel on the street affected. No street shall be closed to traffic unless the closing is approved by the board of commissioners. The board of commissioners shall be informed of all street closings at least 24 hours in advance, except where the work is of an emergency nature when notice shall be given when work commences. Traffic control devices and their placement shall be in accordance with the Manual on Uniform Traffic Control Devices for Streets and Highways, subject to the borough engineer's review.

c. All refuse and material shall be removed within 48 hours.

d. All excavations shall be completely backfilled by the permittee, and shall be compacted by tamping or other suitable means in a manner prescribed by the borough engineer. Where the engineer determines that the excavated material is unsuitable for backfill, the permittee shall backfill the excavation with sand, soft coal, cinders or other suitable material which shall be placed in layers not exceeding six inches in depth and thoroughly compacted with a mechanical vibrator or in the manner prescribed by the engineer. The permittee shall replace all shoulder stone to a depth of six inches and thoroughly compact it with a mechanical compaction device. Upon completion of the work, the permittee shall remove any excess material and leave the premises in a clean condition. If it is determined that any backfilled excavation has settled or caved in, the engineer shall so notify the permittee, who shall promptly continue backfilling until settlement is complete.

e. If tunneling operations are required, the tunnel shall be backfilled with rammed concrete with a minimum 4,000 psi.

f. If blasting is required to be done in the course of any excavation, it shall be done in strict compliance with all applicable state laws and regulations.

g. If the work is not completed within the time prescribed in the permit, or any extension granted by the borough, or is not performed in accordance with the regulations set forth in this subsection and any other regulations, the borough may complete the work itself and restore the surface of the street. The cost of completing the work and restoring the street shall be charged to the permittee and may be deducted from his deposit or recovered by an action in any court or competent jurisdiction.

19-1.9 Rules and Regulations for Restoration of Surface. In all cases the permittee shall restore the surface of the street in accordance with the following rules, regulations and requirements:

a. No permittee shall commence the restoration of any street foundation or surface until the borough engineer has determined that settlement of the subsurface is complete and the area properly prepared for restoration. Temporary cold patch will be required for a minimum of three months prior to final road restoration to insure proper settlement, or as directed by the borough engineer.

b. The street surface shall be restored so as to extend a minimum of one foot beyond the excavation on all sides.

c. The street surface shall be restored pursuant to the section designated by the borough engineer in the permit, but in no case shall be less than the structural equivalent of the following:

   1. Six inch course of quarry process sub-base (Type I-5 Soil Aggregate) thoroughly compacted.

   2. Two inches of bituminous concrete stabilized base course.

3. One and one-half inches of bituminous concrete Type FABC-1, top course.

19-1.10 Permit Conditions and Regulations.

a. Transferability. A permit shall apply only to the person to whom it is issued and shall not be transferable.

b. Commencement/Completion of Work. Work under a permit shall commence within 45 days from the date of issuance of the permit. If work is not commenced within that time, the permit shall automatically terminate unless extended in writing by the borough. The work must be completed within six months of the date of the permit.

c. Possession of Permit. A copy of the permit, together with a copy of the plan endorsed with the approval of the borough engineer shall be kept in possession of the person actually performing the work and shall be exhibited on demand to any duly authorized employee of the borough or police officer.

d. Revocation of Permit. The board of commissioners may revoke a permit for any of the following reasons:

   1. Violation of any provision of this section or any other applicable rules, regulations, laws or ordinances.

   2. Violation of any condition of the permit issued.

   3. Carrying on work under the permit in a manner which endangers life or property, or which creates any condition which is unhealthy, unsanitary or declared by any provision of this revision to constitute a nuisance.

   The procedure for revoking a permit shall be the same as that set forth in this revision for the revocation of licenses, except that the initial hearing shall be before the board of commissioners in charge of the road department with a right of appeal to the board of commissioners, and the chairman may provide in his decision that the revocation shall not become effective, if the permittee corrects the violation within a specified period of time.

e. Modification of Permit Conditions. In a special case, then board of commissioners may, by resolution, impose special conditions to which the issuance of the permit may be subject, or may decide that any provision of this section shall not apply or shall be altered.

CHAPTER XX

FERTILIZER APPLICATION REQUIREMENTS

20-1. FINDINGS.

