

1 Whereas, the Town has employed a harbormaster, devised and adopted plans to
2 improve the Marina, Yacht Basin, and adjoining lands (including mooring fields), and
3 encouraged interconnectivity among the navigable waters and adjoining lands; Now, therefore,
4 The General Assembly of North Carolina enacts:

5 **SECTION 1.** Definitions. – The following definitions apply in this act:

- 6 (1) Adjoining lands. – The term includes all the lands within the Town's
7 boundaries and extraterritorial jurisdiction that adjoin the navigable waters
8 as defined in subdivision (2) of this section. The term includes the
9 Boardwalk, Freeman Park, Carolina Beach, and Lake Park.
- 10 (2) Navigable waters. – The term includes all of the following: The Atlantic
11 Ocean as it adjoins the Town's beach front and historic Boardwalk; Carolina
12 Beach Inlet, which links the Atlantic Ocean to the Intracoastal Waterway to
13 its north and to Myrtle Grove Sound to its south. The term also includes
14 those navigable waters in the Sound located between (i) a developed
15 peninsula on which Virginia Avenue is located, and (ii) those lands along the
16 west shore of Canal Drive. The Sound waters are further bounded by the
17 Intracoastal Waterway and its right-of-way to its north, Snow's Cut to its
18 west and the Yacht Basin at its southernmost portion; Snow's Cut (a water
19 passage southwest of Carolina Beach Inlet that separates Pleasure Island
20 from the remainder of New Hanover County), which links the Ocean, the
21 Intracoastal Waterway, and Carolina Beach Inlet to the Cape Fear River;
22 Myrtle Grove Sound, which links numerous water bodies – the Cape Fear
23 River, Snow's Cut, the Intracoastal Waterway, Carolina Beach Inlet, and the
24 Atlantic Ocean along the Town's ocean front southward – to the Town's
25 Yacht Basin and Municipal Marina; and the Town's Yacht Basin which is
26 linked to the drainage system that sustains Carolina Beach Lake. The term
27 further includes "Carolina Beach Lake", which is a park and lake located
28 inland along U.S. Highway 421 (South Lake Park Boulevard). The Lake is
29 fed by and drains to navigable waters of the United States. Thus, the U.S.
30 Army Corps of Engineers deems the Lake to be "waters of the United States"
31 under its jurisdiction. The term does not include the Intracoastal Waterway
32 and all areas within its right-of-way.

33 **SECTION 2.** Purpose. – The purposes of this act are to enable the Town of
34 Carolina Beach to do the following, subject to the limitations set forth in Section 4 of this act,
35 as follows:

- 36 (1) To enable the Town to continue its historic functions.
- 37 (2) To enable the Town to act in certain matters currently entrusted to the State,
38 but in a manner concurrent with the State and not inconsistent with State
39 powers.
- 40 (3) To enable the Town to perform acts in exercise of those powers set forth in
41 Section 3.

42 **SECTION 3.** Navigable waters and adjoining lands powers. – The Town of
43 Carolina Beach is authorized to perform all of the following in connection with the navigable
44 waters and adjoining lands, subject to the limitations in Section 4 of this act:

- 45 (1) Exercise the powers of a body corporate, including the power to sue and be
46 sued, and to make contracts with any public or private person or entity,
47 including all necessary contracts and arrangements with any governmental
48 and private entities and persons.
- 49 (2) Develop and implement plans for navigable waters and adjoining land's
50 purposes and to appoint any commissions or other bodies by the Town