A. The Board of Commissioners of the Borough of Harvey Cedars, desiring to promote and regulate matters which benefit the health, safety and welfare of the citizens of the community, are aware of numerous scientific reports which have demonstrated that the improper and excessive application of fertilizers and fertilizer products may have an adverse impact on surface waters and ground waters. The United States Environmental Protection Agency, the State of New Jersey Department of Environmental Protection and numerous environmental organizations have recognized that one of the major factors which are detrimentally impacting the bays, lagoons, estuaries, marshes, wetlands, fish nurseries and ground water on and surrounding Long Beach Island is non-point source pollution. The same groups have determined that the sources of non-point pollution include among other things the runoff of chemicals and related substances originating from the improper application of fertilizers.

B. The Board of Commissioners of the Borough of Harvey Cedars is aware that the geological compositions of the soils in Harvey Cedars consist primarily of sand and sandy soil which have little ability to remove nitrates, phosphates, nutrients and other common ingredients found in chemical fertilizers. The Board of Commissioners is also aware that common fertilizers which are readily available in retail stores are regularly applied on residential and commercial properties throughout Harvey Cedars by property owners and landscapers. The Board of Commissioners is further aware that there are no Federal, State, County nor local laws regulating or restricting the application of such products.

C. It is accepted by the scientific community that excess phosphorous, a common element in many chemical fertilizers, into the waterways surrounding Harvey Cedars may cause accelerated growth of algae and other aquatic vegetation which may interfere with the naturally occurring aquatic life in such waterways, recreational use thereof, fisheries and aquaculture. The accelerated algae growth and aquatic vegetation has been shown to have a detrimental effect on the waterways through, inter alia, oxygen depletion and temperature increase and that these detrimental impacts threaten individual animal species and may cause a reduction in the diversity of life living in the waters.

D. A continuation or exacerbation of the above noted adverse impacts which may be traced to improper fertilizer application have significant potential to cause detrimental impact on the economy of Harvey Cedars and further cause potential risks to the health, safety and welfare of the citizens of Harvey Cedars. As a result of the foregoing the Board of Commissioners of the Borough of Harvey Cedars believes that it is desirable that the Borough enact an Ordinance which will restrict the improper application of fertilizer products and also advise the public and landscaping operators who perform services in the Borough of the proper timing and methods for fertilizer application.

20-2. DEFINITIONS.

Applicator – any person who applies fertilizer products to soils or turf.

Fertilizer – a material containing one or more recognized plant nutrients, which is used for its plant nutrient content, and that is designed for use or claimed to have value in promoting plant growth, and which is offered for sale, or intended for sale.

Impervious Surface/Impervious Lot Coverage – surface covering the natural earth which covering inhibits water percolation into the natural earth, thereby causing surface water to drain off the site of the surface covering rather than be absorbed into the soil constituting the lot upon which the surface covering is placed.

Landscape Professional – a person or business that, in exchange for pay, goods, services or other considerations, applies fertilizer to soils or turf.

Phosphorous Fertilizer – any fertilizer that contains phosphorous expressed as p2 o5, with a guaranteed analysis of greater than zero; except that it shall not be considered to include manipulated animal, vegetable manures, bio-solid fertilizers, agricultural liming materials or wood ashes that have not been modified to increase their nutrient content. The phosphorous percentage in a fertilizer product is included on the packaging, which contains three numbers (e.g. “26-0-3”), with the phosphorous percentage as the middle number. A zero in the middle means no phosphorous, while a “2” or a “3” means low phosphorous.

Soil Test – a technical analysis of soil conducted by an accredited soil testing laboratory.

Waterbody – the Atlantic Ocean and Barnegat Bay as well as the various lagoons, coves, canals, creeks and estuaries entering any of the foregoing.

20-3. PROHIBITED CONDUCT.

The following conduct shall be prohibited within the Borough of Harvey Cedars:

1. The application of fertilizer to an impervious surface. Fertilizer inadvertently applied to an impervious surface must be immediately swept into the target surface or returned to its original container or another appropriate container for reuse or disposal. Failure to provide and undertake immediate cleanup as is herein required shall be prohibited conduct.

2. The application of fertilizer between December 15th and February 15th or if the ground is frozen.

3. The deposit of grass clippings, leaves or other vegetative debris into waterbodies, retention or detention areas, drainage ditches or stormwater drains, or onto impervious surfaces except during scheduled cleanup programs.

4. The application of fertilizer in excess of the manufacturer's recommended rate.

5. The application of any phosphorous fertilizer except as demonstrated by a need for specific soils in accordance with a soil test and the associated annual fertilizer recommendation issued by the Rutgers Cooperative Research and Extension.

6. Application of fertilizer within 24 hours of any rainfall consisting of one half inch of rain or more within a single 24 hour period.

20-4. PERMITTED APPLICATIONS.

The following uses and applications of phosphorous fertilizers shall be and are hereby permitted:

1. Where vegetation is being established upon initial planting, such as where the virgin soil has been disturbed, provided that the application is made in accordance with the requirements established under the Soil Erosion and Sediment Control Act, N.J.S.A. 4:24-39 et seq. and any regulations lawfully adopted pursuant thereto.

2. The re-establishment or repair of turf after substantial damage has occurred thereto.

3. Applying phosphorous fertilizer that delivers liquid or granular fertilizer under the surface of the soil directly to the feeder roots of the vegetation being fertilized.

4. Application of phosphorous fertilizer to residential container plantings, flowerbeds and vegetable gardens.

5. Application of phosphorous fertilizers on the sand dunes along the oceanfront in the area between the building line and the easterly toe of the dune shall be permitted since experience has proven that high phosphorous fertilizer is necessary to encourage luxuriant growth of natural dune grass and such growth has been proven to be effective in stabilization of Long Beach Island's protective dunes.

20-5. LANDSCAPE PROFESSIONAL REQUIREMENTS.

1. All Landscape Professionals who apply fertilizer to property in the Borough shall be required to complete an educational course on the proper application of fertilizer by January 1, 2011.

2. A Landscape Professional with more than one employee may designate a person to serve as the business's "Certified Fertilizer Applicator", which person shall complete the Fertilizer Education Course. Any employee of a Landscape Professional who applies fertilizer must work under the direct supervision of a Certified Fertilizer Applicator, who shall be responsible for the compliance of the Landscape Professional and its employees with the provisions of this Ordinance.

3. Upon completion, each Landscape Professional that attends and completes the Fertilizer Education Course shall be provided with a certificate of completion and a sticker to be placed upon vehicles used by the Landscape Professional to document the successful completion of the course.

20-6. GUIDELINES.

The following guidelines are recommended for use by applicators:

1. Drop spreaders, rather than broadcast spreaders when applying fertilizers.

2. Use of only nitrogen-based fertilizers in slow release formula.

3. Application of fertilizers not more than four (4) times annually on the same parcel of land.

20-7. ENFORCEMENT.

Enforcement of the within Ordinance shall be the responsibility of the Harvey Cedars Code Enforcement Officer.

20-8. VIOLATION AND PENALTIES.

Any person(s) in violation of this ordinance shall be subject to the general penalty provisions of Chapter 3 of the Code of the Borough of Harvey Cedars and a fine not to exceed one thousand ($1,000.00) dollars.

CHAPTER XXI

PROPERTY MAINTENANCE CODE

21-1 TITLE. This chapter shall be known as the Property Maintenance Code of the Borough of Harvey Cedars, hereinafter referred to as "this code".

21-2 SCOPE. The provisions of this code shall apply to all existing residential and nonresidential structures and all existing premises and constitute minimum requirements and standards for premises, structures, equipment and facilities for light, ventilation, space, heating, sanitation, protection from fire and other hazards, and for safe and sanitary maintenance; the responsibility of owners, operators and occupants; the occupancy of existing structures and premises, and for administration, enforcement and penalties.

21-3 INTENT. This code shall be construed to secure its expressed intent, which is to ensure public health, safety and welfare insofar as they are affected by the continued occupancy and maintenance of structures and premises. Existing structures and premises that do not comply with these provisions shall be altered or repaired to provide a minimum level of health and safety as required herein.

21-4 DEFINITIONS. Unless otherwise expressly stated, the following terms shall, for the purposes of this code, have the meanings shown in this chapter. Where terms are not defined through the methods authorized by this section, such terms shall have ordinarily accepted meanings such as the context implies.

Anchored. Secured in a manner that provides positive connection.

Approved. Approved by the code official.

Code Official. The official who is charged with the administration and enforcement of this code, or any duly authorized representative.

Condemn. To adjudge unfit for occupancy.

Deterioration. To weaken, disintegrate, corrode, rust or decay and lose effectiveness.