- 1 Council with responsibility for the same, and to take proper actions to
2 further the same.
- 3 (3) Appoint, designate, and hire a harbormaster (with all the qualifications and
4 authority of Town law enforcement personnel, and to have any required
5 training and qualifications the Town Council or its designee may designate)
6 to serve at the pleasure of the Town Council, which is the responsible agent
7 to oversee the operation of the Marina and Yacht Basin and enforce
8 applicable town ordinances and matters delegated to the Town by this act.
9 The Town Council may delegate to the harbormaster or any other
10 appropriate body or official to hire any other such personnel to serve under
11 the harbormaster and perform those same acts delegated to the same. The
12 harbormaster, any Town employees or officials and the Town who by their
13 actions in the performance of their duties cause any damage to property or
14 any injury to a person shall not be liable for such damage or injury, unless
15 such is a direct result of their intentional misconduct.
- 16 (4) Take actions in connection with acquisition, sale, lease, construction,
17 expansion, improvement, maintenance, regulation, and operation of matters
18 in connection with the Marina, the Yacht Basin, Carolina Beach Lake, and
19 adjoining lands, including related piers, wharves, parks, docks, slips, quays,
20 bulkheads, erosion control devices, drainage, boats/water transportation,
21 moorings and mooring fields, boat safety equipment, dredging and channel
22 maintenance equipment, emergency and lifesaving services, fire protection,
23 law enforcement, warehouses, storage, tackle, waste disposal, fueling,
24 parking, recreational related-retail facilities, boat access, pedestrian/motor
25 vehicle/boating traffic control, elevators, compresses, refrigeration storage
26 plants, streets, access ways, navigational devices and equipment and related
27 structures, transportation over and about the navigable waters and adjoining
28 lands, lighting and signage and other structures, and any and all types of
29 facilities, infrastructure and equipment, streets, and other property (real and
30 personal).
- 31 (5) Establish offices for the transaction of business as, in the opinion of the
32 Town Council, shall be advisable or necessary.
- 33 (6) Delineate any pier head lines and channel lines.
- 34 (7) Pay all costs and expenses regarding the navigable waters and adjoining
35 lands.
- 36 (8) Apply for and accept loans and grants of money for any and all of the
37 purposes authorized by this act, from any sources, and to expend the same in
38 accordance with the directions and requirements imposed by the sources,
39 and to give such evidences of indebtedness as shall be required, provided,
40 however, that no indebtedness of any kind incurred or created by the Town
41 shall constitute an indebtedness of the State and no such indebtedness shall
42 involve or be secured by the faith, credit, or taxing power of the State or any
43 political subdivision thereof, including the Town.
- 44 (9) Act as an agent for and designated by (i) the United States of America, the
45 County of New Hanover and their respective applicable departments,
46 commissions, divisions, agencies, corporations, or instrumentalities, and (ii)
47 the State regarding any matter within their delegable jurisdiction in
48 connection with the navigable waters and adjoining lands.
- 49 (10) Adopt, alter, amend, or repeal its own ordinances, policies, rules, and
50 regulations concerning the manner in which navigable waters and adjoining
51 lands – related business may be transacted and operated.

- 1 (11) Establish and charge various reasonable fees for use of and access to its
2 services, facilities, and infrastructure related to the Marina, Carolina Beach
3 Lake, Yacht Basin, and adjoining lands. The fees being charged shall relate
4 to the actual cost of providing, preserving, maintaining, expanding, and
5 improving the same. In establishing these fees, the Town Council shall
6 consider the costs of providing the services, facilities, infrastructure, and
7 access, Town taxes and fees paid by Town residents used to defray the said
8 costs, the costs of similar services facilities, infrastructure, and access at
9 other similar marinas and beach parks in the South Atlantic region, revenue
10 requirements, and any other factors it considers relevant.
- 11 (12) Preserve, protect, and manage public access to the navigable waters and
12 adjoining lands and to issue temporary permits for events on the Marina,
13 Lake, Yacht Basin, and adjoining lands, for which the permittee may charge
14 a reasonable fee for entrance to and participation in the event subject to
15 approval as approved by the Town Council.
- 16 (13) Enforce State public safety, navigation, and fishing laws in connection with
17 conduct and activities at and on the navigable waters and adjoining lands, in
18 a manner consistent with and to the extent the same can be performed by the
19 State.
- 20 (14) Enforce public safety and welfare ordinances pertaining to recreation,
21 water-related activities, boating, and navigation.
- 22 (15) Rent, lease, own, acquire, sell, mortgage, otherwise encumber, and dispose
23 of any form of ownership interest in real, personal, and intangible property
24 in accordance with the procedures set forth in Chapter 160A of the General
25 Statutes.
- 26 (16) Acquire any form of interest in real property by eminent domain pursuant to
27 those procedures set forth in Chapter 40A of the General Statutes.
- 28 (17) Do any and all other acts and things required to be done to accomplish the
29 purposes of this act, whether or not included in the general powers in this
30 section.

31 **SECTION 4.** This act does not confer upon the Town any of the following:

- 32 (1) Any power within any exclusive non-delegable jurisdiction of the United
33 States of America, and its applicable departments, commissions,
34 divisions, agencies, corporations, or instrumentalities, nor authorize any act
35 infringing upon the powers of the same.
- 36 (2) Any non-delegable powers of the State.
- 37 (3) Any power to issue, modify, or revoke any State permits or licenses unless
38 otherwise expressly delegated to the Town by other applicable State law or
39 action.
- 40 (4) Any power to act contrary to State law except to the extent otherwise
41 provided by this act.
- 42 (5) Any exemption from applicable State law.

43 **SECTION 5.** This act is effective when it becomes law.