Dwelling Unit. A single unit providing complete, independent living facilities for one of more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation.

Exterior Property. The open space on the premises and on adjoining property under the control of owners or operators of such premises.

Garbage. The animal or vegetable waste resulting from the handling, preparation, cooking and consumption of food.

Neglect. The lack of proper maintenance for a building or structure.

Occupancy. The purpose for which a building or portion thereof is utilized or occupied.

Occupant. Any individual living or sleeping in a building, or having possession of a space within a building.

Owner. Any person, agent, operator, firm or corporation having a legal or equitable interest in the property; or recorded in the official records of the state, county or municipality as holding title to the property; or otherwise having control of the property, including the guardian of the estate of any such person, and the executor or administrator of the estate of such person if ordered to take possession of real property by a court.

Person. An individual, corporation, partnership or any other group acting as a unit.

Pest Elimination. The control and elimination of insects, rodents or other pests by eliminating their harborage places; by removing or making inaccessible materials that serve as their food or water; by other approved pest elimination methods.

Premises. A lot, plot or parcel of land, easement or public way, including any structures thereon.

Rubbish. Combustible and noncombustible waste materials, except garbage; the term shall include the residue from the burning of wood, coal, coke and other combustible materials,, paper, rags, cartons, boxes, wood, excelsior, rubber, leather, tree branches, yard trimmings, tin cans, metals, mineral matter, glass, crockery and dust and other similar materials.

Structure. That which is built or constructed or a portion thereof.

Yard. An open space on the same lot with a structure.

21-5 VIOLATIONS.

21-5.1 Unlawful acts. It shall be unlawful for a person, firm or corporation to be in conflict with or in violations of any of the provisions of this code.

21-5.2 Notice of violation. The code official shall serve a notice of violation or order in accordance with Section 21-6.

21-5.3 Prosecution of violation. Any person failing to comply with a notice of violation or order served in accordance with Section 21-6 shall be deemed guilty of a misdemeanor or civil infraction as determined by the local municipality, and the violation shall be deemed a strict liability offense. If the notice of violation is not complied with, the code official shall institute the appropriate proceeding at law or in equity to restrain, correct or abate such violation, or to require the removal or termination of the unlawful occupancy of the structure in violation of the provisions of this code or of the order or direction made pursuant thereto. Any action taken by the authority having jurisdiction on such premises shall be charged against the real estate upon which the structure is located and shall be a lien upon such real estate.

21-5.4 Violation penalties. Any person who shall violate a provision of this code, or fail to comply therewith, or with any of the requirements thereof, shall be prosecuted within the limits provided by state or local laws. Each day that a violation continues after due notice has been served shall be deemed a separate offense.

21-5.5 Abatement of violation. The imposition of the penalties herein prescribed shall not preclude the legal officer of the jurisdiction from instituting appropriate action to restrain, correct or abate a violation, or to prevent illegal occupancy of a building, structure or premises, or to stop an illegal act, conduct, business or utilization of the building, structure or premises.

21-6 NOTICES AND ORDERS.

21-6.1 Notice to person responsible. Whenever the code official determines that there has been a violation of this code or has grounds to believe that a violation has occurred, notice shall be given in the manner prescribed in Sections 21-6.2 and 21-6.3 to the person responsible for the violation as specified in the is code.

21-6.2 Form. Such notice prescribed in Section 21-6.1 shall be in accordance with all of the following:

1. Be in writing.
2. Include a description of the real estate sufficient for identification.
3. Include a statement of the violation or violations and why the notice is being issued.
4. Include a correction order allowing a reasonable time to make the repairs and improvements required to bring the dwelling unit or structure into compliance with the provisions of this code.
5. Inform the property owner of the right to appeal.
6. Include a statement of the right to file a lien in accordance with Section 21-5.3.

21-6.3 Method of service. Such notice shall be deemed to be properly served if a copy thereof is:

1. Delivered personally;
2. Sent by certified or first-class mail addressed to the last known address; or
3. If the notice is returned showing that the letter was not delivered, a copy thereof shall be posted in a conspicuous place in or about the structure affected by such notice.

21-6.4 Unauthorized tampering. Signs, tags or seals posted or affixed by the ode official shall not be mutilated, destroyed or tampered with, or removed without authorization from the code official.

21-6.5 Penalties. Penalties for noncompliance with orders and notices shall be as set forth in Section 21-5.4.

21-6.6 Transfer of ownership. It shall be unlawful for the owner of any dwelling unit or structure who has received a compliance order or upon whom a notice of violation has been served to sell, transfer, mortgage, lease or otherwise dispose of such dwelling unit or structure to another until the provisions of the compliance order or notice of violation have been complied with; or until such owner shall first furnish the grantee, transferee, mortgagee or lessee a true copy of any compliance order or notice of violation issued by the code official and shall furnish to the code official a signed and notarized statement from the grantee, transferee, mortgagee or lessee, acknowledging the receipt of such compliance order or notice of violation and fully accepting the responsibility without condition for making the corrections or repairs required by such compliance order or notice of violation.

21-7 EXTERIOR PROPERTY AREAS.

21-7.1 Sanitation. All exterior property and premises shall be maintained in a clean, safe and sanitary condition. The occupant shall keep that part of the exterior property which such occupant occupies or controls in a clean and sanitary condition.

21-7.2 Grading and drainage. All premises shall be graded and maintained to prevent the erosion of soil and to prevent the accumulation of stagnant water thereon, or within any structure located thereon.

21-7.3 Weeds. All premises and exterior property shall be maintained free from weeds or plant growth in excess of 16 inches. All noxious weeds shall be prohibited. Weeds shall be defined as all grasses, annual plants and vegetation, other than trees or shrubs provided, however, this term shall not include cultivated flowers and gardens.

Upon failure of the owner or agent having charge of a property to cut and destroy weeds after service of a notice of violation, they shall be subject to prosecution in accordance with Section 21-5.3 and as prescribed by the authority having jurisdiction. Upon failure to comply with the notice of violation, any duly authorized employee of the jurisdiction or contractor hired by the jurisdiction shall be authorized to enter upon the property in violation and cut and destroy the weeds growing thereon, and the costs of such removal shall be paid by the owner or agent responsible for the property.

21-7.4 Rodent harborage. All structures and exterior property shall be kept free from rodent harborage and infestation. Where rodents are found, they shall be promptly exterminated by approved processes which will not be injurious to human health. After extermination, proper precautions shall be taken to eliminate rodent harborage and prevent reinfestation.

21-7.5 Exhaust vents. Pipes, ducts, conductors, fans or blowers shall not discharge gases, steam, vapor, hot air, grease, smoke, odors or other gaseous or particulate wastes directly upon abutting or adjacent public or private property or that of another tenant.

21-7.6 Accessory structures. All accessory structures, including detached garages, fences and walls, shall be maintained structurally sound and in good repair.

21-7.7 Motor vehicles. Except as provided for in other regulations, no inoperative or unlicensed motor vehicle shall be parked, kept or stored on any premises, and no vehicle shall at any time be in a state of major disassemble, disrepair, or in the process of being stripped or dismantled. Painting of vehicles is prohibited unless conducted inside an approved spray booth.

Exception: A vehicle of any type is permitted to undergo major overhaul, including body work, provided that such work is performed inside a structure or similarly enclosed area designed and approved for such purposes.

21-8 SWIMMING POOLS, SPAS AND HOT TUBS

21-8.1 Swimming pools. Swimming pools shall be maintained in a clean and sanitary condition, and in good repair.

21-8.2 Enclosures. Private swimming pools, hot tubs and spas, containing water more than 24 inches (610 mm) in depth shall be completely surrounded by a fence or barrier at least 48 inches (1219 mm) in height above the finished ground level measured on the side of the barrier away from the pool. Gates and doors in such barriers shall be self-closing and self-latching. Where the self-latching device is less than 54 inches (1372 mm) above the bottom of the gate, the release mechanism shall be located on the pool side of the gate. Self-closing and self-latching gates shall be maintained such that the gate will positively close and latch when released from an open position of 6 inches (152 mm) from the gatepost. No existing pool enclosure shall be removed, replaced or changed in a manner that reduces its effectiveness as a safety barrier.

Exception: Spas or hot tubs with a safety cover that complies with ASTM F1346 shall be exempt from the provisions of this section.

21-9 EXTERIOR STRUCTURE.

21-9.1 General. The exterior of a structure shall be maintained in good repair, structurally sound and sanitary so as not to pose a threat to the public health, safety or welfare.

A. Unsafe Conditions. The following conditions shall be determined as unsafe and shall be repaired or replaced to comply with the *International Building Code* or the *International Existing Building Code* as required for existing buildings:

1. The nominal strength of any structural member is exceeded by nominal loads, the load effects or the required strength;
2. The anchorage of the floor or roof to walls or columns, and of walls and columns to foundations is not capable of resisting all nominal loads or load effects;
3. Structures or components thereof that have reached their limit state;
4. Siding and masonry joints including joints between the building envelope and the perimeter of windows, doors and skylights are not maintained, weather resistant or water tight;
5. Structural members that have evidence of deterioration or that are not capable of safely supporting all nominal loads and load effects;
6. Foundation systems that are not firmly supported by footings, are not plumb and free from open cracks and breaks, are not properly anchored or are not capable of supporting all nominal loads and resisting all load effects;
7. Exterior walls that are not anchored to supporting and supported elements or are not plumb and free of holes, cracks or breaks and loose or rotting materials, are not properly anchored or are not capable of supporting all nominal loads and resisting all load effects;
8. Roofing or roofing components that have defects that admit rain, roof surfaces with inadequate drainage, or any portion of the roof framing that is not in good repair with signs of deterioration, fatigue or without proper anchorage and incapable of supporting all nominal loads and resisting all load effects;
9. Flooring and flooring components with defects that affect serviceability or flooring components that show signs of deterioration or fatigue, are not properly anchored or are incapable of supporting all nominal loads and resisting all load effects;
10. Veneer, cornices, belt courses, corbels, trim, wall facings and similar decorative features not properly anchored or that are anchored with connections not capable of supporting all nominal loads and resisting all load effects;
11. Overhang extensions or projections including, but not limited to, trash chutes, canopies, marquees, signs, awnings, fire escapes, standpipes and exhaust ducts not properly anchored or that are anchored with connections not capable of supporting all nominal loads and resisting all load effects;
12. Exterior stairs, decks, porches, balconies and all similar appurtenances attached thereto, including guards and handrails, are not structurally sound, not properly anchored or that are anchored with connections not capable of supporting all nominal loads and resisting all load effects; or

13. Chimneys, cooling towers, smokestacks and similar appurtenances not structurally sound or not properly anchored, or that are anchored with connections not capable of supporting all nominal loads and resisting all load effects.

Exceptions:

1. When substantiated otherwise by an approved method.
2. Demolition of unsafe conditions shall be permitted when approved by the code official.

21-9.2 Protective treatment. All exterior surfaces, including but not limited to, doors, door and window frames, cornices, porches, trim, balconies, decks and fences, shall be maintained in good condition. Exterior wood surfaces, other than decay-resistant woods, shall be protected from the elements and decay by painting or other protective covering or treatment. Peeling, flaking and chipped paint shall be eliminated and surfaces repainted.

21-9.3 Premises identification. Buildings shall have approved address numbers placed in a position to be plainly legible and visible from the street or road fronting the property. Numbers shall be a minimum of 4 inches and contrast with their background.

21-9.4 Structural members. All structural members shall be maintained free from deterioration, and shall be capable of safely supporting the imposed dead and live loads.

21-9.5 Roofs and drainage. Roof water shall not be discharged in a manner that creates a public nuisance.

21-9.6 Stairways, decks, porches and balconies. Every exterior stairway, deck, porch and balcony, and all appurtenances attached thereto, shall be maintained structurally sound, in good repair, with proper anchorage and capable of supporting the imposed loads.

21-10 HANDRAILS AND GUARDRAILS.

21-10.1 General. Every exterior flight of stairs having more than four risers shall have a handrail on one side of the stair and every open portion of a stair, landing, balcony, porch, deck, ramp or other walking surface which is more than 30 inches above the floor or grade below shall have guards not less than 30 inches high above the floor of the walking surface.

21-11 RUBBISH AND GARBAGE.

21-11.1 Accumulation of rubbish or garbage. All exterior property and premises, and the interior of every structure, shall be free from any accumulation of rubbish or garbage.

21-11.2 Disposal of rubbish. Every occupant of a structure shall dispose of all rubbish in a clean and sanitary manner by placing such rubbish in approved containers.

21-11.3 Rubbish storage facilities. The owner of every occupied premise shall supply approved covered containers for rubbish, and the owner of the premises shall be responsible for the removal of rubbish.